

AMENDED AND RE-STATED
BYLAWS
OF
EMERALD BAY HOMEOWNERS ASSOCIATION

(A Texas Nonprofit Corporation)

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Contents

- 1 NAME AND PURPOSE5
 - 1.1. NAME5
 - 1.2. PURPOSE OF HOA.....5
 - 1.3. NONPROFIT PURPOSE5
- 2 MEMBERSHIP6
 - 2.1 OCCUPANCY OF RESIDENCES6
 - 2.1.1 LIMITATIONS ON OCCUPANCY6
 - 2.2 MEMBERS.....6
 - 2.2.1 LIMITATION ON MEMBERSHIP6
 - 2.2.2 VOTING RIGHTS6
 - 2.3 ADMISSION PROCEDURES6
 - 2.3.1 WAIVER OF LIABILITY7
 - 2.4 TERMINATION BY SALE OF PROPERTY7
 - 2.4.1 FORCED SALE7
 - 2.5 ADDRESSES7
 - 2.6 SUCCESSION.....7
 - 2.6.1 DEATH OF A MEMBER7
 - 2.6.2 SEPARATION7
 - 2.6.3 BEQUESTS7
- 3 FEES, DUES, ASSESSMENTS AND PENALTIES.....8
 - 3.1 INITIATION AND TRANSFER FEES8
 - 3.1.1 INITIATION FEES8
 - 3.1.1.1 CORPORATE MEMBERS.....8
 - 3.1.1.2 CHANGE IN DESIGNATED MEMBER.....8
 - 3.1.2 TRANSFERS AND TRANSFER FEES8
 - 3.1.3 FORCED SALE8
 - 3.1.4 REIMBURSEMENT8
 - 3.2 MEMBERSHIP FEES AND DUES.....9
 - 3.2.1 MONTHLY STATEMENTS9
 - 3.2.2 PAYMENT DUE DATE9
 - 3.2.3 DELINQUENCY9
 - 3.2.4 PARTIAL PAYMENTS.....9
 - 3.2.5 COMMENCEMENT OF DUES OBLIGATION9
 - 3.3 OPERATING ASSESSMENTS.....9
 - 3.4 CAPITAL ASSESSMENTS10
 - 3.5 PAYMENT OF ASSESSMENTS10
 - 3.6 LIABILITY OF MEMBERS FOR COSTS OF LITIGATION10
- 4 GOVERNMENT AND GENERAL MANAGEMENT11
 - 4.1 BOARD OF DIRECTORS.....11
 - 4.2 NOMINATION AND ELECTION OF BOARD MEMBERS11

| | | |
|----------|--|----|
| 4.2.1 | NOMINATING COMMITTEE | 11 |
| 4.2.2 | SPECIAL NOMINATIONS..... | 12 |
| 4.2.3 | VOTING..... | 12 |
| 4.2.4 | TERM OF OFFICE | 12 |
| 4.2.5 | TERM LIMITS..... | 12 |
| 4.2.6 | MARRIED MEMBERS | 12 |
| 4.3 | ISSUANCE OF MEMBERSHIPS | 12 |
| 4.4 | COMPENSATION..... | 12 |
| 4.5 | INTERPRETATION OF BYLAWS | 13 |
| 4.6 | RULES AND QUORUM..... | 13 |
| 4.6.1 | REGULAR MEETINGS..... | 13 |
| 4.6.2 | LOCATION OF MEETINGS | 13 |
| 4.6.3 | QUORUM | 13 |
| 4.6.4 | MAJORITY VOTE | 13 |
| 4.6.5 | DISTRIBUTION OF MEETING AGENDA | 13 |
| 4.6.6 | EXECUTIVE SESSIONS | 14 |
| 4.6.7 | CONDUCT OF MEETINGS | 14 |
| 4.7 | ANNUAL MEETING | 14 |
| 4.8 | REMOVAL FROM OFFICE AND VACANCIES..... | 14 |
| 4.8.1 | REMOVAL | 14 |
| 4.8.2 | VACANCIES | 14 |
| 4.8.3 | UNEXCUSED ABSENCES | 14 |
| 4.9 | SPECIAL MEETINGS OF THE BOARD OF DIRECTORS | 14 |
| 4.9.1 | AUTHORIZATION | 14 |
| 4.9.2 | NOTICE | 15 |
| 4.9.3 | WAIVER OF NOTICE | 15 |
| 4.10 | OFFICERS | 15 |
| 4.10.1 | PRESIDENT..... | 15 |
| 4.10.2 | VICE PRESIDENT | 15 |
| 4.10.3 | SECRETARY..... | 15 |
| 4.10.4 | TREASURER..... | 15 |
| 4.11 | GENERAL MANAGER | 15 |
| 4.12 | COMMITTEES | 16 |
| 4.12.1 | STANDING COMMITTEES..... | 16 |
| 4.12.1.2 | SPECIAL PROVISIONS | 16 |
| 4.13 | ANNUAL MEMBER MEETING..... | 16 |
| 4.13.1 | SPECIAL MEMBER MEETINGS | 17 |
| 4.14 | CONFLICT OF INTEREST..... | 17 |
| 4.14.1 | CONTRACTS WITH MEMBERS | 17 |
| 4.15 | AMENDMENTS TO BYLAWS..... | 17 |
| 5 | FINANCIAL MANAGEMENT..... | 18 |
| 5.1 | RESPONSIBILITY | 18 |
| 5.2 | HOA FUNDS | 18 |
| 5.3 | PROHIBITIONS | 18 |
| 5.3.1 | SALE OF REAL ESTATE..... | 18 |

| | |
|---|----|
| 5.3.2 BORROWING FUNDS | 18 |
| 5.3.3 COMPENSATION..... | 18 |
| 5.3.4 LOANS..... | 18 |
| 5.4 BUDGETING..... | 18 |
| 5.4.1 FINANCE COMMITTEE | 18 |
| 5.4.2 ANNUAL BUDGET | 18 |
| 5.4.3 DEFICITS..... | 18 |
| 5.4.4 SUBMISSION OF ANNUAL BUDGETS | 19 |
| 5.4.5 SUBMISSION OF ANNUAL BUDGETS TO BOARD | 19 |
| 5.4.6 BUDGET HEARING..... | 19 |
| 5.5 FINANCIAL REPORTING | 19 |
| 5.6 AUDIT/REVIEWS..... | 19 |
| 5.7 CAPITAL FUNDING AND EXPENDITURES..... | 19 |
| 5.7.1 CAPITAL FUND | 19 |
| 5.7.2 PURPOSE OF CAPITAL FUNDING..... | 20 |
| 5.7.3 CAPITAL ASSETS..... | 20 |
| 5.7.3.1 CAPITAL ASSET RULES | 20 |
| 6 CONTRACTS, CHECKS, DEPOSITS AND FUNDS | 22 |
| 6.1 CONTRACTS. | 22 |
| 6.2 CHECKS, DRAFTS, OR ORDERS OF PAYMENT. | 22 |
| 6.3 DEPOSITS. | 22 |
| 6.4 BONDING..... | 22 |
| 6.5 GIFTS..... | 22 |
| 7 PROHIBITED TRANSACTIONS AND TAX EXEMPTION..... | 23 |
| 7.1 PROHIBITED TRANSACTIONS..... | 23 |
| 7.2 TAX EXEMPTION..... | 23 |
| 8 GENERAL PROVISIONS | 24 |
| 8.1. DISSOLUTION..... | 24 |
| 8.2. CONFLICTING PROVISIONS..... | 24 |
| 8.3. SEVERABILITY | 24 |
| 8.4. WAIVER..... | 24 |
| 9 CERTIFICATE..... | 25 |

ARTICLE 1

1 NAME AND PURPOSE

1.1. NAME.

The name of this corporation shall be Emerald Bay Homeowners Association (hereinafter termed "HOA"), and it is a non-profit corporation incorporated under the laws of the State of Texas.

1.2. PURPOSE OF HOA. The HOA exists for the following purposes:

- (i) To own, construct, improve, repair, maintain, manage, and care for the:
 - a) Streets and Roadways;
 - b) Bridges;
 - c) Guard Station;
 - d) Security Gates; and
 - e) All other assets under the care and control of the HOA
- (ii) To provide or contract for security protection for the Emerald Bay Subdivision.
- (iii) To improve, repair, maintain, manage and care for the streets and roadways situated in the Emerald Bay Subdivision via contract with Emerald Bay Municipal Utility District or any other qualified contractor.
- (iv) To provide architectural control pursuant to the Restrictions and Covenants applicable to the Emerald Bay Subdivision and enforcement of same.
- (v) To keep the vacant lots in the Emerald Bay Subdivision mowed and free and clean of debris pursuant to the Restrictions and Covenants applicable to the Emerald Bay Subdivision and all applicable provisions of the Texas Property Code.

1.3. NONPROFIT PURPOSE. The HOA shall not have the authority to act, do or perform any act or deed which would nullify the HOA's tax-exempt status as a homeowners association under the Internal Revenue Code of the United States of America.

ARTICLE 2

2 MEMBERSHIP

2.1 OCCUPANCY OF RESIDENCES. Only those persons listed on the membership application shall reside in a Member's residence. Any additional occupants must be approved by the Board of Directors and registered with the office and Security.

2.1.1 LIMITATIONS ON OCCUPANCY. Occupancy of any and all homes in Emerald Bay Subdivision shall be limited to "Single Family Occupancy" which is defined as one or more persons related by blood, marriage or legal adoption which shall not exceed the number of persons determined by multiplying the number of bedrooms in a residential unit by two or a group of not more than three unrelated persons in the entire home. This section shall not be interpreted to prevent the occupancy of any home by guests on a temporary basis of less than 30 days provided such Stockholder Member or Lessee Member is present in such home during the entire period of visitation. This section shall not be construed so as to prohibit a live-in maid or other full or part time care giver required for the convenience or care of those residing in such home provided the maximum of two persons for each bedroom is not exceeded. The Board of Directors may, in their discretion, grant exceptions to the strict application of this Section.

2.1.2 LEASES AND RENTALS: There shall be no short-term leases or rentals. The minimum term of any leases or rentals shall be defined by the Board of Directors and such minimum term thereof shall be published in the Consolidated Rules and Regulations. In no event shall any lease or rental be less than six (6) months. Exceptions for Member-to-Member leases or rentals may be made for shorter terms by an affirmative vote of the Board of Directors in a regularly scheduled meeting.

2.2 MEMBERS. Members shall consist of persons i) owning one or more lots in Emerald Bay Subdivision, Smith County, Texas, or ii) who are designated Members by corporations, partnerships, trusts, and guardianships which own one or more lots in Emerald Bay. More than one lot being used in a building site shall be counted as only one (1) membership.

2.2.1 LIMITATION ON MEMBERSHIP. No person shall own more than one Membership in the HOA.

2.2.2 VOTING RIGHTS. Only one vote at each election will be allowed for each numbered Membership. In the case of a married couple, either spouse may cast the vote.

2.3 ADMISSION PROCEDURES. An owner of property in the Emerald Bay subdivision shall automatically be a member of the HOA without the necessity of any further action. No person or entity shall be a member of the HOA by reason of ownership of only an easement, right-of-way, or mineral interest.

2.3.1 WAIVER OF LIABILITY. All applicants, by their act of filing an application for membership, agree that they have satisfied themselves that the land and/or structures which they are in the act of purchasing or leasing has been examined to their satisfaction with regard to workmanship and drainage and agree to waive any and all claims for damages as against Emerald Bay Homeowners Association and Emerald Bay Club, Inc., their officers, directors, agents, members and employees and hold them harmless of and from any and all claims, damages, injuries and costs, including attorney fees, in such regard.

2.4 TERMINATION BY SALE OF PROPERTY. Membership shall be terminated by the sale of interest in all lands owned in Emerald Bay Subdivision. Seller's membership may be extended at Seller's request for not more than sixty (60) days or such time period approved by the Board of Directors with dues paid in advance for the extended period of time.

2.4.1 FORCED SALE. A "forced sale" is defined as a sale pursuant to a foreclosure, bankruptcy, or other court order. In the event of a forced sale, the membership of the Member subject to the forced sale shall be terminated.

2.5 ADDRESSES. It is the duty of each Member to ensure the Emerald Bay HOA's records contain the Member's correct, current mailing address and email addresses, if applicable. All notices to Members mailed to the last mailing address or email address furnished by the Member to the HOA shall be deemed adequately addressed.

2.6 SUCCESSION.

2.6.1 DEATH OF A MEMBER. In the case of death of any surviving Member, dues to the HOA shall, during the period of estate administration, be paid by the estate. Should the property of the deceased Member be sold, the eventual purchaser or owner of such property shall pay the current initiation fee.

2.6.2 SEPARATION. Upon the separation, pending divorce, of a married couple holding Membership, each spouse shall continue to be entitled to the privileges of Membership (so long as amounts owing the HOA are timely paid) until the HOA receives an order from a court of competent jurisdiction awarding the membership to either spouse individually. This rule does not expand the voting privilege beyond the one (1) vote to which such share is entitled. If more than one (1) ballot is cast in any election, by more than one (1) person claiming ownership, all ballots cast in that name shall be void.

2.6.3 BEQUESTS. When an Emerald Bay Member deeds ownership of their Emerald Bay property, by virtue of which they are a member of the HOA, to a spouse, mother, father, son, daughter, son-in-law, daughter-in-law, step children or grandchildren, there will be no transfer or initiation Fee, such that the grantor's Emerald Bay HOA membership will pass to the grantee of the property so deeded.

ARTICLE 3

3 FEES, DUES, ASSESSMENTS AND PENALTIES

3.1 INITIATION AND TRANSFER FEES.

3.1.1 INITIATION FEES. The Board of Directors shall from time to time establish the initiation fee to be paid by applicants to the HOA as new Members. An initiation fee shall become payable by a proposed new Member when an existing Member sells his/her property to such proposed new Member. All initiation fees shall be placed in the Capital Fund.

3.1.1.1 CORPORATE MEMBERS. In the event of ownership, or proposed ownership of a property or properties in Emerald Bay by any corporation, partnership, trust, or guardianship, the individual designated as the Member by such corporation, partnership, trust, or guardianship shall be liable to pay the initiation fee.

3.1.1.2 CHANGE IN DESIGNATED MEMBER. If a Corporate Member changes the designated member for such corporation, partnership, trust, or guardianship, it shall be considered a transfer and an initiation fee shall be charged to the new designated Member. The funds received by the HOA shall be allocated according to Section 3.1.2.1 above. However, if the lot owned by the Corporate Member is either vacant, unoccupied, or a non-buildable Membership lot, there shall be no transfer/initiation fee charged upon the appointment of new designated member.

3.1.2 TRANSFERS AND TRANSFER FEES. A transfer occurs when an existing Member sells his/her property to another existing Member. The Board of Directors shall from time to time establish the fee to be paid for such transfers.

3.1.3 FORCED SALE. No initiation or transfer fee shall be due upon a forced sale as defined in the Section 2.4.1. However, any subsequent purchaser other than a lender that obtains ownership of the property by means of foreclosure or a deed tendered in lieu of foreclosure, shall be considered a proposed new Member and shall purchase a membership pursuant to the terms and conditions contained in these Bylaws. No refund shall be due or owing to a Member who has been dispossessed of their property by a forced sale.

3.1.4 REIMBURSEMENT. No part of the HOA initiation Fee or Transfer Fee shall be reimbursable to the transferor.

3.2 MEMBERSHIP FEES AND DUES. The Board of Directors shall have the right and obligation from time to time, to set the dues, charges and fees payable by the HOA Members and the Board of Directors may also determine whether the dues, charges and fees are to be paid monthly or at some other time interval.

3.2.1 MONTHLY STATEMENTS. A statement of all current and past due HOA charges shall be delivered to each Member on a monthly basis. Such amounts are due and payable upon receipt, but effective as of the billing date, which is the last day of the month for which charges appear on the member's statement.

3.2.2 PAYMENT DUE DATE. All current and past due HOA charges must be received in the Club office before 5:00 PM on the last business day of each month. Any indebtedness remaining unpaid after such time and day shall be deemed past due and a late payment fee shall be charged on the unpaid balance. This late payment fee shall be maintained by the Board of Directors at the maximum legal interest rate allowed under the laws of the State of Texas.

3.2.3 DELINQUENCY. With respect to Members, any indebtedness of sixty (60) days past the billing date and, with respect to Lessees, any indebtedness of thirty (30) days past the billing date, shall be deemed delinquent. When a Member is deemed delinquent, the member shall be notified by certified mail of such delinquency. When a Member is deemed delinquent, a grace period of fifteen (15) days shall be allowed for the delinquent party (parties) to make satisfactory arrangements for the payment of the indebtedness. If satisfactory arrangements are not made within the fifteen (15) days grace period, the member shall be declared delinquent and denied the use of club facilities. With respect to a Member, when an amount is declared delinquent, the HOA shall file a lien on the delinquent member's property. A list of delinquent members along with the delinquent amounts shall be reported to the Board of Directors. Certain exceptions may be made by the Board of Directors when illness or other circumstances justify. A delinquent member shall be reinstated upon payment of all indebtedness plus penalties and current dues. Charges for recording and subsequent releasing of lien will be added to the member's account.

3.2.4 PARTIAL PAYMENTS. Partial payments and credits shall be applied per the applicable provisions of the Texas Property Code.

3.2.5 COMMENCEMENT OF DUES OBLIGATION. Dues obligation commences on the date the membership transaction closes. Dues will be prorated for partial months.

3.3 OPERATING ASSESSMENTS. If the Board of Directors believes it necessary to levy assessments for the purpose of operating and maintaining the HOA, it shall be authorized to levy such assessments upon the membership from time to time not to exceed in the aggregate fifteen percent (15%) of the annual dues paid per individual Member for any one calendar year. Any Operating Assessments in excess of fifteen percent (15%) of the dues chargeable for the then current

year may be levied only after approval by two-thirds (2/3) of the Members voting or a majority of all the Members in an Annual Meeting or a Special Meeting called for the purpose stated herein.

3.4 CAPITAL ASSESSMENTS. If the Board of Directors believes it necessary to levy assessments for the purpose of improving the HOA or for the repair or improvement of a Capital Asset (as defined in Section 5.7.3), such Capital Assessment shall be subject to Section 5.7.3.1 herein and levied only after approval by two-thirds (2/3) of the Members voting or a majority of all the Members in an Annual Meeting or a Special Meeting called for the purpose stated herein.

3.5 PAYMENT OF ASSESSMENTS. Payment of any assessment levied pursuant to Section 3.3 and 3.4 shall be due and payable upon receipt and subject to all the provisions in these Bylaws regarding payments of dues and fees, specifically Section 3.2 herein.

3.6 LIABILITY OF MEMBERS FOR COSTS OF LITIGATION. In the event the HOA is the prevailing party in any lawsuit or litigation matter which is brought either by the HOA against any Member or by any Member against the HOA, then all costs and expenses paid or incurred by the HOA in such litigation matter, including, without limitation, all attorney's fees and expenses, shall be paid to the HOA by such non-prevailing member on demand.

ARTICLE 4

4 GOVERNMENT AND GENERAL MANAGEMENT

4.1 BOARD OF DIRECTORS. The affairs of the HOA shall be governed by the Board of Directors in accordance with the Articles of Incorporation, the Bylaws, Texas Property Code and the Texas Business Non-Profit Corporation Act, which are incorporated herein by reference thereto. The Board of Directors of the HOA shall serve in the dual capacity as the board of directors of the Club. In addition to the duties imposed by the Articles of Incorporation, the Board of Directors (referred to herein as the “Board” and the “Board of Directors”) shall be responsible for the following:

- (i) Care, upkeep and maintenance of the real property owned, leased, or operated by the HOA and carrying out the purposes of the HOA.
- (ii) Adopting and publishing Rules and Regulations governing the HOA and uses of the property owned, leased, or operated by the HOA.
- (iii) Adopting disciplinary procedures and penalties for violations of the Bylaws, Rules and Regulations, Covenants and Restrictions, or any other rule of the HOA and enforcing penalties imposed. Said disciplinary procedures and penalties shall be included in the Rules and Regulations of the HOA.
- (iv) Construing these Bylaws and the Rules and Regulations governing the use of the HOA property and recommending changes or alterations of the Bylaws to the membership.
- (v) Hearing appeals made to the Board from any decision rendered by a committee. Board decisions in any such appeal shall be final.
- (vi) Contract with the Emerald Bay Club or any other qualified entity for the management of HOA and the billings and collection of dues, charges and assessments.

4.2 NOMINATION AND ELECTION OF BOARD MEMBERS. Each Director shall be elected for a term of three years.

4.2.1 NOMINATING COMMITTEE At least ninety (90) days before the annual meeting, the HOA President shall appoint a nominating committee of five Members, only two of whom may be Directors. This committee shall, not less than sixty (60) days before the annual meeting, nominate a slate for election as Directors to serve for the ensuing three years. This slate shall be posted on the Club bulletin Boards, recorded in the Board of Directors’

minutes, and mailed to the Members at least thirty (30) days prior to the closing of the ballot box. The candidates elected will serve in a dual capacity of governance over Emerald Bay Club and Emerald Bay Homeowners Association. The committee shall use its best efforts to nominate no less than five Members to fill the expiring Director positions.

4.2.2 SPECIAL NOMINATIONS. Any Member may submit his or her name to the Nominating Committee as a candidate for a position as Director, provided such Member has certified in writing that he or she will serve if elected. If the submission and certification is dated at least forty-five (45) days before the annual meeting, said Member's name shall be included on the slate of the Nominating Committee.

4.2.3 VOTING. Voting shall be by printed ballot. Each ballot must be signed by the voting HOA Member. The ballot shall list the names of the qualified nominees in alphabetical order with spaces provided opposite each name for a check mark. No less than thirty (30) days prior to the Annual Meeting, the Board President shall appoint from the Members five Election Judges, only one of whom shall be a Board member. Their duties shall be to insure that only qualified voters cast a ballot, provide a sealed ballot box at the Clubhouse, count and record the votes and deliver to the Secretary their tabulation. Ballots will not be accepted after 12:00 p.m. on the date of the Annual Meeting. The Secretary will announce the names of those elected and post the results on the Club Bulletin Boards, including the number of votes received by each candidate elected. The Election Judges shall, at the close of the meeting, deliver to the Secretary the original ballots which the Secretary shall keep for a period of no less than fifteen (15) days.

4.2.4 TERM OF OFFICE. The Directors so elected shall serve on the Board for a period of three years or until their successors are elected or appointed by the Board to fill their position. In case a vacancy occurs, a Board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position. Three Directorships shall expire annually.

4.2.5 TERM LIMITS. No member may serve more than two consecutive three-year terms on the Board of Directors. A member may serve an unlimited number of three-year terms if so elected, but in the event that a member serves two consecutive terms, that member must take a hiatus of not less than three (3) years from the end of such two terms before being elected to another term.

4.2.6 MARRIED MEMBERS. In the case of a married couple, both spouses are Members and eligible to be a Director, but both cannot serve as Directors at the same time.

4.3 ISSUANCE OF MEMBERSHIPS. The Board of Directors shall be responsible for the admission of applicants to membership and suspension of members in conformity with the Bylaws.

4.4 COMPENSATION. Directors shall not receive any salary or compensation for serving on the Board of Directors. Directors and Members may be reimbursed for out-of-pocket expenses for such items as

transportation, lodging, and meals while away from their home base for the purpose of HOA business specifically authorized by the Board.

4.5 INTERPRETATION OF BYLAWS. With regard to the Bylaws of the HOA, the Board of Directors shall be responsible for the following:

- (i) Making such other Rules and Regulations not within the Bylaws as it may deem necessary or advisable.
- (ii) Fixing and imposing penalties for the violations of the Bylaws, Rules and Regulations, and Restrictions and Covenants.
- (iii) Making, altering and amending rules for its own government consistent with these Bylaws.
- (iv) Making and amending rules for the use of the HOA by its Members and for their conduct everywhere within the confines of Emerald Bay, including rules for the admission of guests and visitors.

4.6 RULES AND QUORUM.

4.6.1 REGULAR MEETINGS. Regular meetings of the Board of Directors shall be held monthly at a time convenient to the Board of Directors and shall be open to all members.

4.6.2 LOCATION OF MEETINGS. Unless otherwise specifically provided in these Bylaws, all meetings of the Board of Directors shall be held in the clubhouse of Emerald Bay Club. The one exception to a meeting place for the Board of Directors shall be in the case of an emergency situation wherein the clubhouse is not available for a Board meeting or has been damaged to such extent that it cannot be used for meeting purposes. In the event of such an emergency situation the Board meeting(s) may be held electronically with the availability for HOA Members to view the electronic meeting.

4.6.3 QUORUM. A majority of the number of Directors shall constitute a quorum for the transaction of business.

4.6.4 MAJORITY VOTE. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless otherwise specifically required by law or these Bylaws.

4.6.5 DISTRIBUTION OF MEETING AGENDA. The President or his/her designate representative shall deliver notice of the next Regular Board meeting by e-mail or other appropriate electronic notification to each member of the Board of Directors. Such notice shall be delivered at least 144 hours (6 days) prior to such Regular Board meeting and shall include the date, hour, place and an agenda setting out, but not limited to, the business to be transacted at the meeting. A copy of such notice shall also be provided to the HOA Members as follows:

- (1) by posting on the Emerald Bay Club bulletin boards;
- (2) by posting on the emeraldbayclub.org website
- (3) by e-mail to each HOA Member who has registered an e-mail address with the Emerald Bay Club/HOA.

4.6.6 EXECUTIVE SESSIONS. Closed Executive Sessions of the Board of Directors may be held to consider actions involving:

- 1) Personnel;
- 2) Pending or threatened litigation;
- 3) Contract negotiations;
- 4) Enforcement actions
- 5) Confidential communications with the Subdivision Association's attorney;
- 6) Matters involving the invasion of privacy of individual owners;
- 7) Matters that are to remain confidential by request of the affected parties and agreement of the Board of Directors.

4.6.7 CONDUCT OF MEETINGS. In the event of a question of a point of order or parliamentary procedure, the Robert's *Rules of Order* shall prevail.

4.7 ANNUAL MEETING. The Board of Directors shall meet annually immediately after the Annual membership meeting to elect officers of the HOA.

4.8 REMOVAL FROM OFFICE AND VACANCIES.

4.8.1 REMOVAL. Any Director may be removed, with or without cause, at a special meeting of the general membership by the affirmative vote of a majority of the members present in person at such meeting and entitled to vote for the election of such directors.

4.8.2 VACANCIES. Any vacancy occurring on the Board of Directors may be filled at subsequent meetings of the Board of Directors by the affirmative vote of a majority of the remaining Directors.

4.8.3 UNEXCUSED ABSENCES. Absence of any Board member for three (3) consecutive meetings, unless excused by the President, or unless a satisfactory explanation be made to the Board of Directors at the next regular monthly meeting after the last such absence, shall be deemed a resignation from the Board, which shall thereupon fill the vacancy by appointment of a new member.

4.9 SPECIAL MEETINGS OF THE BOARD OF DIRECTORS.

4.9.1 AUTHORIZATION. A special meeting of the Board of Directors may be called by or

at the request of the President or any two Directors. All HOA Meetings should be in compliance with the “Open Meetings Act.”

4.9.2 NOTICE. Notice of a special meeting shall be in writing and delivered to each of the Directors at least seventy-two (72) hours prior to such a meeting. Said notice shall contain the purpose or purposes of such special meeting and shall be posted on the Emerald Bay Club bulletin boards by the Secretary of the Board. A copy of such notice shall be delivered to the Members in the same manner as described in paragraph 4.6.5 DISTRIBUTION OF MEETING AGENDA (1), (2) and (3) hereinabove.

4.9.3 WAIVER OF NOTICE. Attendance of a Director at a special meeting shall constitute a waiver of notice except where a Director attends a meeting for the express purpose of objecting to transaction of business or objecting that the meeting is not lawfully called or convened.

4.10 OFFICERS.

4.10.1 PRESIDENT. The President shall be the chairman of the Board of Directors and shall preside at all meetings of the general membership of the HOA and at all meetings of the Board of Directors.

4.10.2 VICE PRESIDENT. In the absence or inability to act of the President, the Vice President shall perform all the duties of the President.

4.10.3 SECRETARY. The Secretary shall keep a record of all meetings of the Members of the HOA and of all meetings of the Board of Directors, shall give notice of the regular or special meetings to the Members of the HOA, and shall notify the directors of all scheduled meetings of the Board. The Secretary shall notify new Members of their election. He or she shall be charged with performance of any duties as may be imposed in these Bylaws, and shall perform such other duties as the Board of Directors may prescribe from time to time by simple resolution.

4.10.4 TREASURER. The Treasurer shall be the financial officer of the HOA, shall have charge of and be responsible for all funds of the HOA, and shall ensure that all such funds are deposited in the name of the HOA in such bank or other depositories as shall be selected by the Board of Directors; and, in general, shall perform all duties as from time to time may be assigned by the Board of Directors or the President.

4.11 GENERAL MANAGER. The General Manager (the “GM”) shall manage the affairs, direct the work and employees of the HOA, subject to, and in accordance with the direction of the Board of Directors. The GM shall prepare budgets of expenses for approval of the designated committee or the Board, and shall be authorized to incur expenses in accordance with the approved budgets, or as

directed by the Board. The GM shall, if requested by the Board, attend all meetings of the Board. The GM shall make reports of work and affairs of the HOA to the Board and Membership meetings.

4.12 COMMITTEES. Committees deemed advisable by the Board of Directors may be established by resolution adopted by a majority of the directors at a meeting at which a quorum is present. The President and General Manager shall be ex-officio Members of all committees, (except as to the Architectural review Authority as specified hereinbelow) but may not vote in committee. The President shall appoint all Members of the Membership, Finance and Budget, and Engineering Committees.

4.12.1 STANDING COMMITTEES. Standing Committees shall be (1) Executive Committee, consisting of the President, Vice President, Secretary and Treasurer; (2) Security; (3) Property Compliance; (4) Legal; (5) Finance and Budget; (6) Membership; (7) Planning and Bylaws; and (8) Engineering and (9) Architectural Review Authority. The Legal, Finance and Budget, Planning and Bylaws, Membership, and Engineering Committees shall serve in a dual capacity for the HOA and Emerald Bay Club, Inc. The Chairman of each Standing Committee shall be a member of the Board of Directors and appointed by the President (except as to the Architectural Review Authority as specified hereinbelow).

4.12.2 SPECIAL PROVISIONS. The Membership, Finance and Budget and Engineering Committees shall each consist of five members, two of whom shall be members of the Board of Directors, including the chairman. Terms for non-Board members on these committees shall normally be for three years. Non-Board members shall be appointed for one, two and three year terms by the President, such that committee members' service expiration dates will be staggered.

4.12.3 AD HOC COMMITTEES. Such other committees as may be needed for special projects or short-term situations may be created as deemed advisable by the Board of Directors. The Chairperson of an Ad Hoc Committee shall be appointed by the President and may be a Director or a Member. In any event, a Director shall be appointed to any such Committee. The term of an Ad Hoc Committee shall run until its purpose is accomplished, or for no more than one (1) year, whichever is shorter.

4.12.4 ARCHITECTURAL REVIEW AUTHORITY (ARA). The members of the ARA shall be appointed by the Board of Directors for three-year terms. The initial appointments shall be for one, two, and three-year terms such that committee members' service expiration dates will be staggered. The appointed members of the ARA shall select their own Chairman. The General Manager shall be an ex-officio member of the committee but may not vote in committee. In accordance with Texas Property Code Sec. 209.00505 (c) no current Board member or Board member's spouse, or anyone residing in a current Board member's household may serve on the Architectural review Authority.

4.13 ANNUAL MEMBER MEETING. Annual meetings of the Members shall be held on the second Tuesday in January of each year at the Club offices, Emerald Bay, at 5:00 p.m., unless the Executive Committee, by majority vote, sets a different day and/or time in January. On the same day and time,

new members of the Board of Directors shall be announced by the Secretary as determined by the election outlined in Article 4.2.3 herein above.

4.13.1 SPECIAL MEMBER MEETINGS. A special meeting of Members may be called at any time by the Board of Directors or the President. By petition signed by not less than twenty percent (20%) of the Membership, a special meeting may be called by Members. In the case of a special meeting, the purpose or purposes for which the meeting is called and the date, time and place of such meeting shall be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting, to each Member.

4.14 CONFLICT OF INTEREST. No Member of the HOA shall hold a salaried position involving HOA finances or management.

4.14.1 CONTRACTS WITH MEMBERS. The Board of Directors has authority to approve or disapprove, in its sole discretion, a transaction or contract between the HOA and current Directors, Members, employees of the HOA, or any business entity owned or controlled by any Director, Member, or employee. Any such approval or disapproval shall only be made after full disclosure of the interest of the Director, Member, employee or business entity in the contract or transaction. Any interested Director shall abstain from voting on said contract or transaction.

4.15 AMENDMENTS TO BYLAWS. The power to alter, amend, or repeal any of the Bylaws or adopt new Bylaws shall be vested in the Membership except as set forth in section 4.15.1. Any change in the Bylaws must be proposed by a petition signed by ten percent (10%) of the Members or by a majority of the Board of Directors. These Bylaws or any part thereof may be amended, modified, or replaced at any regular or special meeting of Members. When any amendment, change or modification of the Bylaws is to be proposed at any meeting, a notice of such meeting containing a recitation of the Bylaw or Bylaws to be amended, and including the proposed amendment, shall be delivered by U. S. Postal Service or via electronic mail along with a ballot to each Member at least ten (10) days in advance of such meeting. A tabulation of all votes shall determine the outcome. Either a two-thirds majority of the members voting or a simple majority of the Membership is necessary to effect any change in these Bylaws. Voting shall be by printed ballot. The ballot must be signed by the voting Member. In the case of married members, either spouse may cast the ballot. After tabulating the votes and posting the results, the Secretary shall keep the original tabulations and ballots for a period of not less than fifteen (15) days.

4.15.1 AMENDMENTS TO BYLAWS MANDATED BY LAW Where amendments or additions or deletions of portions of these Bylaws are mandated by changes in Federal, State or Local law, the legally required amendments shall not require a vote of the Membership. However, the Board of Directors shall vote to approve the specific language of such amendments to the Bylaws required by such changes in Federal, State, or Local laws.

ARTICLE 5

5 FINANCIAL MANAGEMENT

5.1 RESPONSIBILITY. The Board of Directors shall be responsible for the financial management of the Emerald Bay HOA.

5.2 HOA FUNDS. The funds of the HOA shall consist of a General Operating Fund and a Capital Fund.

5.3 PROHIBITIONS.

5.3.1 SALE OF REAL ESTATE. The Board of Directors may sell real estate only under the following conditions:

- (i) if the Board determines that real estate to be a 'membership lot' which is defined as vacant real property on which a structure may not be built; or
- (ii) to settle real property encroachments on HOA property;
- (iii) both (i) and (ii) shall be sold for a price to be determined by the Board.

5.3.2 BORROWING FUNDS. The Board of Directors shall not borrow or create any indebtedness or encumber assets of the HOA in any amount. This does not prohibit the Board from entering into capital or operating leases.

5.3.3 COMPENSATION. No compensation shall be paid and no part of the income of the HOA shall be distributed to the Directors or Officers for services rendered.

5.3.4 LOANS. No loan shall be made by the HOA to its Members, Directors or Officers.

5.4 BUDGETING.

5.4.1 FINANCE COMMITTEE. The President shall appoint a five-member Finance and Budget Committee constituted as follows: the Treasurer, one additional Director, and three (3) at large Members. The Members shall serve three-year terms with staggered service expiration dates.

5.4.2 ANNUAL BUDGET. The Board of Directors shall adopt an annual operating budget and capital budget to ensure adequate funding for the operation of the HOA.

5.4.3 DEFICITS. The Board of Directors shall not allow the accumulation of deficits caused

by operating expenses exceeding revenues. Unforeseen deficits shall be eliminated over a period not to exceed two (2) years.

5.4.4 SUBMISSION OF ANNUAL BUDGETS. The Finance and Budget Committee shall set financial and budgetary standards for the GM. Once the GM has established his/her recommended budgets for all the departments under his/her authority, the Finance and Budget Committee shall meet with the GM to review the budgets in detail and work towards agreement on budget levels. In the event the two parties cannot reach agreement on a proposed budget, they will ask for a meeting with the Board for resolution. Once a proposed Budget is completed, the GM shall consolidate the proposed budgets into a proposed Annual Operating Budget, Capital Budget and a proposed 5-year Capital Plan.

5.4.5 SUBMISSION OF ANNUAL BUDGETS TO BOARD. The GM, with the Finance and Budget Committee in attendance, shall provide the consolidated proposed budgets and recommendations to the Board of Directors prior to the Board's "Budget Work Session." During Budget Work Sessions the full Board shall review and consider the proposed Annual Operating and Capital Budget and 5-year Capital Plan.

5.4.6 BUDGET HEARING. When the Board has reached agreement on the proposed budget, a "Budget Hearing" open to the Members shall be held. The purpose of this Budget Hearing is to provide the Members an opportunity to comment on the proposed budgets prior to their adoption by the Board. Notice of the Budget Hearing, together with summaries of the proposed budgets, shall be delivered by U. S. Postal Service or via electronic mail to each Member no later than 10 days prior to the date of such Budget Hearing. After the Budget Hearing, the proposed Operational and Capital Budgets and 5-year Capital Plan, with changes deemed appropriate as a result of such Budget Hearing, shall be adopted by the Board of Directors at its regular December meeting.

5.5 FINANCIAL REPORTING. The HOA's current financial operating statement summaries shall be placed on the Emerald Bay web site and in the Newsletter monthly. The financial statements shall contain such detailed information, as determined by the Board of Directors, to inform the membership of current financial operation

5.6 AUDIT/REVIEWS. The financial affairs of the HOA shall be reviewed or audited annually (and at such other times as the Board of Directors deems advisable) by an outside Certified Public Accountant. Copies of the auditor's reports shall be posted on the Club Bulletin Boards and be made available to the Members for review at the Club office.

5.7 CAPITAL FUNDING AND EXPENDITURES.

5.7.1 CAPITAL FUND. A fund to support capital expenditures shall be maintained with funding to be derived from:

- (i) Initiation fees (See Section 3.1.1);
- (ii) Capital Dues;
- (iii) HOA funds as necessary;
- (iv) Capital donations;
- (v) The proceeds of sale of any capital asset; and
- (vi) Interest earned from Capital Fund bank account.

5.7.2 PURPOSE OF CAPITAL FUNDING. The purpose of Capital Funds shall be:

- (i) Acquisition of capital assets;
- (ii) Improvement/enhancement of existing capital assets; and
- (iii) Satisfying monetary requirements of an extraordinary non-recurring expenditure.

5.7.3 CAPITAL ASSETS. Capital Assets are defined as repairable equipment and land, land easements, and/or buildings and appurtenances having an estimated life of at least three years and repairable cost less than replacement cost.

5.7.3.1 CAPITAL ASSET RULES. Capital Assets shall be managed as follows:

(i) Capital assets must have a threshold value of one thousand dollars (\$1,000). There is one exception to this rule: As part of a construction project, costs may be incurred to fit out space with new furnishings and equipment. When such purchases are made as part of a construction project, if the aggregate cost of these expenditures exceeds one thousand dollars (\$1,000) and the items have a useful life of three years or more, the cost may be capitalized even though some of the individual items cost less than one thousand dollars (\$1,000).

(ii) For amounts less than ten thousand (\$10,000) the board may approve, at a regular board meeting, non-budgeted expenditures provided the approved annual budget is not exceeded. In the event of a price increase on a budgeted expenditure, the board may approve the additional cost, provided the approved annual budget is not exceeded.

(iii) The Board of Directors shall have the authority to use either capital or non-capital funds to offset the cost of an expenditure that does not exceed ten thousand (\$10,000) and would exceed the annual approved capital budget.

(iv) An “extraordinary non-recurring expenditure” is defined as one of an emergency or critical nature required to sustain or maintain service to and for the welfare of the community and must be resolved immediately.

(v) In case of an extraordinary non-recurring expenditure which exceeds ten thousand (\$10,000) and exceeds the approved capital budget, the Board of

Directors shall immediately proceed to resolve the urgent or critical situation. In such instances, the Members shall be informed of the action by publication in the Rainbow Review and at the immediately succeeding meeting of the Board of Directors. The Board shall inform the Members of the details of and justification for the expenditure.

(vi) All capital expenditures, except in the case of urgent or critical situations, shall be presented to the Board of Directors in full detail, including competitive bids, for final approval prior to commitment. This shall be done whether or not the expenditure was included in the capital budget.

(vii) Any expenditure in excess of ten thousand (\$10,000) that is not an extraordinary, non-recurring expenditure, as defined in Section 5.7.3.1(iv) above, and is not in the current operating or capital budget, must be approved by a two-thirds majority of members voting or by a simple majority of the membership.

ARTICLE 6

6 CONTRACTS, CHECKS, DEPOSITS AND FUNDS

6.1 **CONTRACTS.** The Board of Directors may authorize the General Manager or any officer of HOA, in addition to the officers so authorized by these Bylaws, to enter into contracts or execute and deliver instruments in the name of and on behalf of HOA, and such authority may be general or confined to specific instances.

6.2 **CHECKS, DRAFTS, OR ORDERS OF PAYMENT.** All checks, drafts, or orders for payment of money, notes, or other evidences of indebtedness issued in the name of the HOA shall be signed by the General Manager or officers of HOA in such manner as shall be determined by resolution of the Board of Directors.

6.3 **DEPOSITS.** All funds of HOA shall be deposited to the credit of HOA in such banks, trust companies or other depositories as the Board of Directors may select.

6.4 **BONDING.** Any person who handles financial matters on behalf of HOA shall be bonded. Bonding costs will be at the expense of HOA.

6.5 **GIFTS.** The Board of Directors may accept on behalf of HOA any contribution, gift, bequest or devise for the general purposes, or any specific purpose, of HOA.

ARTICLE 7

7 PROHIBITED TRANSACTIONS AND TAX EXEMPTION

7.1 PROHIBITED TRANSACTIONS. HOA shall do no act which constitutes a basis for denial of tax exemption under applicable laws. In particular HOA shall not:

- (i.) Lend any part of its income or corpus without the receipt of adequate security and a reasonable interest rate.
- (ii.) Pay any compensation in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered.
- (iii.) Make any part of its services available on a preferential basis.
- (iv.) Make any substantial purchase of securities or any other property for more than adequate consideration in money or money's worth.
- (v.) Sell any substantial part of its securities or other property for less than an adequate consideration in money or money's worth.
- (vi.) Engage in any other transaction which results in a substantial diversion of its income or corpus to a person who has made a substantial contribution to HOA, a member of the family of such person, or a corporation controlled by such person.

7.2 TAX EXEMPTION. In order to carry out the purposes and functions constituting the basis of tax exemption, HOA shall not accumulate out of income amounts which are:

- (i.) Unreasonable in amount or duration; or
- (ii.) Used to a substantial degree for purposes or functions other than those constituting the basis for tax exemption; or
- (iii.) Invested in such manner as to jeopardize the carrying out of the purpose or function constituting the basis for tax exemption.

ARTICLE 8

8 GENERAL PROVISIONS

8.1. DISSOLUTION. HOA may be dissolved by resolution approved by at least two-thirds (2/3) of the Members entitled to vote, at a meeting called specifically for that purpose. At least ninety (90) days notice of such meeting shall be given in the manner provided in ARTICLE 4.13.1. Members may vote in person, by mail, or by written proxy given to another shareholder which is effective only for the special meeting to consider dissolution. Authority to dissolve, liquidate or wind up the affairs of the HOA may be delegated by resolution approved by at least two-thirds (2/3) of the Members entitled to vote. Such authority may be given in general or specific terms to the Board of Directors for exercise in accordance with the relative provisions of the Texas Non-Profit Corporation Act.

8.2. CONFLICTING PROVISIONS. If any provision of these Bylaws conflicts with any provision of the laws of the State of Texas, such conflicting Bylaw provision shall be null and void, but all other provisions of these Bylaws shall remain in full force and effect. In the case of any conflict between the Articles of Incorporation of the Association and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

8.3. SEVERABILITY. Invalidation of any provision of these Bylaws, by judgment or court order, shall in no way affect any other provision which shall remain in full force and effect. The effect of a general statement shall not be limited by the enumerations of specific matters similar to the general.

8.4. WAIVER. No restriction, condition, obligation, or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

9 CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, complete, and correct copy of the Bylaws of Emerald Bay HOA, a Texas nonprofit corporation, as adopted by the Members and Board of Directors on the _____ day of _____, 20__.

IN WITNESS WHEREOF, I hereunto set my hand this the ____ day of _____, 20__.

EMERALD BAY HOA

By: _____
_____, President

STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this _____ day of _____, 20__, personally appeared, _____, President of Emerald Bay HOA, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the Association.

Notary Public in and for the State of Texas