

**AMENDED AND RESTATED BY-LAWS OF  
SEASIDE HEIGHTS BUSINESS IMPROVEMENT DISTRICT, INC.**

**Adopted as of July 16, 2008**

**ARTICLE I**

**NAME; OFFICES; CORPORATE SEAL**

1.01 Name. The name of the corporation is the Seaside Heights Business Improvement District, Inc. (the "SHBID"), and such other assumed names as the Board of Directors ("Directors" is used herein to refer to "trustees" as such term is defined under the New Jersey Nonprofit Corporation Act) shall determine from time to time.

1.02 Offices. The registered office of the SHBID shall be 815 Boulevard, P.O. Box 248, Seaside Heights, New Jersey 08751. The principal office of the SHBID shall be located at such location or locations in Seaside Heights, New Jersey, as the Board of Directors may hereafter designate from time to time.

1.03 Corporate Seal. The Board of Directors shall procure a corporate seal which shall be circular in form and shall bear, on its outer edge, the name "Seaside Heights Business Improvement District, Inc.," and, in the center, the words and figures "Incorporated 2000, New Jersey." The Board of Directors may amend the form of the seal or the inscription thereon at its discretion.

**ARTICLE II  
PURPOSES**

2.01 Purposes. The SHBID is organized and shall be operated exclusively for charitable and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Regulations there under as they may hereafter be amended. The purposes and powers of the SHBID are more particularly set forth as follows:

(a) To serve as the district management corporation for the Seaside Heights Business Improvement District (sometimes referred to herein as the "District") pursuant to N.J.S.A. 40:56-65 et seq. (the "Act") and as approved in the Borough of Seaside Heights Business Improvement District Ordinance 99-36 adopted on December 22, 1999, and as amended from time to time (the "Ordinance"). As such, the SHBID shall have the powers and comply with all requirements as set forth in the Act and in the Ordinance;

(b) To serve the assessed members of the Seaside Heights Business Improvement District, the community and the borough government to formulate, promote and implement the economic revitalization and general welfare of the District and the Borough of Seaside Heights;

(c) To mobilize available public and private resources for the purposes set forth herein;

(d) To provide a mechanism by which relevant business interests, service firms, restaurants, retail establishments, property owners, employers, lenders, and others can cooperate to expand and promote business opportunities, sales, employment, consumer choices, shoppers' facilities, retail and entertainment establishments, amusement areas, tourism and trade; and

(e) To do any other act incidental to or connected with the foregoing purposes or any advancement thereof, either directly or indirectly, either alone or in conjunction or cooperation with others; to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable or proper for the furtherance, accomplishment, fostering, or attainment of any or all of the purposes for which the SHBID is organized; and to aid or assist other organizations whose activities are such as to further accomplish, foster, or attain any of such purposes.

(f) Notwithstanding any other provision of these By-Laws, the SHBID shall not conduct any activities not permitted to be carried on by (a) a corporation exempt from Federal income tax under section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law) or (b) a corporation permitted to deduct its contributions under Section 170(c)(2) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

(g) The SHBID shall not carry on propaganda or otherwise attempt to influence legislation. The SHBID shall not engage in any transaction or permit any act or omission that shall operate to deprive it of its tax-exempt status under Section 501(c)(3) of the Code. The SHBID shall not in any manner, including, but not limited to the publishing or distribution of statements, or to any extent participate in or intervene in any political campaign on behalf of any candidate for public office nor shall it engage in any "prohibited transaction" as defined in Section 503(b) of the Code.

(h) The SHBID shall not have capital stock, and no stock shares shall be issued. No incorporator, Director or officer shall at any time be considered to be an owner of any of the assets, property, or income of the SHBID, nor shall he or she, by distribution, liquidation, dissolution or in any manner, be entitled to receive assets, property or income, all of which shall be devoted exclusively and forever to the purposes of the SHBID or disposed of as herein provided. The SHBID is organized for and shall operate not for profit, and no part of its net earnings shall inure to benefit any member of the SHBID or other private individual except that the SHBID shall be authorized and empowered to pay reasonable compensation for services rendered herein.

(i) The SHBID also has such powers as are or may hereafter be granted under laws of New Jersey that are in furtherance of the SHBID's exempt purposes within the meaning of Section 501(c)(3) of the Code or the corresponding section of any future Federal tax code.

### **ARTICLE III** **MEMBERS**

3.01 Membership. SHBID membership shall be determined as follows:

(a) The members of the SHBID (the “Members”) shall be:

(i) each owner of real estate who, by the terms of the Ordinance, is subject to assessment by the Seaside Heights Business Improvement District (the “Assessed Property”);

(ii) each individual or entity within the Assessed Properties who holds a Mercantile License(s); and

(iii) each individual or entity within the Assessed Properties who holds a Legalized Games of Chance License(s); and

(iv) each individual or entity within the Assessed Properties who holds a Liquor License(s).

(b) The following may voluntarily elect to be Members (“Voluntary Members”):

(i) any owner of real estate that is located within the Seaside Heights Business Improvement District, and who does not otherwise qualify as a Member under subsection 3.01(a)(i) herein;

(ii) any individual or entity who holds a Mercantile License(s) for business(es) located within the Seaside Heights Business Improvement District, and who does not otherwise qualify as a Member under subsection 3.01(a)(ii) herein;

(iii) any individual or entity who holds a Legalized Games of Chance License(s) for business(es) located within the Seaside Heights Business Improvement District, and who does not otherwise qualify as a Member under subsection 3.01(a)(iii) herein; and

(iv) any individual or entity who holds a Liquor License(s) for business(es) located within the Seaside Heights Business Improvement District, and who does not otherwise qualify as a Member under subsection 3.01(a)(iv) herein.

(c) Voluntary Members shall be Members for no less than one (1) calendar year. All assessments for Voluntary Members shall be paid in full in January, and will be based upon the property’s current real property tax assessment as if it were subject to the Seaside Heights Business Improvement District assessment.

(d) Every reference to Members in these By-Laws shall include Voluntary

Members, unless otherwise stated herein.

3.02 Rights of Members. The rights of each Member shall be limited to voting for the Directors of the SHBID as set forth in Article IV hereof.

(a) The Members shall vote as follows:

(i) Each Member, or his, her or its designee, who is a Member by virtue of property ownership, shall be entitled to one (1) District vote per each property owned.

(ii) Each Member, or his, her or its designee, who is a Member by virtue of Mercantile License ownership, Legalized Games of Chance License ownership or Liquor License ownership shall be entitled to only one (1) District vote irrespective of the number of licenses held. For example, if a Member holds five (5) Mercantile Licenses, he shall still be entitled to only one (1) District vote or, if a Member holds one (1) Mercantile License and one (1) Liquor License, he shall still be entitled to only one (1) District vote.

(b) Limits on a Members Right to Vote. Each property within the District shall entitle its owner to exercise one (1) District vote. In order for the owner to be eligible to cast said vote, the owner must not be delinquent on its tax payments to the Borough with respect to that property.

3.03 No Transfers of Membership Interests. No Member, directly or indirectly, shall assign, transfer, hypothecate, pledge, encumber, give or otherwise voluntarily or involuntarily dispose of any or all of his or her membership interest in the SHBID without the written consent of the Board.

#### **ARTICLE IV** **BOARD OF DIRECTORS**

4.01 Board of Directors. There shall be up to twenty-three (23) members of the Board of Directors of the SHBID. Each Director must be at least twenty-one (21) years of age and a Member of the SHBID, except as otherwise provided in Section 4.04. A Voluntary Member may serve as a Director as long as he or she is a Member. If a Voluntary Member fails to remain a Member, for any reason, while serving as a Director then he or she shall be replaced according to the terms of Section 4.06(b) herein. The policies, activities, and affairs of the SHBID shall be determined and managed by the Board of Directors who shall exercise all the powers of the SHBID and shall keep full and fair accounts of all its transactions, and formulate and approve the yearly budget of the SHBID. The approved budget may be reviewed and revised periodically as deemed necessary by the Board. For designation purposes, the Board of Directors is referred to in these By-Laws as the "Board", and each person serving on the Board is referred to individually as a "Director," and, if more than one (1) Director is referred to, as "Directors."

4.02 Initial Board of Directors. The initial Board shall be recommended by the District Steering Committee and then appointed by the Mayor and approved by the Council of the Borough of Seaside Heights, to carry on the initial duties of the SHBID. Subsequently, there shall be an election of the Board by the voting Members, said election shall be held during the month of October. Thereafter, the election of the Board shall be held annually during the month of October.

4.03 Term of Office. The Directors shall be divided into three (3) classes, with seven (7) Directors in the first class (the "Class A"), seven (7) Directors in the second class (the "Class B") and the balance of Directors in the third class (the "Class C"). The term of office of Class A shall expire at the second (2<sup>nd</sup>) Annual Meeting of the SHBID after their election to the Board; the term of office of Class B shall expire at the third (3<sup>rd</sup>) succeeding Annual Meeting of the SHBID after their election to the Board, and the term of office of Class C shall expire at the fourth (4<sup>th</sup>) succeeding Annual Meeting of the SHBID after their election to the Board. Except as otherwise provided in Article 4.07 and in the remainder of this Article 4.03, once the initial terms of the three (3) classes of Directors have expired the successor Directors shall be elected for a term of three (3) years, such that the term of office of one class shall expire annually; provided, however, that each Director selected pursuant to Section 4.04 (1) herein shall serve a term of one (1) year.

4.04 Composition of the Board of Directors. The Board shall be comprised of the following:

(a) two (2) Members who are retail business owner/operators within the District and whose business is located on the Boardwalk from the south side of Sherman Avenue to Porter Avenue;

(b) two (2) Members who are retail business owner/operators within the District and whose business is located on the Boardwalk from the north side of Sherman Avenue to Hierung Avenue;

(c) one (1) Member who is a retail business owner/operator and/or tenant of property located within the District and which is located on the Boardwalk from Porter Avenue to Hierung Avenue;

(d) two (2) Members who are retail business operators whose business is located on the Boulevard from Porter Avenue to Hierung Avenue;

(f) two (2) Members who are owner/operators of a lodging accommodation within the District;

(g) two (2) residents of the Borough of Seaside Heights who own their own residences within the District and who do not operate a business or commercial establishment in the Borough of Seaside Heights;

(h) two (2) Members who are owner/operators of dining and entertainment establishments on the Boulevard from Porter Avenue to Hierung Avenue;

(i) one (1) retail business owner/operator or one business property owner of a

business establishment to the west of the Boulevard;

(j) one (1) owner/operator of a parking lot in the District;

(k) up to four (4) other Members of the business community included within the District;

(l) one (1) Member shall be selected from the governing body of the Borough of Seaside Heights and appointed by the Mayor to serve at the discretion of the Borough of Seaside Heights;

(m) two (2) Members at large shall be selected by the SHBID Board;

(n) the Borough Administrator as appointed by the Mayor of the Borough of Seaside Heights; and

(o) the Executive Director of the SHBID as a voting member only if there is a tie vote (50/50) and this vote will break the tie.

#### 4.05 Election of Directors.

(a) Except as set forth in Article 4.07 hereof, Directors shall be elected by plurality vote of Members.

(b) The annual election of Directors shall be held at the Annual Membership Meeting (the "Annual Election"). The date, time and place of the Annual Election shall be determined by the Executive Committee, as set forth in Article 5.01 hereof, and shall be published three (3) times, once in each of three (3) consecutive weeks, in a newspaper of general circulation in the District. Such publication requirement shall be completed no later than ten (10) days prior to the scheduled Annual Election. All voting shall be governed by the provisions of Article 5.01 hereof.

#### 4.06 Removal of Directors.

(a) At any meeting of the Directors, duly called and at which a quorum is present, the voting Directors may, by a majority vote, remove for cause any Director from office and may elect a successor to serve for the balance of the term of such removed Director.

(b) Vacancies occurring in the Board for any reason may be filled by a vote of majority of the Directors then in office. A Director elected to fill a vacancy shall be elected to hold office for the unexpired term of his or her predecessor.

4.07 Mandatory Members of the Board. This Article IV shall not apply to any mandatory Member of the Board as set forth in the Act, which includes the Member of the governing body and the Administrator of the Borough of Seaside Heights appointed by the Mayor.

## **ARTICLE V** **MEETINGS**

5.01 Annual Membership Meeting. The annual meeting of the Members of the SHBID shall be held in October of each year (the "Annual Membership Meeting"), for the purposes of electing the Board. The date, time and place shall be determined by the

Executive Committee, as provided in Article 6.01 hereof. The Secretary shall cause to be mailed to each Member, at least twenty (20) days prior to the scheduled Annual Membership Meeting, at his or her address as it appears in the property assessment and mercantile list of the Borough of Seaside Heights, or as on file at the offices of the SHBID, a notice stating the time and place of the Annual Meeting. The ballots will also be mailed to each Member twenty (20) days prior to the scheduled Annual Membership Meeting and must be returned and received by the scheduled Annual Membership Meeting. Members may submit their vote(s) in the following manner: (i) via mail, which must be received at least one (1) hour prior to the Annual Membership Meeting; (ii) via hand delivery by messenger to the Annual Membership Meeting no later than thirty (30) minutes after the meeting has been "Called to Order"; or (iii) via delivery in person at the Annual Membership meeting no later than thirty (30) minutes after the meeting has been "Called to Order". The elected Directors will be determined by a plurality vote of the total responses received. Directors elected at the Annual Membership Meeting shall take office at the First Regular Board Meeting of the following year; as such term is defined in Article 5.03 hereunder.

5.02 Annual Meeting of the Board. The annual meeting of the Board (the "Annual Board Meeting") shall be held in October of each year, after the annual election at the Annual Membership Meeting, as set forth in Article 5.01, has taken place, for the purposes of electing officers and to conduct such other business as may come before the Board. The Secretary shall cause to be mailed to each Director at his or her address a notice stating the time and place of the Annual Board Meeting. All voting shall take place at said meeting. Officers elected at the Annual Board Meeting shall take office at the First Regular Board Meeting of the following year; as such term is defined in Article 5.03 hereunder.

5.03 Regular Board Meetings. Regular meetings of the Board shall be held at least nine (9) times per year, which shall include the Annual Board Meeting (the "Regular Board Meetings").

(a) The dates of the Regular Board Meetings shall be established by the Board at the first Regular Board Meeting of each year.

(b) At the Regular Board Meeting held in July, a nominating committee (the "Nominating Committee") of five (5) Directors shall be appointed by the Chairman. It shall be the duty of the Nominating Committee to nominate candidates for the offices to be filled at the annual election of officers held at the Annual Board Meeting in October. The Nominating Committee shall report to the Regular Board Meeting in September and shall submit a list of qualified candidates for suggested nomination. Before the election at the Annual Board Meeting in October, additional nominations from the floor shall be permitted.

(c) Notwithstanding anything in this Section 5.03, the Executive Committee, as that term is defined later in these By-Laws, in its sole discretion, may change the date, time or location of any Regular Board Meeting; provided, any such change is made upon no less than three (3) days notice to all Directors by delivering notice to him or her personally, or by delivering the same at his or her residence or usual place of business, or by contacting him or her by telephone, email or facsimile

5.04 Special Meetings of the Board. Special meetings of the Board may be called by the Chairman (the “Special Board Meetings”). Notice of the place, day and hour of such special meeting shall be given to each Director at least three (3) days before the meeting, by delivering notice to him or her personally, or by delivering the same at his or her residence or usual place of business, or by contacting him or her by telephone, email or facsimile. Any notice of a special meeting shall state the business to be transacted.

5.05 Quorum. A quorum at the meetings of the Board shall consist of one-third (1/3) of the full membership of the Board, excluding vacancies. Except as otherwise provided in the Certificate of Incorporation, these By-Laws or the laws of the State of New Jersey, a quorum shall be sufficient to pass any measure. In the absence of a quorum, the Directors present by a majority vote and without notice other than by announcement may adjourn the meeting from time to time until a quorum shall attend. At any such meeting after an adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the adjourned meeting as originally notified.

5.06 Compensation. No compensation shall be paid to any officer or Director. Nothing herein shall prevent any officer or Director from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the SHBID, provided, however, that any such expenses incurred or services rendered shall have been authorized in advance in writing by a majority vote of the Board.

5.07 Contracts and Service. The Members, Directors and officers of the SHBID may be interested directly or indirectly in any contract relating to or incidental to the operations conducted by the SHBID, and may freely make contracts, enter transactions, or otherwise act for and on behalf of the SHBID, notwithstanding that they also may be acting as individuals, or a trustee of trusts, or as agents for other persons or corporations, or may be interested in the same matters as stockholders, Members, trustees, or otherwise. Notwithstanding the foregoing, any contract, transaction, or act on behalf of the SHBID in a matter in which any Member, Director or officer is personally interested as a stockholder, director, or otherwise must be disclosed to the Directors, conducted at arm’s length, shall not violate any prohibition against the SHBID’s use or application of its funds for private benefit and shall be approved in accordance with N.J.S.A. 15A:6-8 as same may be amended or modified and any successor statute thereto. Common or interested Directors may be counted in determining the presence of a quorum at a board meeting at which such a contract or transaction is authorized, approved or ratified; however, such authorization, approval or ratification shall only be effective by affirmative vote of a majority of the disinterested Directors present and voting.

5.08 Parliamentary Rules. Unless otherwise specified in these By-Laws, Robert’s Rules of Order shall govern the conduct of all meetings.

## ARTICLE VI



## **COMMITTEES OF THE BOARD OF DIRECTORS**

6.01 Executive Committees. An executive committee (the “Executive Committee”) shall be appointed by the Chairman of the Board. The Executive Committee shall be comprised of at least five (5) but no more than eight (8) Members, which shall include the Chairman of the Board, all of whom shall be members of the Board. The Executive Committee shall approve the annual budget, the appointment of the principal staff persons employed by the SHBID, the terms of said employment and the nominating committee who shall, each year, propose the names of persons to serve on the Board and as officers of the SHBID.

6.02 Committees Generally. By resolution adopted by a majority of the Board, the Board may provide for such standing or special committees with such powers and duties, as it deems desirable and may discontinue the same at its pleasure. The members of all such committees shall be appointed by the committee chairman, who shall be a member of the Board, named by the Chairman of the Board. At least one member of each standing or special committee shall be a member of the Board; the remaining members of such committees may, but need not be, members of the Board. Each committee shall keep full and fair accounts of its transactions and accurate minutes of its meetings. Vacancies on any committee shall be filled by the Chairman.

6.03 Committee Reports. All recommendations by a committee shall be reported in writing to the Executive Committee upon the written request of the Executive Committee.

6.04 Participation in Committees. In selecting members of committees, the Board shall encourage widespread participation among members of the business community within the District and others concerned with the purposes of the SHBID. From time to time, special committees may be named to advise the Board on issues on which additional perspective may be required and public meetings may be held to solicit advice from those concerned about the economic well-being of the District.

6.05 Members of Committees. The Members appointed by all of the foregoing bodies shall serve at the pleasure of the appointing body.

## **ARTICLE VII** **OFFICERS**

7.01 Executive Officers. By a majority of the Board at the Annual Board Meeting, the Board shall select a Chairman of the Board (the “Chairman”), a Vice-Chairman of the Board (the “Vice-Chairman”), a Treasurer, a Secretary and such other subordinate officers, as it deems necessary, from among the Directors to serve for a two (2) year term. Except for the offices of the Chairman and Secretary, any person may hold more than one (1) office; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity.

7.02 Vacancies. Except as provided in Article 7.03 herein below, in the event any office becomes vacant by death resignation, retirement, removal, disqualification or any other cause, the Board may elect, by a majority vote, an officer to fill such vacancy, and

such officer shall hold office and serve until the next Annual Board Meeting. In the event that any officer cannot conduct the duties of his or her office for a period exceeding sixty (60) days, the Board may deem such office vacant.

7.03 Chairman of the Board; Vice-Chairman of the Board; Executive Director.

(a) Chairman.

(i) The Chairman shall preside at all meetings of the SHBID and of its Board at which he or she is present.

(ii) The Chairman shall have general charge and supervision of the activities and affairs of the SHBID.

(iii) The Chairman shall have and may exercise such powers as are, from time to time, assigned to him or her by the Board.

(v) With the approval of the Board and in conjunction with the Secretary, the Chairman may enter into and execute in the name of the SHBID, contracts and other instruments in the regular course of business, except where the execution of such instruments is expressly delegated by resolution of the Board to another officer or agent of the SHBID.

(b) Vice-Chairman.

(i) In the event the Chairman is absent or unable to act, or at the request of the Chairman, the Vice-Chairman shall perform the duties and exercise the functions of the Chairman, and when so acting shall have the powers of the Chairman.

(ii) The Vice-Chairman shall have such other duties as may be assigned to him or her by the Chairman.

(c) Executive Director.

(i) The Executive Director shall be employed by the Board.

(ii) The Executive Director shall perform all duties incident to the chief executive officer of a corporation and such other duties as may be, from time to time, assigned to him or her by the Board. He or she shall serve at the will of the Board and may be removed, with or without cause, by the Board at any time.

7.04 Secretary.

(a) The Secretary shall keep or cause to be kept corporate records in which shall be entered all information required by these By-Laws or by law to be kept by the SHBID, which shall include, but is not limited to, the minutes of the meetings of the Board in books provided for such purpose.

(b) The Secretary shall perform any and all legal duties under the Certificate of Incorporation and incident to the corporate office of Secretary.

(c) The Secretary shall be responsible for providing notice of meetings and other actions to Directors whenever required by, and in accordance with, the provisions of these By-Laws or as required by law.

(d) The Secretary shall be the custodian of the SHBID's seal and shall affix same to all documents which require said seal and which he or she has been authorized to execute on behalf of the SHBID and when so affixing may attest to the same.

(e) The Secretary shall perform all other duties as, from time to time, may be assigned to the Secretary by the Board or the Chairman.

#### 7.05 Treasurer.

(a) The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the SHBID, and shall deposit or cause to be deposited in the name of the SHBID all monies and other valuable effects in such bank, or other depositories, as shall be, from time to time, designated by the Board.

(b) The Treasurer shall disburse the funds of the SHBID as authorized by the Board. The Treasurer shall keep or cause to be kept proper vouchers of all sums disbursed, and maintain complete and regular accounts in accordance with a system satisfactory to the Board.

(c) Upon the request of the Board, and at least annually, the Treasurer shall submit to the Board an account of the financial condition of the SHBID.

(d) The Treasurer shall perform any and all legal duties under the Certificate of Incorporation and incident to the office of a treasurer of a corporation and such other duties as may be assigned to him or to her by the Board.

7.06 Subordinate Officers. The Board may from time to time appoint such subordinate officers, as it may deem desirable in the manner provided herein. Each such officer shall perform such duties as the Board or the Chairman may prescribe.

7.07 Personnel. The Board may hire and/or retain an administrator, manager, staff and/or consultants as necessary to achieve the purposes of the SHBID.

7.08 Removal. Any officer of the SHBID may be removed from office with or without cause by the affirmative vote of a majority of the Board.

### **ARTICLE VIII** **CONDUCT OF BUSINESS**

8.01 Checks, Drafts, Etc. Except as otherwise provided in these By-Laws, all checks, drafts or other orders for payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the SHBID shall be signed by such officers and/or Directors in such manner as shall, from time to time, be determined by resolution of the Board. In no event shall the signatures of fewer than two (2) such officers and/or Directors be necessary to bind the SHBID on any such checks, drafts or other orders for payment of money, notes or other evidence of indebtedness.

#### 8.02 Annual Reports, Audits and Budgets.

(a) Annual Report. There shall be prepared annually a full and correct statement of the affairs of the SHBID, including a balance sheet and statement of operations for the preceding fiscal year, audited and certified by an independent Certified Public Accountant, which shall be submitted to and reviewed by the Board at a regular meeting of the Directors and filed immediately thereafter at the principal office of the SHBID. Such statement shall be prepared by the Chairman, in conjunction with the Treasurer, or such other executive officer of the SHBID as may be designated by the Board. A copy of the report shall be made available at the principal office of the SHBID for inspection by the public upon request made to SHBID. Pursuant to N.J.S.A. 40:56-80, the SHBID shall submit such annual report to the Mayor and governing body of the Borough of Seaside Heights (the "Governing Body") within thirty (30) days of the close of the fiscal year.

(b) Annual Audit. Pursuant to N.J.S.A. 40:56-88, the SHBID shall cause an annual audit of its books, accounts and financial transactions to be made and filed with the Governing Body, and for that purpose the SHBID shall employ an independent Certified Public Accountant. The annual audit shall be completed and filed with the Governing Body within four (4) months after the close of the fiscal year of the SHBID. A duplicate copy of the audit shall be filed with the Director of the Division of Local Government Services in the State of New Jersey Department of Community Affairs within five (5) days of the filing of the audit with the Governing Body.

(c) Annual Budget. Pursuant to N.J.S.A. 40:56-84, the SHBID shall submit a detailed business plan and budget for the upcoming year, no later than October 1 of the current fiscal year, for approval by resolution of the Governing Body. The budget shall be submitted with a report, which explains how the budget contributes to the goals and objectives for the SHBID. The budget shall be introduced, approved, amended and adopted pursuant to the terms and conditions set forth in N.J.S.A. 40:56-84(b).

8.03 Fiscal Year. The fiscal year of the SHBID shall be the year ending December 31st.

8.04 Bonds. The Board may require any officer, agent or employee of the SHBID to give a bond to the SHBID conditioned upon the faithful discharge of his or her duties with one or more sureties and in such amount as may be satisfactory to the Board.

8.05 Contracts. Except as otherwise provided in these By-Laws, the Board, by resolution, may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the SHBID, and such authority may be general or confined to specific instances.

8.06 Deposits. All funds of the SHBID not otherwise employed shall be deposited in a timely manner to the credit of the SHBID in such banks, trust companies or other depositories as the Board by resolution may select or as may be designated by any officer or officers, agent or agents of the SHBID to whom such power is delegated by resolution of the Board.

8.07 Acceptance of Gifts. The Board, or any officer or officers, agent or agents of

the SHBID to whom such authority is delegated by resolution of the Board, may accept on behalf of the SHBID any contribution, gift, grant, bequest or devise for the general purposes or for any special purpose of the SHBID followed by proper acknowledgment.

8.08 Debt Obligations. The SHBID is obligated to satisfy all debts, loans and financial liabilities it incurs. The District and the SHBID may not borrow an amount that exceeds the approved budget for that fiscal year.

## **ARTICLE IX** **AMENDMENTS**

9.01 Amendments. A motion to amend, alter, repeal, or enact a new By-Law may be introduced, considered, discussed and voted on at any meeting of the Board, provided at least ten (10) days prior to such meeting a full written statement of the exact language of the motion and the time, place and date of the meeting when the motion(s) will be introduced has been forwarded to every member of the Board. An affirmative vote of two-thirds (2/3) of the full Board shall be required to carry said motion. Upon the approval of said motion, the Board will forward the amendment to the Mayor and Council of the Borough of Seaside Heights. The procedures and notice of requirements of this section shall apply irrespective of any contrary provisions, which may be contained in these By-Laws.

## **ARTICLE X** **INDEMNIFICATION; EXCULPATION**

10.01 Indemnification.

(a) For the purposes of this Article X, all definitions set forth in N.J.S.A. 15A:3-4, as amended from time to time, shall apply.

(b) Indemnification of any person who is a Director, officer, employee or corporate agent of the SHBID shall be provided to the fullest extent permitted by N.J.S.A. 15A:3-4 as same may be amended or modified and any successor statute thereto or any other applicable provision of law. Such indemnification shall include, without limitation, indemnification against the actual amount of net loss including counsel fees, reasonably incurred by or imposed upon him or her in connection with such action, except as to matters for which he or she shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of any settlement of such a case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the SHBID is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

(c) Any corporate agent may be insured by insurance purchased and maintained by the SHBID against any expenses incurred in any such proceeding and any liabilities asserted against the corporate agent in the capacity as corporate agent, whether or not the SHBID would have the power to indemnify such corporate agent under N.J.S.A. 15A:3-4

as same may be amended or modified and any successor statute thereto.

10.02 Exculpation. Unless acting in bad faith, neither the Board as a body nor any Director, officer or corporate agent shall be personally liable to any Member of the SHBID in any respect for any action or lack of action arising out of the execution of his or her office. Each Member of the SHBID shall be bound by the good faith actions of the Board, officers and corporate agents of the SHBID, in the execution of the duties and powers of said Directors, officers and corporate agents. However, nothing contained herein shall be construed so as to exculpate Directors, or any of them, from discharging their fiduciary responsibilities.

10.03 Interpretation. This Article X is subject to N.J.S.A. 15A:3-4 as same may be amended or modified and any successor statute thereto. Nothing in this Article X shall be construed so as to conflict with or violate the terms of N.J.S.A. 15A:3-4. Any and all requests for indemnification under this Article X shall be made, and shall be heard and decided by the Board, in accordance with the applicable terms of N.J.S.A. 15A:3-4.

## **ARTICLE XI** **DISSOLUTION**

11.01 Dissolution. Upon the dissolution or liquidation of the SHBID, any assets, then remaining, shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code (or the corresponding section of any future Federal tax code) or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the SHBID is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

## CERTIFICATE

I, the undersigned Secretary of the SEASIDE HEIGHTS BUSINESS IMPROVEMENT DISTRICT, INC., hereby certify that the above is a true copy of the Amended and Restated By-Laws of the SHBID duly adopted and in full force and effect.

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Elizabeth King, Secretary

Dated: July 16, 2008