

# HOMEOWNER'S DOCUMENTS

Return to

Prepared by and return to:  
Charles S. Bolz, Esq.  
John T. Kinsey, P.A.  
2300 Corporate Blvd., Suite 112  
Boca Raton, Fl. 33431

JAN-09-1998 1:36pm 98-009231  
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**CERTIFICATE OF CORRECTIVE AMENDMENT OF  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR SUNSET POINTE**

This Certificate of Amendment is made this 6<sup>th</sup> day of January, 1998 by Transeastern Wellington Properties, Inc., a Florida Corporation (hereinafter referred to as "Declarant")

**RECITALS**

A. American Venture Enterprises, Inc. (hereinafter referred to as the "Original Declarant") filed the Declaration of Covenants and Restrictions for Montauk Harbour in Official Records Book 8424, Page 1295 of the Public Records of Palm Beach County, Florida (hereinafter referred to as the "Original Declaration") and subjected the property described therein to the operation thereof; and

B. Attached to the Original Declaration, as Exhibit "B" thereto, was the Articles of Incorporation of Montauk Harbor Homeowners, Inc. (hereinafter referred to as the "Articles"), and attached to the Original Declaration as Exhibit "C" thereto were the By-Laws of Montauk Harbor Homeowners, Inc. (hereinafter referred to as the "Original By-Laws")

C. Due to a scrivener's error the copy of the Articles attached as exhibit "B" to the Original Declaration, and references to the Association in the Original Declaration and Original By-Laws, spelled the name of the Association as "Montauk Harbor Homeowners, Inc." although the actual Articles of Incorporation of the Association filed with the Florida Secretary of State spelled the name of the Association as "Montauk Harbor Homeowners, Inc."; and

D. Attached hereto as Exhibit "A" is a true and correct copy of the Articles of Incorporation of Montauk Harbor Homeowners, Inc. filed with the Florida Secretary of State; and

E. Pursuant to Certificate of Amendment of Declaration of Covenants and Restrictions of Montauk Harbor and By-laws of the Montauk Harbor Homeowners Association, Inc. recorded in Official Records Book 9362, Page 1258, of the Public Records of Palm Beach County, Florida (hereinafter referred to as the "First Amendment"), the Original Declaration was Amended and replaced by Declaration of Covenants, Conditions and Restrictions for Sunset Pointe attached to

the First Amendment (hereinafter referred to as the "Declaration"), and the Original By-Laws were amended and replaced by First Amended By-laws of the Montauk Harbor Homeowners Association, Inc. attached as Exhibit "A" to the Declaration (hereinafter referred to as the By-Laws")

F. The Declaration provides, at Article XI, Section 7, that so long as the Declarant owns a Lot, that the Declaration can be amended by the Declarant without the consent of the Association or any Owner; and

G. Pursuant to Assignment of Rights, Privileges and Options dated June 7, 1995 and recorded in Official Records Book 9362, Page 1254, of the Public Records of Palm Beach County, Florida, The Original Declarant has assigned to Declarant all of the Original Declarant's rights, privileges and options provided to or reserved by the Original Declarant as the Declarant and the Approving Party under the Original Declaration, Articles and Original By-Laws, and Declarant is the Declarant and Developer pursuant to the Declaration; and

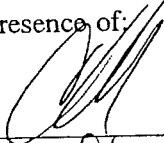
H. Declarant owns a Lot.

NOW THEREFORE, in consideration of the premises, covenants and provisions herein contained Declarant, hereby Amends the Declaration and By-Laws in the manner set forth below:

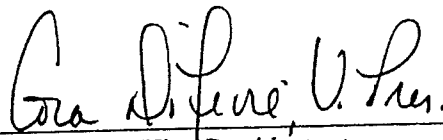
1. The above recitations are true and correct.
2. The Declaration is hereby amended to provide that any references in the Declaration or By-Laws to the "Association" or "Montauk Harbor Homeowners Association, Inc." shall mean, and refer to, the Montauk Harbor Homeowners Association, Inc., a Florida corporation not for profit, and any references in the Declaration or By-Laws to the Articles of Incorporation or Articles shall mean and refer to the Articles of Incorporation of Montauk Harbor Homeowners, Inc. Attached hereto as Exhibit "A".

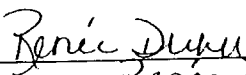
IN WITNESS WHEREOF, this Certificate of Amendment has been signed by Declarant on the day and year first above set forth.

Signed, sealed and delivered  
in the presence of:

  
Print name: Charles S. B. 12

TRANSEASTERN WELLINGTON PROPERTIES,  
INC., a Florida Corporation

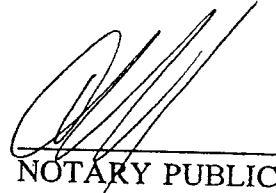
By:   
Cora DiFiore, Vice President

  
Print name: Renee Dunn

STATE OF FLORIDA  
COUNTY OF BROWARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Cora DiFiore, to me known to be the Vice President of TRANSEASTERN WELLINGTON PROPERTIES, INC., a Florida corporation, to me personally known, and who executed the foregoing instrument and who acknowledged before me that he executed same for the purposes therein stated on behalf of said corporation.

WITNESS my hand and seal in the County and State last aforesaid, this 6 day of January, 1998.

  
NOTARY PUBLIC

Charles S Bolz

Printed Notary Name

My Commission Expires:

Form of Identification:

Perennially Known



Charles S Bolz

My Commission CC699140

Expires December 10, 2001

Prepared by and return to:  
Charles S. Bolz, Esq.  
John T. Kinsey, P.A.  
2300 Corporate Blvd., Suite 112  
Boca Raton, Fl. 33431

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**CERTIFICATE OF AMENDMENT OF  
DECLARATION OF COVENANTS  
AND RESTRICTIONS OF MONTAUK HARBOR  
AND BY-LAWS OF THE MONTAUK HARBOR  
HOMEOWNERS ASSOCIATION, INC.**

This Certificate of Amendment is made this 17 day of July, 1996 by  
Transeastern Wellington Properties, Inc., a Florida Corporation (hereinafter referred to as  
"Declarant")

**RECITALS**

A. American Venture Enterprises, Inc. (hereinafter referred to as the "Original  
Declarant") filed the Declaration of Covenants and Restrictions for Montauk Harbour in  
Official Records Book 8424, Page 1295 of the Public Records of Palm Beach County, Florida  
(hereinafter referred to as the "Declaration") and subjected the property described therein to  
the operation thereof; and

B. Attached to the Declaration as Exhibit "C" thereto are the By-Laws of Montauk  
Harbor Homeowners, Inc. (hereinafter referred to as the "By-Laws"); and

C. The Declaration provides, at Article 10, that so long as the Declarant  
thereunder owns any portion of the Subject Property that the Declaration can be amended by  
the Declarant without the consent of the Montauk Harbor Homeowners Association, Inc. or  
any Owner; and

D. The By-Laws provide, at Article 9.3.2., that so long as the Declarant is entitled  
to appoint a majority of the Directors, that Declarant shall have the right to unilaterally  
around the By-Laws without the joinder of the Board of Directors or any member; and

E. Pursuant to Assignment of Rights, Privileges and Options dated June 7, 1995  
and recorded in Official Records Book 9362, Page 254 of the Public Records of Palm Beach  
County, Florida, The original Declarant has assigned to Declarant all of the Original  
Declarant's rights, privileges and options provided to or reserved by the Original Declarant as  
the Declarant and the Approving Party under the Declaration, Articles of Incorporation of the  
Montauk Harbor Homeowners Association, and By-Laws; and

F. Declarant owns a portion of the Subject Property and is entitled to appoint a

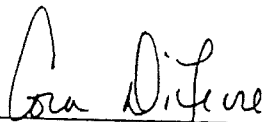
majority of the Board of Directors.

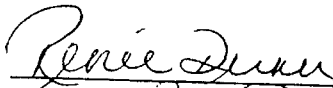
NOW THEREFORE, in consideration of the premises, covenants and provisions herein contained Declarant, hereby Amends the Declaration and By-Laws in the manner set forth below:

1. The above recitations are true and correct.
2. The Declaration is hereby amended to delete all existing terms and provisions and replace them in their entirety with the terms and provisions of the Declaration of Covenants, Conditions and Restrictions for Sunset Pointe attached hereto and recorded herewith ( hereinafter referred to as the "Amended Declaration").
3. The By-Laws are hereby amended to delete all existing terms and provisions to replace them in their entirety with the terms and provisions of the First Amended By-Laws of the Montauk Harbor Homeowners Association attached to the above described First Amended Declaration as Exhibit "A" thereto.

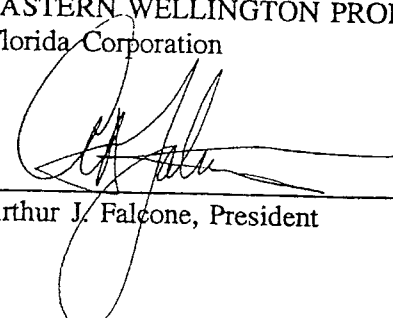
IN WITNESS WHEREOF, this Certificate of Amendment has been signed by Declarant on the day and year first above set forth.

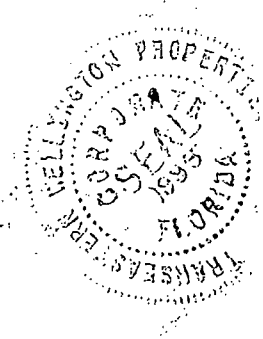
Signed, sealed and delivered  
in the presence of:

  
Print name: CORA Di Fiore

  
Print name: Renee Dunn

TRANSEASTERN WELLINGTON PROPERTIES,  
INC., a Florida Corporation

By:   
Arthur J. Falcone, President



STATE OF FLORIDA  
COUNTY OF BROWARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Arthur J. Falcone, to me known to be the President of TRANSEASTERN WELLINGTON PROPERTIES, INC., a Florida corporation, to me personally known, and who executed the foregoing instrument and who acknowledged before me that he executed same for the purposes therein stated on behalf of said corporation.

WITNESS my hand and seal in the County and State last aforesaid, this 17<sup>th</sup> day of July, 1996.

Cora DiFiore  
NOTARY PUBLIC

Cora DiFiore  
Printed Notary Name  
My Commission Expires:

Form of Identification:

N/A



CORA DIFIORE  
My Commission CC361233  
Expires May. 07, 1998  
Bonded by ANB  
800-852-5878

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNSET POINTE

THIS DECLARATION is made this 17 day of July, 1996, by TRANSEASTERN WELLINGTON PROPERTIES, INC., a Florida Corporation, which hereby declares that "The Property" described in Article II, of this Declaration shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

### ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. DEFINITIONS. The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

A. "Association" shall mean and refer to Montauk Harbor Homeowners Association, Inc., a Florida Corporation not for profit. This is the Declaration of Covenants and Restrictions to which the Articles of Incorporation (the "Articles") and First Amended By-Laws (the "By-Laws") of the Association make reference. A Copy of the Articles is attached as Exhibit "B" to the Declaration of Covenants and Restrictions of Montauk Harbor recorded in Official Records Book 8424, Page 1295, of the Public Records of Palm Beach County, Florida. A copy of the First Amended By-Laws is attached hereto as Exhibit "A".

B. "Developer" and/or "Declarant" shall mean and refer to Transeastern Wellington Properties, Inc., a Florida Corporation, ("Transeastern") and its successors or assigns if any such successor or assign acquires the undeveloped portion of Sunset Pointe from the Developer for the purpose of development and is designated as such by the Developer. Reference herein to Transeastern as the Developer of Sunset Pointe is not intended, and shall not be construed, to impose upon Transeastern liability for any obligations, legal or otherwise, for the acts of omissions of third parties who purchase lots within Sunset Pointe from Transeastern and develop and resell the same.

C. "Sunset Pointe," or "Property" shall mean and refer to all such existing properties and additions thereto as are subject to this Declaration or any supplemental Declaration under the provisions of Article II hereof, and shall include the real property described in Section 1 of Article II hereinbelow.

D. "Lot" shall mean and refer to any lot or other parcel with any and all improvements thereon, in Sunset Pointe platted in the Public Records of Palm Beach County, Florida or separately designated on a site plan approved by the Palm Beach County or the Village of Wellington, as applicable, on which a residential structure could be constructed, whether or not one has been constructed.

E. "Owner" shall mean and refer to the record owner, whether one or more persons



or entities, of the fee simple title to any Lot which is part of the Property, including Developer.

F. "Owner's Permittee" shall mean any and all persons who come within the physical boundaries of Parkside at the request or with the consent of a particular Owner, or for the purpose of transacting any business with or for an Owner.

G. "Common Area" shall mean and refer to the property legally described on Exhibit "B" attached hereto and made a part hereof, together with all property designated as Common Area in any supplemental declaration; together with the landscaping and improvements thereon, including without limitation all private roadways, pedestrian walkway areas, structure, recreational facilities, open space, walkways and pathways, sprinkler systems and street lights, but excluding any public utility installations thereon or thereunder, including, without limitation, a right of use, for the common use and enjoyment of the members of the Association. The use of the Common Area not designated as roadways or ingress and egress shall be restricted to park and recreational purposes. Common Areas designated as roadways or for ingress and egress shall be for the benefit of each Owner, their respective guests, invitee and licensees. All Common Areas may be subject to reasonable rules and regulations from time to time imposed.

H. "Turnover Date" shall mean and refer to the date when Declarant shall no longer appoint a majority of the Board of Directors of the Association, as set forth in the Articles and By-Laws, or at an earlier date upon the voluntary election of the Declarant.

Section 2. INTERPRETATION. The provisions of this Declaration, as well as those of the Articles, By-Laws and rules and regulations of the Association shall be interpreted by the Board of Directors. Any such interpretation of the Board of Directors which is rendered in good faith shall be final, binding and conclusive if the Board receives a written opinion of legal counsel to the Association, or the counsel having drafted this Declaration, that the interpretation is not unreasonable, which opinion may be rendered before or after the interpretation is adopted by the Board. Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Articles, By-Laws and the Rules and regulations of the Association, shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association, the preservation of the value of the Lots and the protection of the Declarant's activities herein contemplated.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO; DELETIONS THEREFROM

Section 1. LEGAL DESCRIPTION. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is legally described as set forth in Exhibit "C" attached hereto.

Section 2. PLATTING AND SUBDIVISION RESTRICTIONS. The Developer shall be entitled at any time and from time to time, to plat and/or replat all or any part of the Property, and to file subdivision restrictions, and/or amendments thereto with respect to any

undeveloped portion or portion(s) of the Property.

Section 3. **ADDITIONAL LAND.** Developer may, but shall have no obligation to, add at any time or from time to time to the coverage of this Declaration, additional lands or withdraw at any time or from time to time portions of the land hereinabove described, provided only that: (a) any lands from time to time added to the coverage of this Declaration shall be contiguous to property then subject to the coverage of this Declaration; (b) any portion of it shall, at the time of addition to the coverage of this Declaration, be approved for single family residential Lot(s); (c) upon addition of any lands to the coverage of this Declaration, the owners of property therein shall be and become subject to this Declaration, including assessment by the Association for their pro-rata share of Association expenses; and (d) neither the addition or withdrawal of lands as aforesaid shall, without the joinder or consent of a majority of the members of the Association, materially increase the pro-rata share of Association expenses payable by the Owners of property subject to this Declaration prior to such addition or remaining subject hereto after such withdrawal. The addition or withdrawal of lands as aforesaid shall be made and evidenced by the filing in the Public Records of Palm Beach County, Florida, of a supplementary Declaration with respect to the lands to be added or withdrawn. Developer reserves the right so to amend and supplement this Declaration without the consent or joinder of the Association or of any owner and/or mortgagee of land in Sunset Pointe. To the extent that such additional real property shall be made a part of the Property as a common scheme, reference herein to the Property shall be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above.

Section 4. **WITHDRAWAL.** Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Property then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Developer; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property. Any withdrawal of land not owned by Developer shall require the written consent or joinder of the then-owner(s) and mortgagee(s) of such land.

### **ARTICLE III** **PROPERTY RIGHTS**

Section 1. **TITLE TO COMMON AREA.** The Developer shall convey to the Association, at such time as it in its sole discretion deems appropriate, title to the Common Area, including all roads, lake bottoms, recreational areas and other areas which are for the use and benefit of all of the Owners of Lots in Sunset Pointe, subject to any mortgages for improvements to such Common Area parcel or parcels, to taxes for the year of conveyance, restrictions, conditions, limitations, easements of record and for drainage and public utilities and to perpetual non-exclusive easements for ingress to and egress from Developer's property in

Sunset Pointe for Developer, its successors and assigns ("Developer's Permittees") and Developer's invitees and licensees.

Section 2. OWNERSHIP. The Common Areas are hereby dedicated non-exclusively to the joint and several use, in common, of the Developer and the Owners of all Lots that may from time to time constitute part of the Property and all Owner's Permittees and the Developer's Permittees, all as provided and regulated herein or otherwise by the Association. Beginning from the date this Declaration is recorded, the Association shall be responsible for the maintenance, insurance and administration of such Common Areas (whether or not then conveyed or to be conveyed to the Association), all of which shall be performed in a continuous and satisfactory manner without cost to the general taxpayers of Palm Beach County, Florida.

Developer and its affiliates, together with the successors and assigns of the foregoing ("Developer's Affiliates") shall have the right from time to time to enter upon the Common Areas and other portions of the Property (including without limitation Lots) for the purpose of the installation, construction, re-construction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on the Common Areas or elsewhere on the Property that Developer and Developer's Affiliates or designees elect to effect, and to use, without charge, the Common Areas and other portions of the Property for sales, displays and signs or for any other purpose during the period of construction and sale of any portion thereof. Without limiting the generality of the foregoing, the Developer and Developer's Affiliates shall have the specific right to maintain upon any portion of the Property sales, administration, construction or other offices and appropriate exclusive and non-exclusive easements of access and use are expressly reserved unto the Developer and Developer's Affiliates, for this purpose.

Section 3. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner and its Permittees shall have a right of use and a non-exclusive, permanent and perpetual easement of enjoyment in and to the Common Area in common with all other Owners and Developer, which shall be appurtenant to (and shall pass with the title of) every Lot subject to the following:

- A. The right of the Association to take such steps as are reasonable necessary to protect the Common Area against foreclosure;
- B. All provisions of this Declaration, any plat of all or any parts of the Property, and the Articles and By Laws of the Association;
- C. Rules and regulations governing use and enjoyment of the Common Areas adopted by the Association;
- D. Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the Property.
- E. Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:
  - (1) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with the restrictions on the plats of portions of the Property from time to time recorded;
  - (2) The right of the Association to suspend an Owner's (and such Owner's Permittees) right to use the recreational facilities (if any) for any period

during which any assessment against such Owner's Lot remains unpaid for more than thirty (30) days; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations;

(3) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities situated on the Common Areas;

(4) The right of the Association to adopt at any time and from time to time and to enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon, including the right to fine Owners for the violation thereof. Any rule or regulation so adopted by the Association shall apply until rescinded or modified as if originally set forth at length in this Declaration;

(5) The right to the use and enjoyment of the Common Areas and facilities thereon shall extend to all Owner's Permittees, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations;

(6) The right of the Developer to permit such persons as Developer shall designate to use the Common Areas and all recreational facilities located thereon.

Section 4. EASEMENTS APPURTENANT. The easements provided in Section 1 above shall be appurtenant to and shall pass with the title to each Lot, but shall not be deemed to grant or convey any ownership interest in the Common Areas subject thereto.

Section 5. UTILITY EASEMENTS. Subject to the requirements of utilities servicing the Property for above-ground structures, public utilities may be installed underground in the Common Areas when necessary for the service of the Property or additional lands for which Developer owns, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration. The Developer, its affiliates and its and their designees, and any public or private utility servicing Sunset Pointe shall have a perpetual easement over, upon and under the Common Areas and the undeveloped portions of the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of all utilities serving the Property.

Section 6. PUBLIC EASEMENTS. Fire, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas and the Lots.

Section 7. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS. If any building or improvement shall encroach upon any portion of the Common Areas or upon an easement or an adjacent Lot by reason of original construction or by the non-purposeful or non-negligent act of Developer or any other Owner of such building or improvement, then an easement for such encroachment shall exist so long as the encroachment exists. In the event that after completion of construction of a residential structure, such residential structure shall encroach upon any portion of the Common Area or upon any

other Lot for any reason other than the intentional tortious act of the Owner of the encroaching property, or in the event that any improvement on the Common Areas shall encroach upon any Lot, then an easement shall exist to the extent of such encroachment for so long as such encroachment shall exist, together with all reasonable and necessary rights of ingress and egress for the purpose of maintaining or servicing the improvements or Common Areas to the extent of such encroachment. It is hereby specifically provided that eaves, soffits and vents may encroach on adjoining properties.

Section 8. SPECIAL MAINTENANCE EASEMENT. The improvements on each Lot will have no setback from the adjacent Lot on one side thereof, and accordingly each Owner acknowledges the necessity for an easement for the Owner of the adjacent Lot in order to maintain such improvements. Each easement is five feet in width and runs along the entire side of the adjacent Lot where there is no setback. Any use of the easement shall be done in a manner as to not inconvenience the adjacent Owner and shall only be done during the hours of 8:00 a.m. through 6:00 p.m., with reasonable prior notice to the adjacent Owner. Moreover, after completion of such maintenance work, each Owner shall be required to repair any and all damage it has caused to the adjacent Lot by such entry and shall be responsible for removing any and all debris from the easement area. The Owner of the adjacent Lot burdened by the easement will have the right to put a gate with a lock or a fence (subject to the approval of the ARB) in the easement area; provided, however, that the Owner holding the easement rights described herein shall have a right to require the Owner of such adjacent Lot to permit ingress and egress after reasonable notice so that the easement holder can use the easement area as herein provided.

Section 9. ADDITIONAL EASEMENT. The Developer (during any period in which the Developer has any ownership interest in the Property) and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Property and to grant access easements and to relocate any existing access easements in any portion of the Property as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

Section 10. ASSOCIATION EASEMENTS. For the purpose solely of performing its obligations under the provisions of this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day except Sunday. In the event of an emergency, such right of entry shall exist without notice on any day, including Sunday. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors, such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the exterior maintenance aforementioned. In the event an Owner is on vacation and/or will not

be present to permit entry onto his Lot for the exterior maintenance aforementioned, said Owner shall deposit his gate key with the Association to permit entry thereon.

Section 11. **STREET LIGHTING.** The street lighting poles and fixtures will be installed by the Developer within the Common Area and the Association shall have the obligation for maintenance of such street lighting facilities from the date of recording this Declaration or from the date of installation of the street lighting, whichever occurs first. Developer shall be entitled to all rebates or refunds of the installation charges as are made by Florida Power and Light Company to the Association for reimbursement for the installation fees for the poles and fixtures, and such rebates or payments shall be forthwith paid by the Association to Developer.

#### **ARTICLE IV** **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. **INCORPORATION.** The Developer's predecessor in interest has caused to be incorporated a corporation not for profit known as "Montauk Harbor Homeowners Association, Inc." (the Association"), in accordance with the Articles and By-Laws.

Section 2. **MEMBERSHIP.** Every person or entity who is a record Owner of a fee or undivided fee interest in a Lot, including the Developer at all times as long as it owns any part of the Property subject to this Declaration, shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 3. **VOTING.** The votes of the Owners shall be established and exercised as provided in the Articles, the By-Laws and the Declaration.

Section 4. **MERGER OR CONSOLIDATION.** Upon a merger or consolidation of the Association with any other association, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other property as one coverage. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by the Declaration within the Property.

Section 5. **TURNOVER, CONVEYANCE, ASSIGNMENT.** Upon the Turnover Date:

(i) Declarant shall convey to the Association any portion of the Common Areas which it has not previously conveyed.

(ii) Except as set forth in this Section, Declarant shall assign to the Association and the Association must accept, all of its rights, powers, duties, obligations and interests in connection with the enforcement of the terms, provisions and conditions created or provided for by this Declaration which it then possesses.

(iii) Notwithstanding anything contained in this Declaration to the contrary, Declarant shall have the right to retain and use, in connection with any Lots it then owns, any and all rights which it has reserved in this Declaration. Provided, that Declarant shall no later than three years after the Turnover Date assign all such rights and privileges it then has to the Association and the Association must accept such assignment.

(iv) Notwithstanding anything contained in this Declaration to the contrary, Declarant shall have those rights, privileges and remedies that Owners have for the Lots that it then owns.

(v) All assignments made in accordance with this Section shall be by written instrument executed by Declarant and recorded in the Public Records of Palm Beach County, Florida. No notice of assignment shall be required to be given to any person other than the Association. Upon the recordation of this assignment, Declarant shall not be liable or responsible for, in any manner, the action (or inaction) of the Association or its successors in interest.

(vi) This Section may not be suspended, superseded or modified in any manner unless such action is consented to in writing by Declarant.

## ARTICLE V COVENANTS FOR MAINTENANCE ASSESSMENTS AND FOR PAYMENT THEREOF

Section 1. **MAINTENANCE.** The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas and, to the extent not otherwise provided for, the paving, drainage structures, landscaping, improvements and other structures (except public utilities) situated on the Common Areas, if any, all such work to be done as ordered by the Board of Directors of the Association. The Association shall provide irrigation and maintenance for the landscaping located solely within the Common Areas.

Section 2. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Except as elsewhere provided herein, the Developer, for each Lot owned by it within Sunset Pointe as of the date of the recording hereof, hereby covenants, and each Owner of any Lot, by acceptance of a deed or other conveyance (whether or not such acceptance is expressed in the deed or instrument conveying title to such Lot) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, any special assessments for capital improvements or major repair

or any other charges provided for herein, as may be imposed by the Association; such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from due date at the highest rate allowed by law and costs of collection thereof, including attorney's fees), shall be a charge on the land and shall be a continuing lien upon the Lot(s) against which each such assessment is made and shall be the personal obligation of the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment.

Section 3. PURPOSE OF ASSESSMENTS. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Sunset Pointe and in particular for the improvement and maintenance of the Common Area and of any easement in favor of the Association, including, but not limited to, the cost of taxes on the Common Area, insurance, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of the Association and undertaken by the Association, including the establishment and maintenance of such reasonable reserves as the Association may deem necessary and appropriate.

Section 4. UNIFORM RATE OF ASSESSMENT. All regular and special assessments shall be at a uniform rate for each Lot in Sunset Pointe, except that assessments may be made pursuant to Section 14 of this Article against the Owners of specific Lots without a corresponding assessment against the Owners of other Lots. Provided however, during the period in which the Developer owns any Lot in Sunset Pointe, it shall be exempt from assessment, at its sole discretion, as long as it agrees to pay any cash operating deficit of the Association as provided in Section 12 below.

Section 5. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS AND MAJOR REPAIRS. In addition to any annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board of Directors of the Association, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of a majority of the members of the Board of Directors of the Association. Any such special assessment shall be subject to all of the applicable provisions of this Article including, without limitation, lien filing and foreclosure procedures, late charges and interest. Any special assessment levied hereunder shall be due within the time specified by the Board of Directors in the Board action imposing such assessment or may be of an on-going nature. Special assessments shall be levied hereunder only as may be necessary for items which are not payable from annual assessments of the Association as ordinary repairs or from reserves established by the Association for the periodic replacement of capital improvements.

Section 6. DUE DATE. The due date of any assessment shall be fixed in the resolution authorizing such assessments, and any such periodic installments shall be payable at



such times as shall be determined by the Board of Directors of the Association.

Section 7. DUTIES OF THE BOARD OF DIRECTORS. The Board of Directors of the Association shall fix the date of commencement and the amount of, the assessment against each Lot and other portions of the Property, for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner subject thereto not later than twenty (20) days after fixing of the date of commencement thereof.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. EFFECT OF NON-PAYMENT OF ASSESSMENT; THE LIEN; THE PERSONAL OBLIGATION; REMEDIES OF ASSOCIATION. The annual, special and other assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and the cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment became due. If any assessment (or installment thereof) provided for herein is not paid on or before the date(s) when due, then such assessments (or installments), together with late charges, interest and the cost of collection thereof as hereinafter provided, shall become delinquent, and the Association may thereupon bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of the lien created hereby) against the Lot on which the assessment and other charges are due, and may foreclose such lien in like manner as a foreclosure of a mortgage on real property. Except as provided in Section 10 of this Article to the contrary, the personal obligation of the then Owner to pay such assessment shall pass to his successors in title and recourse may be had against either or both.

If the assessment is not paid within thirty (30) days after the due date, which shall be set by the Board of Directors of the Association, the assessment shall bear interest from the date of delinquency at the highest rate allowed by law, and there shall be added to the amount of such assessment the cost of preparing and filing the claim of lien and any complaint in any action brought to collect such assessment and other charges, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the Court together with the costs of the action.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein, as well as in any other Article of this Declaration, shall be subordinate to real property tax liens and the lien of any first mortgage to a federal or state chartered bank, mortgage company, life insurance company, federal or state savings and loan association or real estate investment trust or other similar mortgagee generally known as an institutional mortgagee, which is perfected by recording prior to the recording of a claim of lien

for any such unpaid assessments by the Association. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot by deed in lieu of foreclosure of such Lot or pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage; provided however, any such Lot shall be liable, following such sale, for a pro rata share of any unpaid assessments against such Lot accruing prior to such sale, in common with all other Lots subject to assessment by the Association. No sale or other transfer shall relieve any Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The written opinion of the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

Section 10. EXEMPT PROPERTY. The Board of Directors shall have the right to exempt any of the Property subject to this Declaration from the Assessments, charge and lien created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

- A. Any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- B. All of the Common Area as defined in Article I hereof;
- C. Any of the Property exempted from ad valorem taxation by the laws of the State of Florida (not including any homestead exemption), to the extent agreed to by the Association.
- D. Any easement or other interest dedicated or conveyed to not for profit corporations for the use and benefit of residents in the Planned Unit Development of which the Property is a part.

Notwithstanding any provisions herein, no land or improvements devoted to residential dwelling or related use shall be exempt from said assessments, charges or lien.

Section 11. EFFECT ON DEVELOPER. Notwithstanding any provision that may be contained to the contrary in this instrument, for so long as Developer (or any of its affiliates) is the owner of any Lot or undeveloped property within the Property, the Developer shall have the option, in its sole discretion, to (i) pay assessments on the Lots owned by it, or (ii) not paying assessments on any Lots and in lieu thereof funding any resulting deficit in the Association's operating expenses not produced by assessments receivable from Owners other than the Developer. The deficit to be paid under option (ii) above, shall be the difference between (a) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees payable to any affiliate of the Developer) and (b) the sum of all monies received by the Association (including, without limitation, assessments, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). The Developer may from time to time change the option stated above under which the Developer is making payments to the Association by written notice to such effect to the Association. When all Lots within the Property are sold and conveyed to purchasers, neither the Developer nor its affiliates, shall have further liability of any kind to the Association for the payment of assessments, deficits or contributions.

Section 12. ASSOCIATION FUNDS. The portion of all regular assessments collected by the Association for reserves for future expenses, if any, and the entire amount of all special assessments, may be held by the Association and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions, the deposits of which are insured by an agency of the United States.

Section 13. SPECIFIC DAMAGE. Owners (on their behalf and on behalf of their children and Owner's Permittees) causing damage to any portion of the Common Areas as a result of misuse, negligence, failure to maintain or otherwise shall be directly liable to the Association and a special assessment may be levied therefor against such Owner or Owners. Such special assessments may be imposed by the Board of Directors of the Association, and shall be subject to all of the provisions hereof relating to other assessments, including but not limited to, the lien and foreclosure procedures.

Section 14. FIRST WELLINGTON, INC.. Sunset Pointe is part of a master development subject to the Amended and Restated Articles of Incorporation of First Wellington, Inc. recorded in Official Records Book 8462, Page 466, and Amended and Restated By-Laws of First Wellington, Inc. recorded in Official Records Book 8446, Page 205, of the Public Records of Palm Beach County, Florida ( the "Master Covenants" ). Pursuant to the Master Covenants, assessments are due and payable to First Wellington, Inc. and the Property is subject to certain covenants, conditions, easements, and restrictions as set forth therein.

## ARTICLE VI EXTERIOR MAINTENANCE

Section 1. EXTERIOR MAINTENANCE OF IMPROVEMENTS. Each Owner shall maintain all structures located on such owner's Lot in a neat, orderly and attractive manner and consistent with the general appearance of Sunset Pointe as a whole. The minimum (although not sole) standard for the foregoing shall be consistency with the general appearance of Sunset Pointe as initially constructed and otherwise improved by Developer or by any other builders who build in accordance with plans approved by the Developer (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness). The judgment of the Board of Directors, in consultation with the ARB, shall be binding as to the determination of whether structures are being sufficiently maintained.

Section 2. MAINTENANCE OF LOTS. No weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep his Lot free of weeds, underbrush or refuse piles, debris or other unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass.

Section 3. REMEDIES FOR NON-COMPLIANCE. In the event of the failure of an Owner to maintain his Lot or the structures erected thereon in accordance with the provisions of the Article, the Association shall have the right, upon five days prior written notice to the Owner in the manner provided herein, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or structures, as applicable, into compliance with the standards set forth in this Article. Such work may include, but shall not be limited to , the cutting/trimming of grass,, tress and shrubs; the removal (by spraying or otherwise) of weeds and other noxious vegetation; the re-sodding or re-planting of grass, tress or shrubs; the re-painting or re-staining of exterior surface of structures; the repair of walls, fences, roofs, doors, windows or other portions of a structure on a Lot; and such other remedial work as is judged necessary by the applicable entity. The remedies provided for herein shall be cumulative with all other remedies available under this declaration, including without limitation the imposition of fines or assessments or the filing of judicial proceedings.

Section 4. COST OF REMEDIAL WORK. In the event that the Association performs work pursuant to this Declaration, the cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed or, in the opinion of the Board of Directors of the Association, benefitting from same. In order to discourage Owners from abandoning certain duties of maintenance imposed hereunder so as to force the Association to perform such work for the Owner, the Association may impose a surcharge of not more than thirty-five percent (35%) of the cost of the applicable remedial work, such surcharge to be a part of the assessment provided for in this Section. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board of Directors of the Association. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot(s) benefitting from such maintenance and the personal obligation of the Owner(s) of such Lot(s) and shall become due and payable in all respects, together with interest and fees for the cost of collection, as provided for the other assessments of the Association, and shall be subordinate to mortgage liens to the extent provided by Section 10 of Article V hereinabove.

Section 5. ACCESS. For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot(s) or the exterior of any improvements thereon at reasonable hours on any day except Saturday or Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice, as under the circumstances, is practically affordable.

## ARTICLE VII ARCHITECTURAL CONTROL

Section 1. NECESSITY OF ARCHITECTURAL REVIEW AND APPROVAL. No landscaping, improvement or structure of any kind, including without limitation, any

building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any Lot nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to and approved in writing, by the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the Architectural Planning Criteria of the Association, as the same may from time to time be adopted by the ARB. It shall be the burden of each Owner to supply completed plans and specifications to the Association's Architectural Review Board (the "ARB") and no plan or specification shall be deemed approved unless a written approval is granted by the ARB to the Owner submitting same. Any change or modification to approved plans shall not be deemed approved unless a submittal and written approval thereof is granted. Provided however, the Developer shall be exempt from review and approval with respect to any property it may own, from time to time. Provided further, the review and approval rights as contained herein are intended to control aesthetics and the maintenance of community standards, not to insure compliance with any contract, Code, ordinance, rule, regulation or law. Each Owner expressly acknowledges that the Developer, Association and ARB shall incur no liability, express or implied, with respect to conformance with any contract, Code, ordinance, rule, regulation or law.

Section 2. ARCHITECTURAL REVIEW BOARD. The architectural review and control functions of the Association shall be administered and performed by the ARB, which shall consist of three (3) members who need not be members of the Association. Members shall serve for a term of one year. The Developer shall have the right to appoint all of the members of the ARB, or such lesser number as it may choose, as long as it owns at least one (1) Lot in Sunset Pointe. Members of the ARB as to whom Developer may relinquish the right to appoint, and all members of the ARB after Developer no longer owns at least one (1) Lot in Sunset Pointe, shall be appointed by, and shall serve at the pleasure of the Board of Directors of the Association. Any time that the Board of Directors has the right to appoint one (1) or more members of the ARB, the Board shall appoint at least one (1) architect or building contractor thereto. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board of Directors; except that Developer, to the exclusion of the Board, shall fill any vacancy created by the death, resignation, removal or other termination of services of any member of the ARB appointed by the Developer.

Section 3. POWERS AND DUTIES OF THE ARB. The ARB shall have the following powers and duties:

A. To recommend, from time to time, to the Board of Directors of the Association modification and/or amendments to the Architectural Planning Criteria. Any modification or amendment to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board

of Directors of the Association at a meeting duly called and noticed at which a quorum is present and voting. Notice of any modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such change or modification, shall be delivered to each member of the Association; provided that, the delivery to each member of the Association of notice and a copy of any modification or amendment to the Architectural Planning Criteria shall not constitute a condition precedent to the effectiveness or validity of such change or modification.

B. To require submission to the ARB of two (2) complete sets of all plans and specifications, and a complete color palette, for any improvement or structure of any kind, including without limitation, any building, fence, wall, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement, the construction or placement of which is proposed upon any Lot in Sunset Pointe, signed by the Owner of the Lot and contract vendee, if any. The ARB may also require submission of samples of building materials proposed for use on any Lot, and may require such additional information as reasonably may be necessary for the Board to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria. If such submission is not approved or disapproved by the ARB within thirty days of the submission thereto, such submission shall be deemed approved. No work shall be commenced until the ARB has (or is deemed to have) approved such plans. Approval by the ARB of the completion of any proposed improvements or removals shall also be required in order to insure that such work has been performed in accordance with the plans approved by the ARB. If the ARB shall not approve or disapprove such work within thirty days of its receipt of written notice of the completion thereof, such work shall be deemed approved. Any changes to completed work required by the ARB shall be subject to the requirement of approval by the ARB, and shall be completed with sixty days of written notice from the ARB requiring such changes.

C. To approve or disapprove any improvement or structure of any kind, including without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot in Sunset Pointe and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARB shall be submitted in writing to the Board of Directors of the Association, and evidence thereof may, but need not be, made by a certificate, in recordable form, executed under seal by the President or any Vice President of the Association. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board of Directors of the Association, within thirty (30) days of such decision, for a review thereof. The determination of the Board upon reviewing any such decision shall in all events be dispositive.

D. To adopt a schedule of reasonable fees for processing requests for ARB approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the ARB.

Section 4 ARCHITECTURAL PLANNING CRITERIA The Architectural Planning Criteria is intended as a guideline to which adherence shall be required by each Owner in Sunset Pointe; provided however, the ARB shall have the express authority to waive any

requirement set forth in the Architectural Planning Criteria if, in its opinion, it deems such waiver is in the best interests of the community and the deviation requested is compatible with the character of Sunset Pointe. A waiver shall be evidenced by an instrument signed and executed by the President and Secretary of the Association upon the approval of a majority of the members of the ARB.

Section 5 DEVELOPER EXEMPTION Developer and its affiliates shall be exempt from the provisions hereof with respect to alterations and additions desired to be effected by any of them and shall not be obligated to obtain ARB or Association approval for any construction or changes which any of them may elect to make at any time.

### **ARTICLE VIII RESTRICTIONS**

Section 1. RESIDENTIAL USE. No Lot shall be used except for residential living units and for no other purpose. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. Provided however, a sales model operated by the Developer shall not be deemed a commercial building. No building or other improvements shall be erected upon any Lot without prior ARB approval thereof as elsewhere herein provided. No Lot shall be divided, subdivided or reduced in size. Without the express prior consent and approval of the ARB, no dwelling or other structure or improvement shall be erected, altered, placed or permitted to remain on any site not including at least one (1) full platted Lot according to the recorded plat of Sunset Pointe.

Section 2. NO TEMPORARY BUILDINGS. No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without written consent of the Developer or the Association. Commercial vehicles shall not be parked within public view on a regular basis.

Section 3. ANTENNAS AND FLAGPOLES. No outside antennas, antenna poles, antenna masts, electronic devices, satellite dishes or antenna towers shall be permitted. Placement of the aforementioned items within a permitted enclosure on the Lot shall be permitted so long as there is appropriate landscaping and/or other screening. The decision of what constitutes adequate landscaping and/or screening shall be made by the ARB, whose decision shall be final. No more than one flagpole per Lot for display of the American flag only will be permitted and the flagpole design and location must first be approved in writing by the ARB. An approved flagpole shall not be used as an antenna. No flagpole on a Lot shall exceed a height of fifteen feet (15') above ground level. Developer, or its successors, shall have the right for a period of five (5) years from the date of recordation of this Declaration, to install a flagpole within the subdivision which will not exceed a height of thirty-five feet (35') above ground level.

Section 4. TRUCKS, COMMERCIAL VEHICLES, BUSES, RECREATIONAL

# VEHICLES, MOTOR HOMES, MOBILE HOMES, BOATS, CAMPERS AND TRAILERS.

A. No truck or commercial vehicle of any kind shall be permitted to be parked within Sunset Pointe for a period of more than four hours unless said vehicles are temporarily present and necessary in the actual construction or repair of a dwelling unit on a Lot, or for the purpose of moving the personal possession of the Owner of such Lot to or from another location. No truck or commercial vehicle shall be parked overnight or stored in or near Sunset Pointe unless fully enclosed within a garage.

B. No recreational vehicle of any kind shall be parked overnight, and no boats, boat trailers, or trailers of any kind, or campers, motor homes, mobile homes or buses shall be permitted to park in Sunset Pointe at any time unless kept fully enclosed within a garage.

C. None of the vehicles named herein shall be temporarily used as a domicile or residence, either permanent or temporary.

D. The prohibitions on parking contained in this Section shall not apply to temporary parking of trucks and commercial vehicles for purposes such as pick-ups and deliveries and other commercial services, nor to vehicles of the developer or its affiliates. No on-street parking or parking on lawns shall be permitted.

E. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions herein or in the rules and regulations now or hereafter adopted by the Association may be towed by the Association at the sole expense of the owner of the vehicle if such vehicle remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing, and once the notice is posted, neither its removal, no failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

Section 5. TREES. No tree or shrub, the trunk of which exceeds two inches (2") in diameter three feet above ground level shall be cut down, destroyed or removed from a Lot without the prior express written consent of the ARB.

Section 6. ARTIFICIAL VEGETATION. No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARB.

Section 7. AUTOMOBILE STORAGE AREA. No automobile garage shall be permanently enclosed or converted to another use without the substitution of another enclosed automobile storage area upon the Lot. No carports shall be permitted unless approved by the ARB. All garages shall contain at least 300 square feet of usable space appropriate for the parking of automobiles. Garages may not be converted to dens, bedrooms or other areas intended for habitation, it being the intent that garages be available for use for the purpose intended.

Section 8. CLOTHES DRYING AREA. No clothing, laundry or wash shall be aired or dried on any portion of the Property except for any portion of a Lot which is screened



from view of adjoining Lots and roadways.

Section 9. LANDSCAPING. An initial basic landscaping plan for each Lot, together with a detailed written estimate of the costs of such plan, must be submitted to and approved by the ARB at the time of construction of a home on such Lot. Sodding will be required on all yards; no seeding and/or sprigging shall be permitted. An underground sprinkler system of sufficient size and capacity to irrigate all sodded or landscaped areas must be installed and maintained in good working order on all Lots. All Lots shall be sodded and irrigated to the paved roadway and/or water's edge where such Lot abuts a roadway and/or water body.

Section 10. NUISANCES. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

Section 11. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except for the following:

A. The exclusive sales agent for the Developer may place such signs for advertising the property for sale as may deemed appropriate by the Developer.

B. No other signs, either permanent or temporary in nature, shall be erected or displayed on any Lot, dwelling unit, structure, vehicle or window (or be visible through any window on the Lot from any location off the Lot), unless the placement, character, form, color, size, and time of placement of such signs are first approved by the ARB. No freestanding signs shall be permitted unless approved by the ARB. Said signs must also conform with local regulatory codes and ordinances.

SECTION 12. IRRIGATION. Irrigation by the Association and by Lots which directly abut any of the water bodies within Sunset pointe may use a well or neighboring water retention systems. All other Lots shall utilize individual wells, which shall be installed in such a manner as to avoid staining.

Section 13. LIVING AREA. Each detached single family residence constructed upon a Lot in Sunset Pointe shall contain a minimum of thirteen hundred (1,300) square feet of air conditioned living area. Living area as referred to in this section excludes garage and patios. The method of determining the square feet of living area of a dwelling unit shall be to multiply the outside horizontal dimensions of the dwelling unit at each floor level.

Section 14. LIGHTING. No lighting shall be permitted which alters the residential character of Sunset Pointe. Lighting of tennis courts and other recreational facilities located in the Common Area shall be permitted.

Section 15. BUILDING SETBACK AREAS.

A. No structure shall be erected or constructed on any Lot within any setbacks for the Property established by the Master Covenants, First Wellington, Inc., Palm Beach County, the Village of Wellington, or any other governmental or quasi-governmental agency or entity having jurisdiction over the Property.

B. All Lots shall have a minimum front setback of twenty feet (20.0').

C. No bay windows, chimneys, balconies or similar extended structures shall be permitted on, upon or over the building setbacks. Notwithstanding the preceding provision, the following extended structures shall be permitted on, upon or over the building setbacks:

- (1) Building appurtenances such as window sills, decorative banding and other similar appurtenances that do not protrude more than twelve inches (12") horizontally into a required building setback;
- (2) Walls, fences, decks and similar structures not exceeding five feet (5.0') in height;
- (3) The eaves of the roof of the dwelling constructed on a Lot;
- (4) Air conditioners, pool pumps, sprinkler pumps or other similar mechanical equipment, provided there is adequate shielding of said mechanical equipment. The decision of what constitutes adequate shielding shall be made by the ARB, whose decisions shall be final.

D. Where two or more Lots are acquired and used as a single building site under a single owner, the said Lot lines shall refer only to the lines bordering on the adjoining property not owned by such Owner.

E. Setback lines for corner Lots and odd-shaped Lots shall be as nearly as possible as set out above, except that minor variations may be authorized by Declarant at the time plans for buildings are approved, and a copy of such plans, including the plot plan, or a record of the variance, may be kept on file by the ARB to establish setback lines as approved. Check each subdivision to local code, plat and master association documents.

Section 16. SCREEN ENCLOSURES.

A. No screen enclosures shall be permitted unless the screen enclosure plans, specifications, elevations and location on the Lot are first approved by the ARB. Any dispute as to the height, location, length, type, design, composition, material or color shall be resolved by the ARB, whose decision shall be final.

B. Screen enclosure plans shall show elevations of the enclosure attached to the elevations of the dwelling unit on the Lot. If an Owner desires to install a screen enclosure subsequent to the ARB's approval of the original plans for the dwelling unit on the Lot (and screen enclosure plans and elevations were not part of the original approved plans), such Owner shall be required to submit screen enclosure plans and elevations, together with the dwelling unit elevations to the ARB. As a condition of approval, the ARB may require additional landscaping.

Section 17. OUTDOOR RECREATIONAL COURTS. No outdoor recreational courts, including, but not limited to, tennis, racquetball, basketball, volleyball and badminton courts shall be permitted. Any approved regulation size basketball backboard and pole shall be located adjacent to the Lot's permitted driveway. The decisions of what constitutes "adjacent"

shall be made by the ARB, whose decision shall be final. Approved poles shall be constructed of metal material.

Section 18. CAPITAL CONTRIBUTION. A "capital contribution" of One Hundred Fifty and 00/100 Dollars (\$150.00) shall be made for each Lot within the Property. Said amount shall be for the purpose of initially funding a reserve established by the Association for making additional purchases for and improvements to the Common Area. In addition, the Capital Contribution may be used for emergency repairs, or to make deposits required by utility companies, or otherwise required by the Articles of Incorporation of the Association, the Board of Directors of the Association, or the Owners. Notwithstanding anything contained herein to the contrary, the Capital Contribution shall not be used for operating funds. Further, the Capital Contribution reserve shall not be used by the Homeowner's Association for litigation at either the trial and appellate levels in any court of competent jurisdiction. The Capital Contribution shall be paid by the Owners, other than Developer or the Association, to the Association in addition to any other regular or special assessment. Capital Contributions shall be paid only once for each Lot in the Property. Capital Contributions shall never be required of Developer. Capital contributions shall be paid at the time of conveyance of title by Developer to each Owner other than the Association.

Section 19. WALLS AND FENCES. No wall or fence shall be constructed with a height of more than five (5.0) feet and no hedge or shrubbery abutting the Lot lines or property lines of a Lot shall be permitted with a height of more than eight feet (8.0'), without the prior written approval of the ARB. No wall or fence shall be constructed on any Lot until its height, length, type, design, composition, material, color and location shall have been approved by the ARB. The height of any wall, fence, hedge or shrubbery shall be measured from the adjoining Lot's then existing elevations. Any dispute as to height, length, type, design, composition, material or color shall be resolved by the ARB, whose decision shall be final. No wood fencing material shall be permitted. Approved walls or fences shall require appropriate landscaping. The decision of what constitutes appropriate landscaping shall be made by the ARB, whose decision shall be final.

Section 20. GARBAGE CONTAINERS, AIR CONDITIONERS, OIL & GAS TANKS, REFLECTIVE MATERIALS, SOLAR COLLECTORS.

A. All garbage and trash containers, oil tanks, bottled gas tanks, irrigation system pumps and swimming pool equipment, pumps and housings, must be underground or placed in fenced, landscaped or walled-in areas so that they shall not be visible from any street or adjacent Lots. Adequate landscaping or shielding shall be installed and maintained by each owner as required by the ARB. Garbage, refuse, trash and rubbish shall be disposed of only as permitted by rules adopted by the Association. The requirements of any local governmental authority regarding collection of waste shall be complied with. No garbage, refuse, trash and rubbish shall be disposed of except in containers designed for that purpose, which containers shall be placed out for collection no sooner than 24 hours prior to scheduled collection and must be removed within 12 hours of collection.

B. All air-conditioning units shall be shielded and hidden by walls and/or landscaping

so that they shall not be visible from any street or adjacent Lots. Wall and window air-conditioning units are prohibited.

C. No building shall have any aluminum foil place in any windows or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except as may be approved by the ARB for energy conservation purposes.

D. Solar collectors shall only be permitted at locations on Lots or on structures thereon, as are approved by the ARB. All solar collectors shall be flush-mounted onto a roof plane or shall be fully screened, and no exposed piping shall be permitted. Shielding of approved solar collectors may be required.. The decision of what constitutes adequate shielding shall be made by the ARB, whose decision shall be final.

E. The ARB shall have the right to approve any specific shielding and such approval shall be binding on all persons so long as it is maintained in the condition as approved by the ARB.

#### Section 21. PETS AND ANIMALS.

A. Commonly accepted household pets such as dogs and cats may be kept in reasonable numbers all as determined by the Homeowner's Association in its sole discretion. All animals shall be contained on the Owner's Lot and shall not be permitted to roam free, or to otherwise disturb the peace of other Owners.

B. Swine, goats, horses, cattle, sheep, chickens and the like are hereby declared to be specifically prohibited. Obnoxious animals, fowl and reptiles are prohibited. The determination what is or may be an obnoxious animal, fowl or reptile shall be made by the Association, whose decision shall be final.

C. No animal breeding or sales as a business shall be permitted in Sunset Pointe.

D. Owners and their invitees shall be responsible for any droppings left by their respective pets on portions of Sunset Pointe other than such Owner's Lot, and shall promptly cause such droppings to be removed and properly disposed of.

Section 22. APPLICABILITY. The provisions of this Article VIII shall be applicable to all of the Lots, but shall not be applicable to the Developer or any of its affiliates or designees.

Section 23. ADDITIONAL RULES AND REGULATIONS. Attached hereto as Exhibit "D" are certain additional rules and regulations of the Association which are incorporated herein by reference and which, as may the foregoing, be modified, in whole or in part, at any time by the Board of Directors of the Association, without the necessity of recording an amendment hereto or thereto in the public records of Palm Beach County, Florida.

### **ARTICLE IX ON SITE LAKES**

Any on site lakes are designed as water management areas and are not designed as

aesthetic features. Due to low ground water elevations within the immediate area, lakes located on site may be extremely shallow during several months of the year. The Developer and the Association shall incur no liability for receding water levels due to changes in the water table and surrounding properties.

## **ARTICLE X INSURANCE**

Section 1. COMMON AREAS. The Association shall keep all improvements, facilities and fixtures located within the Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters), and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Owners. The insurance coverage with respect to the Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the assessments made by the Association.

The Association shall also maintain flood insurance in an amount equal to 100% of the replacement cost of all insurable improvements within the Common Areas or the maximum amount available under the National Flood Insurance Program.

The Association may obtain such other insurance coverages as the Board may deem necessary and appropriate to the performance of the Association's obligations hereunder and the protection of the Association and its properties.

Section 2. REPLACEMENT OR REPAIR OF PROPERTY. In the event of damage to or destruction of any portion of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of this Declaration.

## **ARTICLE XI GENERAL PROVISIONS**

Section 1. DURATION. The Covenants and Restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Developer, the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said Covenants and Restrictions shall automatically be extended for successive periods of ten (10) years unless an

instrument executed by the then Owners of 75% of all Lots subject hereto and 100% of all mortgages on any portion of the Property has been recorded in the public records of Palm Beach County, Florida, agreeing to change or terminate said Covenants and Restrictions in whole or in part. Provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner and mortgagee at least ninety (90) days in advance of any signatures being obtained.

Section 2. NOTICES. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as member or Owner on either the records of the Association or the Public Records of Palm Beach County, Florida, at the time of such mailing.

Section 3. ENFORCEMENT. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association 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. Violation or breach of any condition, covenant or restriction herein contained shall give the Developer and/or Association and/or Owner(s) in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any one of them, and the expenses of such litigation shall be borne by the then Owner or Owners of the subject Property, provided such proceeding results in a finding that such Owner was in violation of said Covenants or Restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Developer and/or the Association in seeking such enforcement.

Section 4. SEVERABILITY. Invalidation of any one of these Covenants and Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. CONFLICT. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By Laws of the Association and the Articles shall take precedence over the By Laws.

Section 6. EFFECTIVE DATE. This Declaration shall become effective upon recordation of this Declaration in the Public Records of Palm Beach County, Florida.

Section 7. AMENDMENT. This Declaration may be amended from time to time upon the execution and recordation of an instrument signed by the President and Secretary of the Association upon approval by Owners holding not less than two-thirds (2/3) of the voting

interests of the membership. In addition, so long as Developer is the owner of any Lot, or any Property affected by this Declaration, or any amendment hereto, or appoints a Director of the Association, this Declaration may be amended by the Developer without the consent or joinder of the Association or any Owner. In no event shall any amendment to this Declaration be effective without Developer's express written joinder and consent. Provided, however, that any amendment of this declaration which shall have the effect of impairing the lien and effect of any mortgage held by any institutional mortgagee upon any portion of the Property or of purporting to subordinate the lien of such mortgage to the lien provided for herein in contravention of Section 10 of Article V hereof, shall require the written consent of all of the institutional mortgagees holding such mortgages on any portion of the Property.

Section 8.     **STANDARDS FOR CONSENT, APPROVAL ETC.**     Whenever this Declaration requires the consent, approval, completion, substantial completion or other action by the developer or its affiliates, the Association or the ARB, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the developer or its affiliates or the Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Association, as appropriate.

Section 9.     **EASEMENTS.**     Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in existence having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners hereby designate the Developer and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owner's behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

Section 10.     **BLASTING AND OTHER ACTIVITIES.**     All Owners, occupants and users of the Property are hereby placed on notice that Declarant and/or its agents, contractors, subcontractors, licensees and other designees will be, from time to time, conducting blasting, excavation, construction or other such activities within the Property. By acceptance of their deed or other interest, and by using any portion of the Property, each such person acknowledges, stipulates and agrees (i) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, hereunder or at law generally (ii) not to enter upon, or allow their children or other persons under their control or direction to enter upon any property within or in proximity to the Property where such activity is being conducted (even if not being actively conducted at the time of entry), and (iii) this acknowledgement and agreement is a material inducement to Declarant to sell, convey, lease and/or allow the use of the applicable portion of

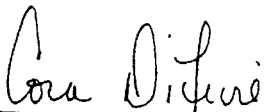
the Property. PROVIDED, HOWEVER, THAT BY THEIR ACCEPTANCE OF SUCH DEED NO LOT OWNER SHALL BE DEEMED TO HAVE WAIVED OR OTHERWISE IMPAIRED ANY RIGHT TO RECOVER DAMAGES FROM ANY PARTY CAUSING DAMAGE TO PERSON OR PROPERTY AS A RESULT OF BLASTING ACTIVITIES ON THE PROPERTY OR ON ANY REAL PROPERTY LOCATED IN THE VICINITY OF THE PROPERTY.

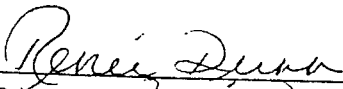
Section 11. ROADWAYS AND TRAFFIC CONTROL DEVICES. Pursuant to the Montauk Harbor Replat recorded in the Public Records of Palm Beach County, the roadways within Sunset Pointe are to be private roadways, whose maintenance and repair shall be the responsibility of the Association. Pursuant to the provisions of this Declaration, the roadways within Sunset Pointe shall remain as private roadways in perpetuity, unless 100% of the Owners and 100% of the parties holding mortgages on Lots within Sunset Pointe, together with Palm Beach County and the Village of Wellington, shall agree that such roadways may become public roadways. Additionally, in the event that any Lot Owner may wish to have a traffic signal installed at the entrance to Sunset Pointe in lieu of the stop signs presently installed at such intersection, such application shall be made only through the Association upon the affirmative vote of the Board of Directors of the Association or otherwise upon the vote of the Owners as provided in the Articles and By-laws. In the event that such request is made by the Association or any third party, and Palm Beach County determines that a traffic signal or other traffic control device is appropriate at the entrance to Sunset Pointe, the cost of such signal/device, including the installation thereof, shall be borne solely by the Association.

Section 12. USAGE. Whenever used the singular shall include the plural and the singular, and the use of any gender shall include all genders.

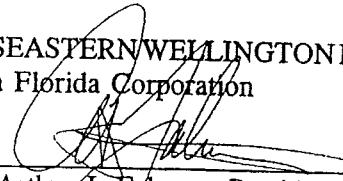
IN WITNESS WHEREOF, Developer has caused this instrument to be executed in its name by its undersigned, duly authorized officers, and its corporate seal to be hereunto affixed the day and year first above written.

Signed, sealed and delivered  
in the presence of:

  
Print Name: CORA Difiore

  
Print name: Renee Dunn

TRANSEASTERN WELLINGTON PROPERTIES,  
INC., a Florida Corporation

  
Arthur J. Falcone, President





STATE OF FLORIDA  
COUNTY OF BROWARD

ORE 9382 Pg 1286

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgements, personally appeared Arthur J. Falcone, to me known to be the President of TRANSEASTERN WELLINGTON PROPERTIES, INC., a Florida corporation, to me personally known, and who executed the foregoing instrument and who acknowledged before me that he executed same for the purposes therein stated on behalf of said corporation.

WITNESS my hand and seal in the County and State last aforesaid, this 17<sup>th</sup> day of July, 1996.

Cora Di Fiore  
NOTARY PUBLIC

CORA Di Fiore  
Printed Notary Name  
My Commission Expires:

Prepared by:  
Charles S. Bolz, Esq.  
John T. Kinsey, P.A.  
2300 Corporate Blvd., Ste. 112  
Boca Raton, Fl. 33431



CORA DIFIORÉ  
My Commission CC361233  
Expires May. 07, 1998  
Bonded by ANB  
800-852-5878

