

BYLAWS  
OF  
FOX BAY OWNERS ASSOCIATION, INC.  
(a non-profit corporation)

ARTICLE I - NAME AND OFFICES

Section 1. The name of this corporation shall be Fox Bay Owners Association, Inc. (hereafter "Association"), or such other corporate name that may be set forth from time to time in the Articles of Incorporation.

Section 2. The principal office of the Association shall be 1640 Lelia Drive, Suite 240, Jackson, Hinds County, Mississippi 39216. The Association may have offices at such other places as the Board of Directors may from time to time appoint or as the business of the Association may require.

ARTICLE II - PURPOSE AND POWERS

In accordance with Section 79-11-149 of the Mississippi Code of 1972, as presently or subsequently amended, the purpose of the Association is to provide for the preservation and enhancement of the property values, amenities and opportunities in Fox Bay, A Planned Community, contributing to the personal and general health, safety and welfare of the residents thereof, and for the maintenance of the land and improvements thereon and accordance with the Governing Documents of Fox Bay Owners Association, Inc., including the Declaration of Protective Covenants, Conditions and Restrictions for Fox Bay (hereafter "Declaration"), and these bylaws.

This Association shall have and exercise all powers necessary and convenient to effect any purpose for which it is organized, including, without limitation, those specific powers enumerated in Section 79-11-151 of the Mississippi Code of 1972, as presently or subsequently amended.

ARTICLE III - DEFINITIONS

All definitions of capitalized terms which appear in Article I of the Declaration are incorporated herein by reference as though copied in full in this text.

ARTICLE IV - MEMBERSHIP, MEETINGS

Section 1. Membership. Members shall include all Owners of Lots; provided, however, that any person or entity who holds such an interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Governing Documents.

Section 2. Voting Rights. For all purposes, the Association shall have two classes of voting membership, as follows:

(a) Class A Members shall be all Owners of Lots, except the Developer. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they may determine among themselves (subject to subparagraph (c) below), but in no event shall more than one vote be cast with respect to any Lot.

(b) The Class B Member shall be the Developer, who shall have three (3) votes for each Lot it owns in all matters including the election of Directors. The Class B membership, and all rights appurtenant to such membership, shall cease when the Developer no longer owns Lots. At any time after the Class B membership shall cease, if the Developer subsequently plats the Additional Property (as defined in Article II of the Declaration) or annexes property to The Properties as permitted by Article II of the Declaration, then the status of the Developer shall be fully reinstated for so long as it continues to own or lease Lots.

(c) The vote appurtenant to any Lot which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote appurtenant to such Lot shall not be counted.

Section 3. Annual Meetings. The first annual meeting of the Members shall be held, when called by the Developer/Director upon ten (10) days notice, at any time. Each subsequent annual meeting of the Members shall be held on the same day of the same month of each year thereafter at the hour of 7:00 P.M., or upon such other day as shall be selected by a simple majority of the Members. If the date for the annual meeting is a Saturday, Sunday or a legal holiday, the meeting will be held on the first day following which is not so.

The failure to hold an annual meeting at a time stated in or fixed in accordance with these Bylaws does not affect the validity of any Association action.

Section 4. Special Meetings. Special meetings of the Members may be called at any time by the President or Chairman of the Board of Directors, or upon written request of Members entitled to cast five percent (5%) of the total voting power. Such request shall be dated and delivered to any officer of the Association and shall set forth the purpose for which such meeting is to be held.

Section 5. Notice of Meeting. (a) Written notice of meetings stating the place, day and hour of the meeting, and in the case of a special meeting, the purpose for which the meeting is called and the person calling the meeting, shall be delivered, either personally or by mail, to each Member at his address as it appears on the books of the Association. (b) Notice of annual meetings which cover a purpose pertaining to any of the following matters which must be approved by the Members must include a description of the purpose: specific indemnification of directors, officers, employees or agents of the Association; amendments to the Articles of Incorporation or Bylaws; or sale, lease or exchange of common area property; approval of transactions by the Association in which a director of the Association has a direct or indirect interest; approval of a plan of merger for the Association; or approval of a plan of dissolution for the Association. (c) If mailed first class, all notices shall be delivered no fewer than ten (10) nor more than sixty (60) days before the meeting date, and shall be deemed delivered five (5) days after its deposit in the United States mail, correctly addressed and postage prepaid. If delivered personally, such notice shall be delivered no fewer than ten (10) nor more than sixty (60) days before the date of the meeting and shall be deemed delivered when actually received by the Member.

Section 6. Quorum. The presence at a meeting of Members or their proxies entitled to cast a simple majority of the total number of votes shall constitute a quorum for any action, except as otherwise provided by the Declaration or these Bylaws. If, however, such quorum shall not be present or represented in any meeting, the Members entitled to vote thereon shall have the power to adjourn the meeting from time to time without notice other than an announcement at that meeting until a quorum shall be present or be represented.

Section 7. Proxies. At all meetings of Members, each member may vote in person or by proxy. All proxies shall be executed in writing by the Member or his or her attorney-in-fact, and filed with the Secretary. Each proxy shall be revocable by the Member and shall automatically cease upon conveyance by the Member of his Lot. No proxy shall be valid for more than three (3) years from its date of execution.

Section 8. Approval of Action without Meetings. All actions or business undertaken by the Association may be approved without a meeting of Members if the action is approved by Members holding at least eighty percent (80%) of the voting power. Such approval shall be evidenced by a written consent describing the action signed by at least eighty percent (80%) of the total voting power, and delivered to the Association for inclusion in the Association records.

#### ARTICLE V - BOARD OF DIRECTORS

Section 1. General Powers and Number. The affairs of this Association shall be managed by a Board of not less than one (1) nor more than nine (9) Directors, each of whom shall be either the Owner of a Lot or of an interest therein, or in the event of ownership of a Lot by a partnership, trust, corporation, or other entity, a partner, trustee, officer, or other designated representative thereof. The number and term of Directors shall be fixed initially in the Articles of Incorporation, and may be changed at any future meeting of the Association upon majority vote; provided, however, that any Director may complete his or her term of office despite any decrease in the number of Directors, unless removed from office, as herein provided. The terms of the initial directors named in the Articles of the Corporation shall expire at the first meeting of the members at which Directors are elected. Thereafter, the full Board shall be elected at each annual meeting of the members upon majority vote, with their terms to expire at the next annual members' meeting following their election.

Section 2. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should a meeting fall upon a Saturday, Sunday or a legal holiday then that meeting shall be held at the same time on the following day thereafter.

Section 3. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by the Chairman of the Board, or by any two Directors, after not less than two (2) days' notice to each Director of the date, time and place of the meeting. A waiver of notice in writing signed by each Director entitled thereto, whether before or after the time of the meeting, shall be sufficient to effect proper notice.

Section 4. Quorum. A majority of Directors shall constitute a quorum, and a majority of those present and voting is deemed to be the action of the Board. Less than a quorum of the Board members may adjourn any meeting to a subsequent day without further notice until a quorum can be had.

Section 5. Powers and Duties of the Board of Directors. The Board of Directors shall have all powers for the conduct of affairs of the Association that are granted by law, the Declaration, these Bylaws, and other Governing Documents which are not specifically reserved to members, the Developer, or the Architectural Review committee in any of said documents. The Board of Directors shall exercise its powers in accordance with the Governing Documents, and without limitation, the Board shall have the power and obligations to perform the following duties:

(a) Real and Personal Property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except that the acquisition, mortgaging or disposal of the Common Area and/or improvements shall be subject to the provisions of Articles II and IV, respectively, of the Declaration;

(b) Rule Making. To establish rules and regulations for the use of property as provided in Articles IV and VI of the Declaration and to review, modify and approve architectural standards adopted by the Architectural Review Committee;

(c) Assessments. To fix, levy and collect assessments as provided in Article V of the Declaration;

(d) Easements. To grant and convey easements to the Common Area as may become necessary and as provided in Article IX of the Declaration;

(e) Employment of Agents. To employ, contract with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct and perform the business obligations and duties of the Association;

(f) Appeals. To decide appeals relative to architectural review applications as provided herein;

(g) Enforcement of Governing Documents. To perform such acts as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, including but not limited to voting rights, in order to enforce or effectuate any of the provisions of the Governing Documents, subject to any appeal which may be filed and is pending;

(h) Disputes. To determine matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of the Governing Documents, which determination shall be final and binding on all Owners;

(i) Access. To restrict vehicular and pedestrian access to The Properties in a reasonable manner, including but not limited to the right to enclose The Properties and to install gateways in any fences surrounding The Properties, and to establish rules and regulations relating to access by Members and other parties; and

(j) Insurance. To purchase insurance upon the Common Area.

Section 6. Combined Special Meetings. Upon notice and call, combined special meetings of the Board of Directors and Members may be held at any time for any purpose other than the election of Directors or Officers.

Section 7. Action Without Meetings. The failure to have a meeting shall not invalidate any action of the Board. All such actions shall be evidenced in writing describing the action taken, signed by the Directors, and included in the records of the Association.

## ARTICLE VI - OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President, a Vice President, a Secretary and a Treasurer, who shall at all times be members of the Board of Directors, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place initially at the first organizational meeting of the Board of Directors, and thereafter at the annual meeting of the Directors. The officers of this Association shall be elected annually by the Board of Directors, and each shall hold office for one (1) year unless they shall sooner resign, be removed, or otherwise be disqualified to serve.

Section 3. Special Appointments. The Members may elect such other officers as the affairs of the Association may require upon the creation of such special offices by resolution of the Board, each of whom shall hold office for such period, have such authority and perform such duties as the Board may determine from time to time.

Section 4. Removal and Resignation. Any officer or agent elected or appointed by the membership may be removed at any time, with or without cause, by a simple majority vote whenever in its judgment the best interest of the Association would be served.

Any officer may resign at any time by giving written notice to the Chairman of the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by appointment of the Board of Directors for the unexpired portion of the term.

Section 6. Multiple Offices Held. Any one person may hold more than one office except in the case of special offices created pursuant to Section 3 of this Article.

Section 7. President. The President shall preside at all meetings of Members and of Directors, or shall designate some other person to preside at such meetings. The President shall have general supervision and management of the Association and shall have the power and authority to sign, make, execute, and deliver any and all deeds or conveyances, deeds of trust, checks, leases, contracts, assignments, releases and all other documents and instruments on behalf of the Association. The President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 8. Vice President. In the absence of the President or in the event of his or her death, inability or refusal to act, the Vice-President shall perform the duties of the President and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President or any additional or Assistant Vice-President shall perform such other duties as may be from time to time assigned by the Chairman of the Board, the President or by the Board of Directors.

Section 9. Secretary. The Secretary shall keep the minutes of the meetings of Members and of the Board of Directors and, upon request, of any committees of the Board of Directors, in one or more books provided for that purpose. He or she shall issue notices for all meetings, except notice for special meetings of Directors as provided in Section 5 of Article V of these bylaws, which notice may be issued by such Directors. He or she shall have charge of a seal and the Association records, shall authenticate records of the Association, shall make such reports and perform such other duties as are incident to his or her office, or which may be required of him or her by the Board of Directors.

Section 10. Treasurer. The Treasurer shall have the custody of all funds and securities of the Association and shall keep regular books of account. He or she shall receive and disburse all funds of the Association and shall render to the Board of Directors from time to time as may be required of him or her an account of all his or her transactions as Treasurer and of the financial condition of the Association. He or she shall perform all duties incident to his or her office or which may be required of him or her by the Board of Directors, including any audits of the Association books by an accountant, whether for any fiscal year or otherwise.



ARTICLE VII - ASSOCIATION COMMITTEES

Section 1. The Architectural Review Committee.

(a) The Architectural Review Committee (hereinafter referred to as the ARC) shall consist of a minimum of three (3) but not more than five (5) people who shall be appointed or designated from time to time by the Board of Directors of the Association and, except as provided herein, may be removed at any time by the same Board of Directors with or without cause. The members of the ARC may be, but are not required to be, Members. The Developer will be represented on the ARC by at least one person of his choice so long as the Developer owns any part of The Properties. The Developer's representative may not be removed from the ARC without the Developer's consent.

(b) The affirmative vote of a majority of the members of the ARC shall be required to make any finding, determination, ruling or order to issue any permit, consent, approval or disapproval under the Declaration, including Article III, Section 4 of the Declaration and the approval or disapproval of all or any portion of any Living Unit Plan and all Lot improvements, or to recommend that the Board of Directors adopt any rule or regulation relating to architectural standards.

(c) The ARC shall regulate the external design, appearance and location of The Properties and improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. In furtherance thereof, the ARC shall:

(1) Review and approve, modify or disapprove written applications of Owners for improvements or additions to Lots or Living Units;

(2) Adopt architectural guidelines subject to the confirmation of the Board of Directors ("Architectural Guidelines");

(3) In accordance with the Declaration, monitor Lots for compliance with Architectural Guidelines and approved plans for alteration;

(4) Interpret and enforce the Architectural Guidelines and make value judgments regarding both the specifics and intent of the Architectural Guidelines; and

(5) Adopt procedures for the exercise of its duties.

(e) Failure to Act. In the event the ARC fails to approve, modify or disapprove in writing a correctly filed application within forty-five (45) days of the date of filing, approval will be deemed to have been granted.

(f) Appeal. An applicant may appeal an adverse ARC decision to the Board of Directors, who may reverse or modify such decision by a majority vote of the Directors present at such meeting.

(g) Developer's Plans. In no event shall the Developer be required to submit Living Unit plans, Lot improvements or any other matters relating to The Properties to the ARC. The provisions of this Section 1 shall apply only to Owners other than the Developer.

Section 2. Other Committees. The Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, including but not limited to the following:

(a) A Recreation Committee which shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines;

(b) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvements of The Properties, and shall perform such other functions as the Board, in its discretion, determines;

(c) A Publicity Committee which shall inform the Members on all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association.

## ARTICLE VIII - ASSESSMENTS

Each Member is obligated to pay to the Association all assessments, which shall become liens upon the property assessed, as provided in Article V of the Declaration, which is incorporated by reference herein as though copied in words and figures in full herein.

## ARTICLE IX - INDEMNIFICATION

Section 1. Special Definitions. For purposes of this Article IX of these Bylaws, the following terms shall have the following meanings:

(a) Director/Officer: The term "Director/Officer" means an individual who is or was director or officer of the Association.

(b) Employee/Agent: The term "Employee/Agent" means an individual who is or was an employee or agent of the Association and who is not or was not, respectively, also a Director/Officer.

(c) Both of the terms "Director/Officer" and "Employee/Agent" are further defined to include an individual who, while a Director/Officer or Employee/Agent of the Association, is or was serving at the Association's request as a director, officer, partner, trustee, employee benefit plan fiduciary, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or a member of the Association's Architectural Review Committee. (An individual is considered to be serving an employee benefit plan at the Association's request if such individual's duties to the Association also impose on, or otherwise involve services by, such individual to the plan or to participants or beneficiaries of the plan.)

(d) Both of the terms "Director/Officer" and "Employee/Agent" also are defined to include the estate or personal representative of such an individual. (Any indemnity required for a Director/Officer under this Article IX of these Bylaws shall continue as to an individual who has ceased to be a Director/Officer with respect to liabilities and expenses incurred for events occurring while such individual was a Director/Officer and shall inure to the benefit of the heirs, executors and administrators thereof. In the discretion of the Board, any indemnity authorized for an Employee/Agent

under the Act or this Article IX of these Bylaws may continue with respect to liabilities and expenses incurred for events occurring while such individual was an Employee/Agent as to an individual who has ceased to be an Employee/Agent and may inure to the benefit of the heirs, executors and administrators thereof.)

Other special and limited definitions applicable to this Article IX of these Bylaws are contained in the Mississippi Nonprofit Corporation Act, Miss. Code Ann. §§ 79-11-101 et seq., as amended (the "Act").

Section 2. STATUTORY INDEMNIFICATION. Except to the extent otherwise prohibited or limited by the Act, the Articles or Sections 4 and 5 of this Article IX of these Bylaws, and in addition to the mandatory indemnification provisions of the Act (being Sections 79-11-281(4) and 79-11-281(8)(a) specifically), the Association shall indemnify any individual who is made a party to a proceeding because such individual is or was a Director/Officer of the Association against liability incurred in such proceeding and shall pay for or reimburse the reasonable expenses incurred by a Director/Officer of the Association who is made a party to a proceeding in advance of final disposition of the proceeding, both to the fullest extent permitted from time to time by the applicable otherwise permissive indemnification and advancement-of-expenses provisions of the Act, being Sections 79-11-281(2), 79-11-281(5), and 79-11-281(8)(b)) specifically. Except to the extent otherwise prohibited or limited by the Act, the Articles or Sections 4 and 5 of this Article IX of these Bylaws, the Association shall also indemnify a Director/Officer of the Association against the expenses incurred by a Director/Officer in connection with an appearance by such Director/Officer as a witness in a proceeding at a time when such Director/Officer has not been made a named defendant or respondent to the proceeding.

Section 3. FURTHER INDEMNIFICATION. Subject to the approval and ratification of this Section 3 of this Article IX of these Bylaws by the Members of the Association, either before or after the occurrence of an otherwise indemnifiable event hereunder (unless the Articles expressly contain an authorization for the Board to adopt a provision in these Bylaws providing for further indemnification, in which event ratification and approval of this Section 3 by the Members is not necessary), and except to the extent otherwise prohibited or limited by the Act, the Articles or Sections 4 and 5 of this Article IX of these Bylaws, the Association, in addition to the requirement of indemnification contained in Section 2 of this Article IX of these Bylaws: (i) shall further indemnify any individual who is made a party to a proceeding

because such individual is or was a Director/Officer and may, at the discretion of the Board, further indemnify any individual who is made a party to a proceeding because such individual is or was an Employee/Agent, against liability incurred in such proceeding; (ii) shall pay for or reimburse the reasonable expenses incurred by a Director/Officer of the Association and may, at the discretion of the Board, pay for or reimburse the reasonable expenses incurred by an Employee/Agent of the Association, who is made a party to a proceeding in advance of final disposition of the proceeding; and (iii) may, at the discretion of the Board, enter into contracts of indemnity with any individual who is a Director/Officer or Employee/Agent of the Association, and the disinterested members of the Board or the Members of the Association may adopt general or specific resolutions of indemnification for any Director/Officer or Employee/Agent of the Association--all to the fullest extent, consistent with the public policy of, and as permitted from time to time by the Act and other laws of, the State of Mississippi, as authorized by Sections 79-11-281(11) of the Act; provided, however, that the Association is not authorized, and shall not have the power, to indemnify any such Director/Officer or Employee/Agent against such individual's gross negligence or willful misconduct.

Section 4. DETERMINATIONS. Notwithstanding any authorization or requirement of indemnification otherwise contained in and provided by this Article IX of these Bylaws and unless the Articles provide otherwise with respect to the further indemnification, including advancement of expenses, authorized by Section 3 of this Article IX of these Bylaws, the Association may not and shall not so indemnify or advance expenses to or for either any Director/Officer under Section 2 of this Article IX of these Bylaws or any Director/Officer or Employee/Agent under Section 3 of this Article IX of these Bylaws unless and until such indemnification or expense advancement is authorized in each specific case after a determination has been made, in accordance with the applicable provisions of the Act (being Sections 79-11-281(7) and 79-11-281(5), respectively, of the Act), that indemnification of or expense advancement to or for such Director/Officer or Employee/Agent is appropriate under the circumstances because such Director/Officer has met the standards of conduct prescribed by Section 79-11-281(2) of the Act with respect to the statutory indemnification of Section 2 of this Article IX of these Bylaws and such Director/Officer or such Employee/Agent has met the standards of conduct prescribed by Section 79-11-281(11) of the Act with respect to the further indemnification of Section 3 of this Article IX of these Bylaws, as well as any other applicable provisions of the Act, public policy, or other laws of the State of Mississippi

required as a condition of and prerequisite to such indemnification or advance reimbursement of expenses otherwise permitted or authorized under the Act or the Articles or required or authorized by these Bylaws. In addition, an authorization of indemnification, and evaluation as to reasonableness, of all expenses, whether being reimbursed in advance or not, shall, except as provided in Section 79-11-281(7)(b) of the Act, be made in the same manner as the determination is made that indemnification is permissible; and, in connection with any advancement of expenses, such individual must furnish to the Association the written affirmations and undertakings required by Section 79-11-281(5)(b) of the Act as a prerequisite to any such advance reimbursement of expenses. Whenever circumstances exist under which indemnification of, or the advancement of expenses to or for, a Director/Officer may be permitted or authorized by the Act or the Articles and required under these Bylaws, then the Association shall, in accordance with the applicable provisions of the Act, the Articles, and these Bylaws, review each such specific case and shall make an appropriate determination, based upon the facts and circumstances of each such specific case, as to whether or not indemnification or advancement of expenses is authorized under the Act, the Articles and these Bylaws. If the application of such procedures results in a determination that indemnification of, or advancement of expenses to or for, a Director/Officer is permitted, authorized and required under the circumstances of a specific case, then the Association, also in accordance with such applicable provisions of the Act, the Articles, and these Bylaws, shall both evaluate the reasonableness of expenses otherwise indemnifiable or subject to advancement and shall authorize such indemnification of, or advancement of expenses to or for, such Director/Officer in each specific case as required by this Article IX of these Bylaws, with the express intention of this Article IX of these Bylaws being that, if a Director/Officer satisfies such standards of conduct, as required by the Act, for indemnification of, or advancement of incurred expenses to or for, such Director/Officer under either Section 2 or 3 of this Article IX of these Bylaws, then such Director/Officer is, under this Article IX of these Bylaws, mandatorily entitled to indemnification from the Association against liability incurred by such Director/Officer in connection with such proceeding or to advancement by the Association of reasonable expenses incurred in connection with such proceeding by the Director/Officer under either Section 2 or 3 of this Article IX of these Bylaws, as appropriate. Unless the Articles or these Bylaws provide otherwise, any authorization of indemnification in the Articles or these Bylaws shall not be deemed to prevent the Association from providing the indemnity permitted or mandated by 79-11-281 of the Act.

Section 5. INSURANCE. The Association may purchase and maintain insurance on behalf of a Director/Officer or Employee/Agent against liability asserted against or incurred by such individual in that capacity or arising from such individual's status as a Director/Officer or Employee/Agent, whether or not the Association would have the power to indemnify such individual against the same liability under the Act or this Article IX of these Bylaws, to the fullest extent consistent with the public policy of the State of Mississippi. If the Association, on behalf of such a Director/Officer or Employee/Agent, does purchase and maintain insurance against liability asserted against or incurred by such individual in such capacity or arising from such individual's status as a Director/Officer or Employee/Agent, or if another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, on behalf of such a Director/Officer or Employee/Agent, purchases and maintains insurance against liability asserted against or incurred by such individual serving in such capacity, for which liability the Association would otherwise, from time to time, be permitted under the Act, authorized by the Articles, or required or authorized under this Article IX of these Bylaws to indemnify such a Director/Officer or Employee/Agent against such liability or to advance expenses to or for such a Director/Officer or Employee/Agent, then, notwithstanding any such permission for indemnification contained in the Act, authorization for indemnification contained in the Articles, or authorization or requirement of indemnification contained in or provided by this Article IX of these Bylaws, the Association shall neither indemnify such a Director/Officer or Employee/Agent for any such liability for which indemnification would otherwise be so permitted under the Act, authorized by the Articles, or authorized or required under this Article IX of these Bylaws, nor make any advancements to or for such a Director/Officer or Employee/Agent for any such expenses, for which payment would otherwise be so permitted under the Act, authorized by the Articles, or authorized or required under this Article IX of these Bylaws, to the extent that any such insurance policy would provide coverage for such liability and expenses absent such indemnification or advancement by the Association under the Act or this Article IX of these Bylaws but would exclude from its coverage any such liability or expenses in connection with any claim or claims made against such Director/Officer or Employee/Agent for which such Director/Officer or Employee/Agent is indemnified by, or is entitled to indemnification from, the Association either under the permissive indemnification provisions of the Act or under the required or authorized indemnification provisions of this Article IX of these Bylaws. Provided, however, that the Association may indemnify such a Director/Officer or Employee/Agent against such liability

incurred by such individual, and make payment of expense advances to or for such a Director/Officer or Employee/Agent, to the extent that such liability and expenses are not payable under any such insurance policy for any reason, such as, by way of amplification but not limitation, such liability or expenses either being within the retention/deductible amount or the co-insurance provisions of the policy, or in amounts in excess of the aggregate dollar limits of coverage stated on the face of the policy, or in amounts in excess of the aggregate dollar limits of coverage stated on the face of the policy.

Section 6. REPORTING. If the Association indemnifies or advances expenses to a Director/Officer or Employee/Agent under this Article IX of these Bylaws or under the Act in connection with a proceeding by or in the right of the Association, the Association shall report such indemnification or advance in writing to the Members with or before the notice of the next Members' meeting.

#### ARTICLE X - WAIVER OF NOTICE

Whenever any notice is required to be given to any Member or Director of the Association, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the time stated therein, shall be equivalent to giving or receiving of such notice. The waiver shall be delivered to the Association for inclusion in the minutes of the Association records.

#### ARTICLE XI - AMENDMENTS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted upon approval of both (1) the Board of Directors at any annual, regular or special meeting of the Board, unless the amendment relates to the number of directors, the composition of the Board, the term of office of directors, or the method in which directors are elected or selected; and (2) the Members at any annual or special meeting of the Members by the affirmative vote of two-thirds of the total votes cast by the Members in person or by proxy, or by the affirmative vote of a majority of the votes of all Class A and Class B Members, combined, whichever is less; provided, however, that any matter stated herein to be, or which in fact is, governed by the Declaration may not be amended by means of vote except as provided in the Declaration itself.



ARTICLE XII - CONFLICTS BETWEEN DOCUMENTS

In the event of conflict between or among any of the Governing Documents, the Declaration shall control, then any Supplementary Declarations, then these Bylaws, except that in all cases where one or more of the Governing Documents may be found to be in conflict with the Lease, the Lease shall always control.

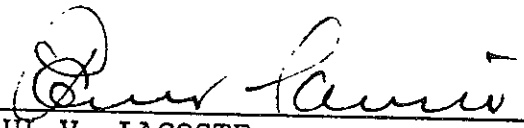
ARTICLE XIII - FISCAL YEAR

The annual accounting period and taxable year of the Association shall end on the last day of the month of December of each year, unless changed by appropriate resolution of the Board.

ARTICLE XIV - SEAL

The Association may use a seal in circular form, having within its circumference the words "FOX BAY OWNERS ASSOCIATION, INC."

IN WITNESS WHEREOF, the undersigned sole initial member of the Board of Directors of Fox Bay Owners Association, Inc., has hereunto set his hand on this 3<sup>rd</sup> day of January, 1989.

  
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PAUL V. LACOSTE  
Director