Waterside
at Boca Trail

# SECOND AMENDED AND RESTATED BY-LAWS

**NOVEMBER 28, 2007**

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# SECOND AMENDED AND RESTATED BY-LAWS OF

# WATERSIDE AT BOCA TRAIL COMMUNITY ASSOCIATION, INC.

(A Corporation Not-For-Profit Under the Laws of the State of Florida)

**Section 1. GENERAL.** These are the Second Amended and Restated By-Laws of WATERSIDE AT BOCA TRAIL COMMUNITY ASSOCIATION, INC., hereinafter the "Association", a corporation not-for-profit organized under the laws of Florida.

1.1 Principal Office. The principal office of the Association shall be located ~~is~~ at Boca Raton, Florida, ~~In care of Residential Management Concepts, Inc. P.O. Box 97-0069, Boca Raton, Florida 33497-0069~~ at a location to be designated by the Board of Directors from time to time.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not-for-profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal maybe required.

1.3 Definitions. The definitions set forth in the Second Amended and Restated Declaration of Covenants and Restrictions Laws, as same shall be amended from time to time ("Declaration"), shall apply to terms used in these By-Laws.

**Section 2. MEMBERSHIP AND VOTING RIGHTS.**

2.1 Qualifications. The members of the Association shall be the owners of legal title to the Lots. The foregoing is not intended to include persons who hold their interest merely as security for the performance of an obligation.

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2.2 Change of Membership. A change of membership in the Association shall be established and become effective by recording in the Public Records of the County, a deed or other similar instrument and delivery to the Association of a copy of such instrument. The failure of a new record owner to deliver a copy of such instrument to the Association shall not deprive the new record owner of membership in the Association.

2.3 Termination of Membership. Any person whose membership ceases because of a change referred to in Section 2.2 above shall be deemed to have a terminated membership. The termination of membership in the Association does not relieve or release a former member from liability or obligation incurred in or in any way connected with the Community during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident to same.

2.4 Voting Interests: Votes. Each Member of the Association is entitled to one (1) vote for each Lot owned by him/her. The vote of a Lot is not divisible. If a Lot is owned by one natural person, his/her right to vote shall be established by record title to the Lot. If a Lot is owned jointly by two or more natural persons, that Lot's vote may be cast by any one of the record Owners. Votes may be cast for Lots owned under a trust arrangement, by any trustee. Votes may be cast by Lots owned by a business-named partnership by any general partner. Votes may be cast by Lots owned by a corporation by any officer of the corporation or any other person permitted to cast the vote pursuant to F.S. 617.0721(3). Votes may be cast for Lots owned by an estate in probate by any personal representative of the estate. If two or more Owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. Votes may be cast in person or by proxy, but proxies may not be used for the election of Directors.

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2.5 Approval or Disapproval of Matters. Wherever the approval of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Lot if in an Association meeting, unless the joiner of record Owners is specifically required.

**Section 3. MEMBERS MEETINGS.**

3.1 Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in ~~the~~ Palm Beach County, at a time designated by the Board of Directors each year during the month of January at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business authorized to be transacted by the members.

3.2 Special Meeting. Special members meetings must be held whenever called by the President or by a majority of the Board of Directors, and must be promptly called by the President upon receipt of a written petition signed by at least twenty-five (25%) percent of the voting interests. Such petition shall state the purpose(s) of the meeting. The business at any special meeting shall be limited to the items specified in the petition, and contained in the notice of the meeting.

3.3 This paragraph intentionally deleted. ~~Court-Ordered Meeting. The Circuit Court of the County may, after notice to the Association, order a meeting of the Members to be held:~~

~~A. On application of any Member of the Association entitled to vote at an annual meeting if an annual meeting has not been held within any 13-month period; or~~

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~~B. On application of a Member of the Association who signed a demand for a special meeting valid under Section 3.2 above, if:~~

~~1. Notice of the special meeting was not given within sixty (60) days after the date on which the demand was delivered to the Association's secretary or president; or~~

~~2. The special meeting was not held in accordance with the notice.~~

~~The Court may fix the time and place of the meeting, determine the Members entitled to participate in the meeting, specify a record date for determining Members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders as may be appropriate.~~

3.4 Notice of Members' Meetings. Notice of all annual and special members meetings must state the time, date, and place of the meeting. Notice of all meetings shall be sent by first class mail to each Owner at his address as it appears on the books of the Association, and an affidavit of the Officer making such mailing shall be retained in the Association records as proof of such mailing. Notice of a members meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained. The member is responsible for providing the Association with any change of the member's address. The notice must be mailed or delivered at least fourteen (14) days, but not more than sixty (60) days, prior to the date of the meeting.

3.5 Waiver of Notice.

A. A Member may waive any notice of a meeting of the Members before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the Member entitled to the notice, and be delivered

to the Association for inclusion in the minutes or filing with the official records. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Members need be specified in any written waiver of notice.

B. A Member's attendance at a meeting, either in person or by proxy:

1. Waives objection to lack of notice or defective notice of meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; or

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

3.6 Quorum. A quorum at members meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast 30% of the voting interests of the entire membership.

3.7 Vote Required. Membership Participation. The acts approved by a majority of the votes cast at a meeting at which a quorum has been attained shall be binding upon all Owners for all purposes, except where a higher vote is required by law or by any provision of the Governing Documents. Any Owner may tape-record or videotape meetings of the membership, so long as no distracting sound or light is emitted, provided that the tape-recording or videotaping device remains in the same location throughout the meeting, and only provided that the Owner advises the Board of Directors in writing at least twenty-four (24) hours prior to the meeting that the Owner intends to tape-record or videotape the meeting. The Board of Directors shall be permitted to adopt additional regulations in connection with membership participation.

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3.8. Members' List for Meeting.

A. After the mailing of notice of any meeting, the Association shall prepare an alphabetical list of the names and addresses of all its Members who were mailed notice of the meeting. This list shall be updated as memberships change up to the date of the meeting.

B. The Members' list shall be available for inspection by any Member for a period of ten (10) days prior to the meeting and continuing up to the start of the meeting at the Association's principal office or at a place identified in the meeting notice in the City/town where the meeting will be held. A Member or his agent or attorney is entitled on written demand to inspect the list during regular business hours and at his expense, during the period it is available for inspection shall make the Members' list available at the meeting, and any Member or his agent.

C. The Association attorney is entitled to inspect the list at any time up to the start of the meeting or start of any adjournment.

D. The Members' list is prima facie evidence of the identity of Members entitled to examine the members' list or to vote at meeting of Members.

E. ~~If the requirements of this Section 3.8 have not been substantially complied with or if the Association refuses to allow a Member or his agent or attorney to inspect the Members' list before or at the meeting, the following shall apply: The meeting shall be adjourned until such requirements are compiled with on the demand of any Member in person or by proxy who failed to get such access, or, if not adjourned upon such demand and such requirements are not complied with, the Circuit Court on the County on application of the Member, may summarily order the inspection or copying at the Association's expense and may postpone the~~

~~meeting for which the list was prepared until the inspection or copying is complete.~~

~~F.~~ Refusal or failure to comply with the requirements of this Section 3.8 shall not affect the validity of any action taken at the meeting.

3.9 Proxies. A proxy may be given by any person entitled to vote, and shall be valid only for the specific meeting for which it was originally given and/or any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing dated, and signed by the person authorized to cast the vote for the Lot, and must be delivered to the Secretary at or before the adjournment of the particular meeting. An executed original, an executed telegram or cablegram appearing to have been transmitted by the authorized person, or a photographic, photo static, facsimile or equivalent reproduction of a proxy form are valid. Holders of proxies need not be Members. The holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. The proxy may name the Board of Directors as the proxy holder, in which case the proxy shall be voted in the manner determined by resolution of the Board. Subject to Section 3.10 of these By-Laws and to any expressed limitation on the proxy's authority appearing on the face of the proxy form, the Association is entitled to accept the proxy's vote or other action as that of the Member appointing the proxy. Notwithstanding any provision contained in this Section 3.9 to the contrary, only limited proxies ~~shall not~~ may be used by the members in the election of Directors.

3.10 Association's Acceptance of Votes.

A. If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a Member, the Association if acting in good

faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the Member.

B. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its Member, the Association if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the Member if:

1. The Member is an entity and the name signed purports to be that of an officer or agent of the entity;

2. The name signed purports to be that of an administrator, executor guardian, personal representative, or conservator representing the Member and, the Association requests, evidence of fiduciary status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment;

3. The name signed purports to be that of a receiver trustee in bankruptcy, or assignee for the benefit of creditors of the Member and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, or proxy appointment.

4. The name signed purports to be that of a pledge, beneficial owner, or attorney-in-fact of the Member and, if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the Member has been presented with respect to the vote, consent waiver, or proxy appointment or;

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5. Two or more persons are the Member as co-owners or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

C. The Association is entitled to reject a vote, consent, waiver, or proxy appointment if the Secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Member.

D. The Association and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this Section 3.10 shall not be liable in damages to the Member for the consequences of the acceptance or rejection.

3.11 Adjourned Meeting. Any duly called meeting of the members may be adjourned by a vote of the majority of the voting interests present, regardless of whether a quorum has been attained. If the date, time and place for the (new) adjourned meeting is announced at the meeting, no new notice of the adjourned meeting need be given. Any business which might have been conducted at meeting as on finally scheduled may be conducted at the continued meeting.

3.12 Order of Business. The order of business at members meetings shall be substantially as follows:

A. Call to order by the President (or other officer in the absence of the President).

B Appointment of a Chairperson, only if the President is absent; otherwise the President chairs the meeting.

C. Appointment of a Parliamentarian.

D. Call of the roll or certification of quorum.

E. Proof of notice of meeting or waiver of notice.

F. Minutes of last members meeting – read or waive reading.

G. Reports of Officers.

H. Reports of Committees.

I. Election of Directors (where appropriate).

J. Unfinished Business.

K. New business.

L. Adjournment.

3.13 Minutes of Meetings. The minutes of all meetings of the membership shall be kept in a book available for inspection by members and/or their authorized representatives at any reasonable time. Member(s) of the Association and their authorized representatives shall have the right to make handwritten notations from the minutes, and to receive photocopies of the Minutes at the cost of the member(s) concerned. The Board of Directors shall establish such cost, not to exceed that permitted by law from time to time.

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**Section 4. BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Governing Documents, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required; except that the power to promulgate architectural guidelines rests with the ARB.

4.1 Number and Terms of Service.

A. Number. The number of Directors which shall constitute the whole Board of Directors shall be seven be (7) persons.

B. Staggered Board. In order to provide for a continuity of service, a system of staggered terms for the Board of Directors has previously been established, with three (3) Directors elected in odd numbered years and four (4) Directors in even numbered years. Such system shall continue.

C. Term. A Director elected shall serve for a term of two (2) years until his successor is duly elected, unless he sooner resigns, or is recalled.

4.2 Election of Directors. At each annual meeting, the members shall elect as many Directors as there are regular terms of Directors expiring and other vacancies to be filled. Not less than sixty (60) days before the annual meeting, the Association must send notice to each Owner of the date. Not less than forty (40) days prior to the date of the annual meeting, eligible candidates must deliver to the Association written notice of his or her desire to run for the Board of Directors in order to be eligible to be placed on the election ballot. Any candidate may furnish the Association with an information sheet which shall be no larger than 8 1/2 inches by 11 inches. The candidate's information sheet must be received by the Association by no later than thirty-five (35) days prior to

the meeting. The Association shall have no liability for the contents of this information sheet prepared by the candidate. The Association shall provide a notice to all Owners reminding them of the date, time and place of the election meeting, together with a ballot listing all eligible candidates and any information sheets received from same, within the time specified for calling Owners' meetings under the By-Laws. No Owner shall permit any other person to cast his ballot, and any such ballots improperly cast shall be deemed invalid. In the election of Directors, there shall be appurtenant to each Lot as many votes as there are Directors to be elected. No voting representative of any Lot may cast more than one vote for any candidate, it being the intent that casting ballots in the election of Directors shall be non-cumulative. The candidates receiving the highest number of ballots cast shall be declared elected, except that any tie(s) shall be decided by the flip of a coin. A newly elected Director shall take office immediately upon the adjournment of the annual meeting. There shall be no quorum required for the election of Directors, which shall proceed on the number of ballots received, even though the quorum referred to in Section 3.6 above was not obtained.

4.3 Resignation of Directors. A Director may resign at any time by delivering written notice to the President or Secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date, the vacancy may be filled before the effective date if it is provided that the successor does not take office until the effective date. A written resignation once tendered cannot be rescinded. Oral resignations shall not be considered effective.

4.4 Removal of Directors. Recall Any or all directors may be removed with or without cause by a majority of the voting interests, either by a written agreement or at any meeting called for that purpose.

A. By Written Agreement. If a proposed recall is sought by written agreement, a separate agreement is required for each member of the Board being recalled.

B. By Special Meeting. A special meeting for the purpose of recall may be called by ten percent (10%) of the voting interests or shall be called pursuant to Section 3.2 of these By-Laws. The notice of the meeting must be accompanied by a dated copy of a signature list of at least ten percent (10%) of the voting interests, stating that the purpose of the Signatures is for recall. The notice of meeting shall specify a person, other than a Board member, subject to that recall, who shall call the meeting to order and determine whether a quorum is present. The failure of the notice to so designate a person other than the Board member subject to recall shall not invalidate an otherwise valid notice. The meeting must be held not less days nor more than sixty (60) days from the date notice is given. The first order of business, upon the determination that a quorum exists, shall be election of a presiding officer for that meeting who shall be a person other than a Director subject to that recall. The proposed recall of more than one member of the Board shall require, a separate vote for each member sought to be recalled. The foregoing procedure shall apply notwithstanding any other provision in these By-Laws to the contrary.

C. All provisions specified in Section 4.2 of these By-Laws shall apply other than the nominating committee procedures. Any Director recalled shall not be eligible for re-election until the next annual meeting of the members.

4.5 Vacancy on the Board of Directors

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A. A Vacancy Other Than in Connection with Recall by Special Meeting. If the office of any director becomes vacant for any reason, other than recall by Special Meeting referred to in Section 4.4.B above, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors who shall hold office until the next regular election, when the term of the successor shall terminate, unless he/she be re-elected. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new Director may not take office until the vacancy occurs.

B. Vacancy in Connection with Recall by Special Meeting. If a vacancy occurs on the Board as a result of recall at a meeting as provided for in Section 4.4.A above, the vacancy shall be filled by the members of the Association at that same meeting.

4.6 Meetings of the Board of Directors.

A. Organizational Meeting. The organizational meeting of a new Board of Directors shall be held with in (10) days after the election of new Directors at such place and time as may be fixed by the Directors at the Annual Meeting at which the were elected.

B. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors.

Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of a majority of the Directors.

4.7 Notice of Board Meetings.

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A. Notice to Directors. Notice of the time and place of meetings shall be given to each Director, personally or by mail, telephone, e-mail or telegraph, and shall be transmitted at least three (3) days prior to the meeting; notwithstanding the foregoing to the contrary, no notice need be given to Directors of a meeting if it is a regular meeting which is held on the same date of each month. Notice of all special meetings shall state the purpose of the meeting.

B. Waiver of Notice by Directors. Any Director may waive notice of a Board meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

C. Notice to Owners. Notices of all Board meetings must be posted in a conspicuous place in the Community at least forty-eight (48) hours in advance of the meeting, except in an emergency. In the alternative, notice is not posted in a conspicuous place in the Community, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments.

4.8 Quorum of Directors. A quorum at a Board meeting shall be attained by the presence in person of a majority of the entire Board of Directors. Members of the Board of Directors may participate in any meeting of the Board or Executive Committee by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to

presence in person.

4.9 Voting by Directors.

A. Quorum. A quorum at a Board meeting shall be attained by the presence in person or via speakerphone of a majority of the entire membership of the Board of Directors.

B. Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by applicable ballot at Board meetings, except that secret ballots may be used in the election of officers. A Vote or abstention from voting (because of an asserted conflict of interest) on each matter voted upon for each Director present at The Board meeting must be recorded in the minutes. Directors may not vote by general or limited proxy.

C. Presumption of Assent. A Director who is present at a meeting of the Board, inclusive of the President, shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.10 Owners Participation at Board Meetings. Meetings of the Board of Directors shall be open to all members to attend and observe. No member, however, shall be entitled to participate in the meeting unless specifically invited to do so, and in the manner set forth by the Board. Any Owner may tape-record or videotape meetings of the Board of Directors, so long as no distracting sound or light is emitted, provided that the tape-recording or videotaping device remains in the same location throughout the meeting, and only provided that the Owner advises the Board of Directors in writing at least twenty-four (24) hours prior to the meeting, that the Owner intends to tape-

record or videotape the meeting. The Board of Directors shall be permitted to adopt additional regulations in connection with membership participation.

4.11 The Presiding Office. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those Directors present.

4.12 Order of Business. The order of business at meetings of the Directors, as appropriate, shall be:

A. Calling of roll.
B. Proof of notice of meeting or waiver of notice.
C. Reading and disposal of any unapproved minutes of Board meetings.
D. Reports of Officers and committees.
E. Election of Officers (if any).
F. Unfinished business.
G. New business.
H. Adjournment.

4.13 Joinder in Meeting by Approval of Minutes. A Director may join in the action of a meeting by signing and concurring in the minutes of that meeting. That concurrence, however, shall not constitute the presence of that Director for the purpose of determining a quorum.

4.14 Adjourned Meetings. Any duly called meeting of the Board of Directors may be adjourned to a later date by a vote of the majority of the Directors present, regardless of whether a quorum has been attained. No notice of adjournment is required to be given to any Director who was not present at the time of adjournment. Any business which might have been conducted at the originally scheduled meeting may be conducted at its

continuance.

4.15 Minutes of Meeting. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by members of the Association and/or their authorized representative(s) at any reasonable time. These individuals shall have the right to make written notations from the minutes, and to receive photocopies thereof at the cost of the member concerned. The Board of Directors shall establish such cost, not to exceed that allowed by law from time to. time.

4.16 Committees.

A. Standing and Special Committees. The Board of Directors, by resolution, may appoint Committees of both members and non-members to assist in the conduct of the affairs of the Association.

B. Executive Committee. The Board of Directors, by resolution, may appoint an executive committee to consist of two or more members of, but less than a quorum of, the Board. The executive committee shall ~~have and may exercise all of the powers of the Board in the management of the business and affairs of the Association during the intervals between the meetings of the Board~~ investigate matters and advise the Board insofar as may be permitted by law. ~~The executive committee, however, shall not have power to do those things prohibited by the corporate statute, as amended from time to time.~~

C. Procedures. The Association shall follow those procedures with respect to committee meetings as required by F.S. ~~617~~ 720.303(2), as amended from time to time.

4.17 Failure to Elect Director Quorum. If the Association or the Board of Directors falls to fill vacancies on the Board of Directors sufficient to constitute

a quorum, any member of the Association may apply to the Circuit Court in and for the County, for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the member shall mail to the Association and post conspicuously on the Properties, a notice describing the intended action, giving the Association time to fill the vacancies. If during such time the Association fails to fill the vacancies, the Member may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver and reasonable court costs and reasonable attorneys' fees incurred. by the petitioner(s). The receiver shall have all the powers and duties of a duly constituted Board of Directors and shall serve as such until the Association fills vacancies on the Board sufficient to constitute a quorum.

**Section 5. OFFICERS.**

5.1 Officer and Elections. The executive officers of the Association shall be a President, and Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by a majority vote of the entire Board. Any officer may be removed with or without cause by vote of a Majority of the entire Board at any Board meeting. Any person may hold more than one (1) office. The Board of Directors may, from time to time, appoint such other officers and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors. He shall execute bonds, mortgages, and other contracts requiring

seal of the Association, except where such are permitted by law to be otherwise signed and executed and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.3 Vice-Presidents. The Vice-Presidents, in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the power of the President, and shall perform such other duties as the Board of Directors may prescribe. Absence or "disability" shall be viewed on a case by case, duty by duty basis, and as used herein, shall mean incapability of the President to effect a particular duty under question incident to the office of the President.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees and Executive Committee when required. He shall maintain a proper roster of Owners and their addresses. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the seal to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by the Assistant Secretary, if one has been designated.

5.5 Treasurer. The Treasurer shall have responsibility for the custody of Association funds and securities and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. He shall cause all monies and other valuable effects to be deposited in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee disbursement of the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or

whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

**Section 6. COMPENSATION OF DIRECTORS, OFFICERS AND COMMITTEE AND ARB MEMBERS.** Neither Directors, officers, nor committee or ARB members shall receive compensation for their services as Directors, officer, committee or ARB member (as applicable), unless compensation is approved by a majority of the voting interests of all members of the Association. Nothing herein shall preclude the Board of Directors from employing a Director, officer, committee or ARB member for the management of the Community, or for any other service to be supplied by such Director, officer, committee or ARB member. Directors, officers, committee and ARB members shall be entitled to reimbursement for all actual and proper out-of-pocket expenses, relating to the proper discharge of their respective duties.

**Section 7. FISCAL MATTERS.** T he provisions for fiscal management of the Association set forth in Section 5 of the Declaration shall be supplemented by the following provisions:

7.1 Annual Budget. The Board of Directors shall at a meeting called for such purpose adopt an annual budget for common expenses for each budget year, which shall run from January 1 through December 31 of the year, unless the Board votes otherwise. A copy of the proposed budget and a notice stating the date, time and place of the Board meeting shall be mailed to or served on the Owner of each Lot not less than fourteen (14) days prior to the date of that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications, and shall set out separately all fees or charges for recreational amenities, regardless of who owns same. Reserves for deferred maintenance and capital expenditures may, but shall not be required to, be included in the annual budget; the failure of the Association to include reserves shall not give any Owner or person any action against the

Association for same. Notwithstanding the foregoing to the contrary, the Association shall include in the annual budget, an unearmarked reserve of 5% of the budget, to be used for expenditures which are necessitated due to a natural disaster, emergency, or the like; a majority of the voting interests of all members of the Association may vote to preclude collection and funding of such reserve, or to divert such reserve which is collected and funded to be used for a different purpose.

7.2 Annual Assessments. Annual assessments based on the adopted budget shall be paid in equal monthly installments, in advance, due on the first days of each and every month of every year, unless otherwise specified by the Board of Directors. Written notice of the annual assessment shall be provided to all Members prior to January 1st of the budget obligation year; no other notices need be sent by the Association. Failure of the Association to send or of a Member to receive such notice shall not excuse the failure to pay. If an annual budget for a new budget year has not been adopted at the time the first installment for that year is due, it shall be presumed that the amount of such installment is the same as the previous installment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time any overage or shortage calculated shall be added or subtracted from each Lot's next due installment. In the event that the annual budget is amended, the overage or shortage calculated shall be added or subtracted equally over the balance of the annual assessment installments due for the year.

7.3 Special Assessments. Special assessments may be imposed by the Board of Directors when needed to meet any proper common expense(s) for which there is/are not sufficient funds in the annual budget and annual assessments. Special assessments are due on the date(s) specified in the resolution of the Board of Directors approving such assessments.

7.4 Acceleration of Assessments. If any annual or special assessment

installment as to a Lot becomes more than forty-five (45) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the last annual assessment for that budget year~~, as well as the next budget year,~~ and/or special assessment, as applicable. ~~To the extent that the years budget has not been adopted as of the date that the Association accelerates, for purposes of calculating of the next year's budget to be accelerated, it shall be presumed that the next years budget was adopted in the same amount as the existing budget year, with any increase or decrease which exists once the next years budget is adopted to be credited or debited to the Owner, as applicable~~. The accelerated assessment shall be due and payable on the date on which the Claim of Lien is recorded. ~~Once the Claim of Lien is recorded,~~ The Association shall send the delinquent owner a notice that the right of acceleration has been exercised prior to recording a Claim of Lien.

7.5 Depository. The Association shall maintain its accounts in such financial institutions or funds as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such person(s) as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

7.6 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each year, unless changed by the Board of Directors.

7.7 Annual Election of Income Reporting Method. Based on tax advice reasonably deemed by the Board to be competent, the Board of Directors shall make a determination annually of the method by which the Association's income shall be reported to the Internal Revenue Service, based upon the method which yields the lowest tax liability.

**Section 8. SYSTEM OF FINES FOR NON-COMPLIANCE: SUSPENSION**

New language is double underlined; deleted language is ~~struck through~~.

8.1 Authority and Scope. The Association may impose fines or suspend use rights as provided in Article X of the Declaration on or against any Owner and Lot as well as upon any lessee, guest or invitee, for any violations of the Governing Documents and Rules and Regulations; as amended from time to time; and/or violations of the law; by Owners or the Owners tenant(s); and/or their family members, agent(s), guest(s), visitor(s), invitee(s), etc. This Section 8 shall not apply to late fees or suspensions relating to an Owner's nonpayment of assessments and Charges.

8.2 Owner is Liable. Each and every such violation shall also be the responsibility of and attributed to the Owner (and his Lot) regardless of whether the offending party is in fact the Owner or the Owners tenant(s), or their family, agent(s), guest(s), visitor(s), invitee(s), etc. As such, the Owner. responsible for the actions of the Owners tenant(s) and family, agent(s), guest(s), visitor(s), invitee(s), etc.

8.3 ~~Written Notice Required: Contents. No fine shall be imposed for any violation unless and until the offending party or parties (which always shall include the Owner) has/have been given an opportunity to request a hearing on whether the fine should be levied. The Association shall provide notice to the offending party or parties that they have an opportunity to request a hearing on whether the fine should be levied. If the Association fails to receive a request for a hearing within fifteen (15) days after the Association mails such notice, no hearing will be held, and the fine may be levied automatically without further warning. The written notice from the Association shall also include a statement as to the provisions of the Governing Documents, Rules and Regulations and/or law which are being violated and the names of the referred to in Section 8.6 below shall violators, if known. If a hearing is timely requested, then the Hearings Committee schedule a hearing as soon as is possible and notify the offending party or parties of the date, time and place of the hearing.~~

~~8.4 Level of Fines. A fine for each violation shall be $100.00. This fine will be~~

~~levied at the rate of $100.00 per day for each day or other time period that the violation occurs, on a running per day or other periodic basis, treating each day or other period to be a separate violation, so long as the Hearing Committee's notice informs the offending party or parties of this fact, provided the fine may not exceed $1,000.00.~~

~~8.5~~ Fining Procedures, Record Keeping. A fine may not be levied until such time as the Association follows the procedures outlined in section 720.305 (2), Florida Statutes, as may be amended from time to time. The Association shall maintain a file of all notices issued and findings of the Hearings Committee in order that a record of offenses and offenders may be kept.

~~8.6 Heading Before the Hearings Committee. If the offending party or parties requested a hearing before the Hearings Committee, then the following shall apply:~~

~~A. A party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, to have counsel present, and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association.~~

~~B. Failure of the Owner and the violator in question to appear at the scheduled meeting shall result in the automatic vote by the Hearings Committee that the Owner is in violation, whereupon the fine may be levied without further warning. The Hearings Committee shall consist of at least three (3) members appointed by the Board of Directors, none of whom are officers, Directors, or employees of the Association, nor the spouse, parent, child, brother or sister of same.~~

~~8.7~~ 8.4 Collection of the Fine. Once a fine is deemed to be due and owing, the Association shall provide written notice to the Owner or other

responsible party of the fine due and owing, with due date for payment. The fine shall be paid and collectible against the Owner as ~~a Charge pursuant to the provisions of the Declaration~~ by all legal and/or equitable means available to the Association.

~~8.8 Suspension.~~

~~A. The Board of Directors' of the Association shall be permitted to suspend the right of use of the recreation facilities of any member (including his family members, lessees, guests, and invitees) during any period in which the member shall be delinquent in the payment of any Charge or assessment levied by the Association. Such suspension may be made by the Board of Directors without having to follow the notice and by laws hearing procedures under Section 8 of these By-Laws.~~

~~B. The Hearings Committee may also vote to suspend the right of use by an Owner (including his family members, lessees, and invitees) of the recreation facilities for a period not to exceed sixty (60) days in the event that any Owner or other violator violates any provision of the Governing Documents or Rules and Regulations of law, other than the delinquency in payment of assessments or charges levied by the Association. However, in connection with such suspension, all provisions regarding notice and hearing as provided for in this Section 8 shall apply, as if the suspension were deemed to be a fine.~~

~~8.9~~ 8.5 Concurrent Remedies. The fine system and suspensions may be invoked independently of or concurrently with any other remedies provided for in the Governing Documents or law. As such, the fine system and or suspensions are not a condition precedent to the Association's pursuit of other remedies available to it under the Governing Documents or under the law. Also, the fact that a fine is levied and/or paid or suspension results does not constitute compliance with the Governing Documents, Rules and Regulation's

and law, if in fact the violation(s) remain(s).

**Section 9. PARLIAMENTARY RULES. ROBERTS' RULES OF ORDER** (latest edition) shall govern the conduct of meetings of the Membership and Board of Directors when not in conflict with the Governing Documents or applicable law.

**Section 10. EMERGENCY BY-LAWS.** The following shall apply:

10.1 The Board of Directors may adopt By-Laws to be effective only in an emergency defined in Section 10.5 below. The emergency By-Laws, which shall be subject to amendment or repeal by the Members, may make all provisions necessary for managing the Association during an emergency, including:

A. Procedures for calling a meeting of the Board of Directors;
B. Quorum requirements for the meeting; and,
C. Designation of additional or substitute Directors.

10.2 The Board of Directors either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the Association are for any reason rendered incapable of discharging their duties.

10.3 All provisions of the regular By-Laws consistent with the emergency By-Laws shall remain effective during the emergency.

10.4 Corporate action taken in good faith in accordance with the emergency By-Laws:

A. Binds the Association, and

B. May not be used to impose liability on a Director, officer, employee, or agent of the Association.

New language is double underlined; deleted language is ~~struck through~~.

10.5 An emergency exists for purposes of this Section 10 if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

**Section 11. INDEMNIFICATION.**

11.1 To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director, every officer, and every member of a committee of the Association against all expenses and liabilities, including attorneys' fees, actually and reasonably incurred by or imposed on him/her in connection with any legal proceeding for settlement or appeal of such proceeding (and including administrative proceeding) to which he/she may be a party because of his/her being or having been a Director, officer or member of a committee of the Association. Indemnification of Directors and Officers shall also be that provided for in Section 617.028, Florida Statutes, as amended from time to time. Indemnification shall include an advance of the Director's. officer's or committee member's attorney' fees and defense costs, provided that ~~the Director or officer provides the undertaking assurance required by F.S. 607.0850(6); the foregoing is conditioned upon~~ the Director, officer or committee member ~~agreeing~~ agrees to use counsel of the Association's choosing~~; if the Association so conditions~~. In the event of a conflict between this Section 11, and ~~said statute~~ applicable law, the conflict shall be resolved in favor of providing the broadest protection possible to Directors, officers and committee members. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his/her actions or omissions to act were material to the cause adjudicated and involved:

A. Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor; or

B. A violation of criminal law, unless the Director, officer or committee member had no reasonable cause to believe his/her action was unlawful or had reasonable cause to believe his action was lawful, or

C. A transaction from which the Director, officer or committee member derived an improper personal benefit in the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

11.2 Insurance. The Association is empowered to purchase directors, officers and other insurance to provide protection to persons covered by this Section II.

Section 12. AMENDMENT OF THE BY-LAWS. All amendments to the By-Laws shall be proposed and adopted in the following manner:

12.1 Proposed. Amendments to these By-Laws may be proposed by the Board of Directors or by written petition signed by the Owners of one-fourth (1/4) of the Lots.

12.2 Procedure: Notice and Format. Upon any amendment or amendments to these By-Laws being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting, unless insufficient time to give proper notice remains before that meeting. Any amendment may be considered at the annual or a special members meeting. The full text of any amendment to the By-Laws shall be included in the notice of the Owners meeting at which a proposed amendment is considered by the Owners. New words shall be inserted in the text by underlining and words to be deleted shall

be lined through with hyphens; however, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Laws. See provision for present text."

12.3 Vote Required. Except as otherwise provided by Florida law, or by specific provision of the Governing Documents, these By-Laws may be amended by concurrence of not less than a majority of the entire membership of the Board of Directors and by not less than 2/3 of the voting interests of those members of the Association present in person ~~and~~ or by proxy to an Owner's meeting. ~~If the amendments were proposed by a written petition signed by the Owners, pursuant to Section 12.1 above, the concurrence of the Board of Directors shall not be required.~~

12.4 Certificate; Recording. Effective Date. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the By-Laws, which certificate shall be in the form required by law and shall be executed by any officer of the Association with the formalities of a deed and recorded in the Public Records of the County. The amendment shall be effective when the certificate and copy of the amendment together with any joinder and consents required, are recorded in the Public Records of the County. The certificate must identify the By-Laws are recorded by Book and Page of the Public Records where the By-Laws are recorded.

12.5 Provisos. Notwithstanding any provision in these By-Laws to the contrary, the following shall apply:

A. No amendment shall operate to unlawfully discriminate against any Lot or class or group of Lots.

New language is double underlined; deleted language is ~~struck through~~.

B. No amendment shall diminish or impair any of the rights, privileges, powers and or options provided in these By-Laws in favor of or reserved to record owners of any institutional mortgages unless the Institutional Mortgagee shall join in the execution of the amendment.

C. An amendment to these By-Laws that adds, changes or deletes a greater or lesser quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

M:\Association\Waterside at Boca Trail Community Association, Inc\Documents\SECOND AMENDED AND RESTATED BYLAWS. final draft.wpd