

AMENDMENT TO THE AMENDED AND  
RESTATED BY-LAWS OF BAYTREE COMMUNITY ASSOCIATION, INC.

The Amended and Restated By-Laws of Baytree Community Association, Inc., which were duly adopted on November 18, 2002, are hereby amended as follows (additions are indicated by underlining; deletions are indicated by ~~strike-throughs~~):

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**ARTICLE IV**

**Election of Voting Members**

Section 1. Neighborhood Committees and Neighborhood Meetings. Within sixty (60) days after fifty-one percent (51%) of the Lots within a Neighborhood have been conveyed to persons other than Merchant Builders, the Declarant, or Board where applicable, shall convene a meeting of the Owners within such Neighborhood. The presence of thirty twenty percent (30%) (20%) of the Owners (other than Declarant) at a Neighborhood Meeting in person or by proxy shall constitute a quorum. At the first Neighborhood Meeting meeting and at each yearly meeting Neighborhood Meeting which shall be held at least every two years thereafter, the Owners (other than the Declarant or Merchant Builders) will elect a Neighborhood Committee for purposes of conducting Neighborhood Meetings. The Owners present in person or by proxy at the Neighborhood Meeting shall elect the Voting Member, alternate Voting Member, and all members of the Neighborhood Committee. In the event that an individual who is elected to serve as a Voting Member for a particular Neighborhood is unable or unwilling to serve as such, and, in the event that the vacancy created by said Voting Member's inability to serve cannot be filled by any individual elected as an alternate Voting Member for that Neighborhood, the Board of Directors shall appoint an Owner to fill said vacancy and serve as a Voting Member for that Neighborhood. Any Voting Member appointed by the Board of Directors shall serve as a Voting Member from the time of appointment by the Board of Directors for a period of no longer than one (1) year or until the next Neighborhood Meeting, whichever occurs first. Any Owner appointed by the Board of Directors to fill a vacancy occurring in a Voting Member position, as described in this subsection, must be the Owner of a Lot within the respective Neighborhood for which they are to serve as Voting Member. After the first Neighborhood Meeting, the Neighborhood Committee shall annually convene a meeting for the purpose of electing a successor Neighborhood Committee and Voting Member. Until a Neighborhood Committee is formed, the Declarant (or the appropriate Merchant Builder) shall be considered the Voting Member for a Neighborhood. The Neighborhoods are:

- (a) Kingswood;
- (b) Windsor;
- (c) The Hamlet;

- (d) Saddleworth;
- (e) Chatsworth;
- (f) Arundel;
- (g) Balmoral a/k/a Southpoint;
- ~~(h) Isles of Baytree Phase One and Phase Two;~~
- (i) (h) Turnberry;

The number of members on each Neighborhood Committee shall not be less than three (3) nor more than five (5). ~~Each Neighborhood Committee shall annually elect: (a) one (1) of its' members to serve as the Voting Member; and (b) one (1) of its' members to serve as the Alternate Voting Member, from that Neighborhood at all meetings of the Association and as to all Association matters requiring membership vote.~~

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## ARTICLE VI

### Election of Board of Directors

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Section 2. Election or Appointment of Directors. ~~The Declarant shall call a Turnover meeting at which the following shall occur: (a) the existing Directors shall resign; (b) the Voting Members shall elect four (4) Directors as described in Section 4; (c) the Declarant shall appoint one (1) Director; and, (d) the Class "B" Membership shall terminate and be converted to a Class "A" Membership. The Declarant shall be considered a Voting Member entitled to one (1) vote for each Lot owned by Declarant (or Merchant Builders) as a Class "A" Member. The four (4) Nominees receiving the most votes of the Voting Members shall be elected. Cumulative voting shall not be allowed. Directors shall have staggered two-year terms. At the initial election of Directors at the Turnover Meeting, the Voting Members shall designate two (2) Director seats as having one-year terms and three Director seats (3) seats as having two-year terms. After the initial election of Directors, all future terms for Directors shall be for two (2) years. If any new Director seats are created, they shall also have terms which shall be staggered as previously indicated.~~

Directors elected by the Voting Members at ~~the Turnover meeting and~~ each annual meeting thereafter shall serve for terms set forth above. At the expiration of the term of office of each elected Director, ~~and at each annual meeting thereafter,~~ successor Directors shall be elected by the respective Voting Members to serve for a term of two (2) years. ~~The Director appointed by the Declarant on the Turnover Date shall resign within thirty (30) days after conveyance of one hundred percent (100%) of the Private Properties.~~

Section 3. Qualifications for Election. ~~Except with respect to Directors appointed by the Declarant, all~~ All Directors shall be Members and shall not have to be a Voting Member. No more than ~~one~~ (1) two Directors shall be from any one Neighborhood.

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## ARTICLE VIII

### Officers

Section 1. Officers. The Officers of the Association shall be a President, Vice President, Secretary, and Treasurer to be elected from among the members of the Board. The Board of Directors may appoint such other Officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable. Such Officers shall have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary or President and Treasurer. ~~After Turnover, no more than one (1) Officer may be elected from any particular Voting Group.~~

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## ARTICLE X

### Committees

Section 1. Standing Committees. ~~For each year after the Turnover, Each year~~ the President, subject to the approval of the Board of Directors, shall designate a Chairman (who shall be a Director, except in the case of the Due Process Committee) and members of each of the following committees, to the extent reasonable and/or possible:

- (a) Architectural Review Committee. The Architectural Review Committee (ARC) shall be established pursuant to Article ~~VIII~~ XIII, Subsection 13.1 of the Declaration.
- (b) Budget Committee. The Budget Committee shall be established to prepare a proposed annual budget for submission to the Board of Directors. The Budget Committee shall consist entirely of Voting Members. The Budget Committee shall be chaired by the Treasurer of the Association or some Officer otherwise designated by the Board of Directors.
- (c) By-Laws Committee. The By-Laws Committee shall be established to review proposed amendments and revisions to the Baytree Community Association By-Laws and Covenants, and to forward such change proposals to the Directors of the Association with disposition recommendation, as

appropriate. The By-Laws Committee shall be comprised entirely of Voting Members, except the Chairman. The Chairman shall be a current member of the Board of Directors. Said Chairman shall not act as a voting member of the By-Laws Committee and shall abstain from voting on any issues placed before the By-Laws Committee.

- (d) Due Process Committee. The Due Process Committee (hereinafter "DPC") shall be established for the enforcement of any provisions of the Declaration or these By-Laws as defined in Article XI. The Board of Directors of the Association may appoint a DPC consisting of at least three Owners, to the extent authorized by the Board of Directors of the Association. The purpose of the DPC shall be to conduct hearings, to make decisions concerning alleged violations by Owners of the Declaration, By-Laws, Articles of Incorporation and/or any duly promulgated rules and regulations and to levy fines as set forth hereinafter. Owners appointed to the DPC shall not be officers, directors or employees of the Association or the spouse, parent, child, brother or sister of an officer, director or employee of the Association. A majority vote of the DPC is necessary to impose a fine (as more fully set forth below).
- (e) Nominating Committee. The Nominating Committee shall be established to submit nominations to the Board of Directors for Officers to be elected each year.
- (f) Community Relations Committee. The Community Relations Committee shall be established to promote a better understanding of the Declaration, Articles, and By-Laws, to encourage confidence and participation in Association matters, to investigate and/or resolve issues of Owner concern, and to foster an active community spirit. The Community Relations Committee, to the extent possible, shall be comprised of one representative from each Neighborhood. The representative from each Neighborhood must be an Owner who owns a Lot within the Neighborhood which he/she represents. The Chairman of the Community Relations Committee shall be a current member of the Board of Directors. The Community Relations Committee, at its discretion, is empowered to establish subcommittees for functions including, but not limited to: hospitality, social activities, seasonal decorations, and/or a neighborhood watch program.

Section 2. Discretionary Ad Hoc Committee. For each year after the Turnover, Each year the President, subject to the Approval of the Board of Directors, may designate the chairman (who shall be a Director) and members of each of the following committees:

- (a) Newsletter Committee. The Newsletter Committee shall supervise and control the preparation of a newsletter for distribution to all Members.

- (b) Ad Hoc Committees. The President, subject to the approval of the Board of Directors, may, from time to time, appoint such ad hoc committees with such powers and composition as the President, with the approval of the Board of Directors, shall determine.

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## ARTICLE XI

### Discipline

Section 1. Enforcement. In addition to all other remedies, and to the maximum extent lawful, a fine or fines may be imposed upon an Owner for failure of an Owner, an Owner's tenant or either's invited guest(s) to comply with any covenant, restriction, rule or regulation. ~~The Board of Directors shall appoint a Due Process Committee ("DPC") comprised of at least three (3) Owners with the exclusion of Directors, officers and employees of Baytree Community Association, Inc. and members of their families. In the sole discretion of the DPC by a majority vote, an Owner may be fined up to \$100 per violation, or the amount allowed by statute, whichever is greater. A fine may be levied on the basis of each day of continuing violation, with a single notice and opportunity for a hearing, except that no such fine shall exceed \$1,000 in the aggregate, or the highest allowed by Florida Law, whichever is higher.~~

The DPC and/or the Board of Directors must adhere to the following guidelines:

- (a) Notice: The Association Manager shall notify the Owner in writing of the alleged infraction or infractions and provide such Owner a grace period of twenty (20) days within which the Owner must remedy said infraction or infractions. Upon expiration of the aforementioned twenty (20) day grace period, if the alleged infraction or infractions are not remedied, the Association Manager shall notify the Owner of the continuing infraction or infractions in writing in a second notice. Included in the second notice shall be the date, place and time of a hearing before the DPC at which time a fine or suspension may be imposed by majority vote of the DPC. The second notice shall give the Owner at least fourteen (14) days notice of the intent to fine. The party sought to be fined may present evidence and reasons why the fine(s) should not be imposed. A repeat of any infraction(s) for which an Owner has received a notice in the past shall be considered a continuing infraction and said Owner shall not be entitled to a first notice or a grace period for which to remedy the infraction(s).
- (b) Hearing: The alleged non-compliance shall be presented to the DPC at a hearing at which time the party sought to be fined for the alleged violation shall have an opportunity to present defenses and reasons why the fine(s) should not be imposed. A written decision of the DPC shall be submitted to the party responsible for the alleged violation not later than twenty-one (21)

days after the meeting of the DPC. The party sought to be fined shall have a right to be represented by counsel and to cross-examine witnesses.

- (c) Fines and/or Revocation of Certain Privileges: The DPC may impose a reasonable fine not to exceed \$100.00 per violation, or, in the case of a continuing violation, may impose a reasonable fine on the basis of each day of said continuing violation not to exceed \$1,000.00 in the aggregate, against any Owner, tenant, guest and/or invitee.
- (d) Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.
- (e) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.
- (f) Non-exclusive Remedy: These fines shall not be construed to be the exclusive remedy of the Association, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

Section 2. Review by Board of Directors. The Board of Directors may overrule a decision made by the DPC to levy a fine or suspension against any Owner pursuant to a hearing, but may not overrule a decision made by the DPC not to levy a fine or suspension against any Owner pursuant to a hearing.

Section 2. — DPC Guidelines:

I.

Membership

~~The DPC shall consist of three (3) regular members and two (2) alternate members. The alternate members shall serve when the regular member is absent or has a conflict as set forth in Section IV paragraphs (1) and (2) below. The Board of Directors of Baytree Community Association, Inc. shall appoint all members. Baytree Community Association, Inc. shall hereinafter be referred to as "The Association."~~

II.

Notice of Violation

~~The Association, through its manager, shall provide an Owner of an alleged violation with the following notices:~~

~~A. — First letter advising that a violation has occurred.~~

~~B. — If the violation is not corrected within fourteen (14) days of the date of the first letter,~~

~~the second letter shall be sent advising of the continuance of the violation and advising the Owner that they may be subject to a fine if the violation is not corrected. If an Owner repeats a prior violation, that shall constitute a continuation of the violation.~~

- ~~C. — If the violation is not corrected within fourteen (14) days of the date of the second letter, the third letter shall be sent advising the date and time the DPC will consider the imposition of a fine. The third letter shall include a copy of these guidelines. The third letter shall constitute a complaint and a written statement of charges, which shall set forth in ordinary and concise language the acts or omissions with which the Owner is charged, the specific provisions of the Declaration, the Articles and the By-Laws or rules and regulations which the Owner is alleged to have violated, and shall contain supporting facts. The complaint shall be concise enough that the Owner can prepare a defense.~~

~~The time and date of the hearing shall be no closer than twenty (20) days from the date of the third letter.~~

### ~~III.~~ Discovery

~~After referral of the matter to the DPC, the Owner is entitled to receive, upon five (5) days written notice, (a) the names and addresses of witnesses, to the extent known to the Association Manager and (b) inspect and make a copy of any statements, writings, pictures or investigative reports in possession of The Association. Nothing herein shall authorize the inspection or copying of any writing or thing that is privileged from disclosure by law such as attorney/client communications.~~

### ~~IV.~~ Hearing

#### ~~A. — Conduct of Hearing~~

~~(1) — The regular DPC members shall constitute the Hearing Panel (hereinafter referred to as “Panel”), however, no DPC Member on the Panel shall be involved in any prior investigation of the matter or be related by blood or marriage to the complaining party, to the Owner, or to those who are witnesses to the matter. An Owner may challenge a Member sitting on the Panel for violation of the above conditions or based upon the fact a Panel Member may not be impartial. The challenge shall be decided by the Board Chairman whose decision shall be final. In the event the Board Chairman finds a conflict, an alternate member shall serve on the Panel.~~

~~(2) — Whenever the Panel has commenced to hear the matter and a Member of the Panel is forced to withdraw prior to a final determination by the Panel, the remaining Members shall continue to hear the case and the Chairman of the Board of the Association shall replace the~~

~~withdrawing member with an alternate. The Panel shall encourage the use of affidavits and written interrogatories in lieu of oral testimony.~~

~~(3) — Each party shall have these rights:~~

- ~~a.) — to be represented by counsel;~~
- ~~b.) — to call and examine witnesses;~~
- ~~c.) — to introduce exhibits;~~
- ~~d.) — to cross examine opposing witnesses on any matter relevant to the issues;~~
- ~~e.) — to impeach any witness regardless of which party first called him to testify;~~
- ~~f.) — and to rebut the evidence against him. If Owner does not testify in his own behalf, he may be called and examined as if under cross-examination.~~

~~(4) — The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but, shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing and irrelevant and unduly repetitious evidence shall be excluded.~~

~~(5) — The allegedly defaulting Owner may choose not to attend the Hearing. The Hearing shall be open to attendance by all Owners within the entire Baytree project. In rendering a decision, official notice may be taken at any time of any generally accepted matters within the Declaration, the Articles, these Bylaws, the rules and regulations or the workings of the Association.~~

#### ~~V.~~

#### Decision

~~(6) — After all testimony and documentary evidence has been presented to the Panel, the Panel shall vote by secret written ballot upon the matter, with a majority of the entire Panel controlling. Within ten (10) days of the Hearing, the Panel will prepare written findings of fact and recommendations for consideration by the Board of Directors. The Panel shall make its determination only in accordance with the evidence presented to it at the Hearing and in accordance with these By-Laws. A copy of the findings and recommendations of the Panel shall be posted by the Board of Directors at a conspicuous place on the Common Properties and a copy shall be served by the Chairman of the Board on each party in the matter and his attorney, if any. Disciplinary action and fines under the Declaration, the Bylaws or the rules and regulations shall be imposed only by the Board of Directors and in accordance with the findings and recommendations of the Panel. The Board of Directors may adopt the recommendations of the Panel in their entirety, or, the Board may~~



~~reduce the proposed penalty or adopt any or all of the recommendations. In no event shall the Board impose more stringent disciplinary action than recommended by the Panel. The decision of the Board shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Panel. The decision of the Board shall become effective ten (10) days after it is served upon the Owner unless otherwise ordered in writing by the Board of Directors. The Board may order a reconsideration on its' own Motion or upon petition by a party at any time within fifteen (15) days following service of its' decision on the parties.~~

~~Section 3. — Payment of Fines. Fines shall be treated as Benefit Assessments subject to the lien rights provided in the Declaration and paid not later than five (5) business days after written notice of imposition of a fine.~~

~~Section 4. — Collection of Fines. Fines shall be treated subject to the foreclosure procedures for delinquent assessments. All moneys received from fines shall be allocated as directed by the Board and, absent such direction, be deposited into the Association's operating account.~~

~~Section 5.3. Additional Enforcement Rights. Notwithstanding anything contrary herein contained, it shall be within the sole discretion of the Board of Directors the Association may elect to enforce any provisions of the Declaration or these By-Laws by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, and to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.~~

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## ARTICLE XIII

### Miscellaneous

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~~Section 5. Amendments. The Declarant may amend these By-Laws in its sole and absolute discretion at any time and from time to time if such amendment is: (a) necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on Private Property; (c) required by an institutional lender or a government mortgage agency or purchaser of mortgage loans, to enable the same to make, insure or purchase mortgage loans on Private Property; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on Private Property subject to this Declaration; or (e) correct any stenographic, scrivener's or surveyor's error or any error of a like nature; provided, however, any such amendment shall not adversely affect the title to Private Property unless the Owner thereof shall consent thereto in writing. So long as it still owns any part of the Property for~~

~~development, the Declarant may amend these By-Laws in its sole and absolute discretion for any other purpose, provided the amendment has no material adverse effect upon, the rights of any Owner of Private Property. Any non-Declarant initiated amendment or any Declarant initiated amendment which has a materially adverse effect upon the rights of an Owner of Private Property~~ All amendments to these By-Laws shall require the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of Voting Members voting a minimum of a majority of the total votes in the Association (other than the Declarant) and the consent of the Declarant, so long as the Declarant has the right to appoint a Voting Member. However, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

~~No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.~~