

JUN 14 2001

Corporations Section

ARTICLES OF INCORPORATION

OF

VILLAGE OF EMERALD BAY HOMEOWNERS ASSOCIATION, INC.

I, the undersigned, being a natural person of the age of twenty-one (21) or more, a citizen of the State of Texas, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I.  
NAME OF CORPORATION

The name of the corporation is Village of Emerald Bay Homeowners Association, Inc., hereinafter called the "Association."

ARTICLE II.  
REGISTERED OFFICE

The initial registered office of the Association is c/o Hoover, Bax & Slovacek, L.L.P., 5847 San Felipe, Suite 2200, Houston, Texas 77057.

ARTICLE III.

Sarah Ann Powers is hereby appointed the initial registered agent of the Association, whose address is the same as that of the initial registered office.

ARTICLE IV.  
DURATION

The period of duration of the Association is perpetual.

ARTICLE V.  
PURPOSES AND POWERS OF THE ASSOCIATION

The Association is organized to be operated for the sole purpose of carrying on as a "homeowners association," as that term is defined by Section 528(c) of the Internal Revenue Code of 1986. Specifically, the Association is formed to provide for the administration, maintenance and preservation of the "Properties," including the "Lots"(as such terms are defined in that certain Declaration of Covenants, Conditions and Restrictions for Village of Emerald Bay, filed for record in the office of the County Clerk of Brazoria County, Texas (the "Declaration") in accordance with

the Declaration; to exercise the duties and prerogatives of the Association set forth in the Declaration; to exercise all of the powers and duties set forth in the Bylaws of the Association and the Declaration; to have and to exercise any and all powers, rights, and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Texas may now or hereafter have or exercise; and, to the extent permitted by law, to do any and all other things necessary to implement or accomplish the purposes set forth in the Bylaws of the Association and the Declaration. Capitalized terms used herein, if not defined herein, shall have the definitions from the Declaration.

**ARTICLE VI.**  
**MEMBERSHIP**

Each Owner of a Lot or Tract encumbered by the Declaration shall upon and by virtue of becoming such Owner, automatically become and shall remain a Member of the Association until ownership of the Lot or Tract ceases for any reason, at which time the Membership in the Association shall also automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of such Lot or Tract and may not be separated from such ownership.

The Association shall have two (2) classes of Members:

A. Class "A". Class "A" Members shall be all Owners, with the exception of Declarant. Each Class "A" Member shall be entitled to one (1) vote for each Lot and two (2) votes per acre for each Tract owned by such Member in the Properties; provided, however, when more than one person holds an interest in any Lot or Tract, all such persons shall be Members, and the single vote for such Lot and multiple votes for such Tract shall be exercised by them as they among themselves determine, but in no event shall more than one (1) vote be cast with regard to any Lot or two (2) votes per acre per Tract owned by a Class "A" Member. The votes of the Class "A" Members are referred to herein as the "Class 'A' votes".

B. Class "B". The Class "B" Member shall be Declarant. The Class "B" Member shall be allowed 5,000 votes, for as long as the Class B Membership exists. All Class "B" votes and the Class B Membership shall cease to exist and automatically be converted to Class "A" votes on the happening of any of the following events, whichever occurs earlier:

1. When 100% of the Lots and Tract on the Property (including Property added by annexation) planned for development have been sold to and occupied by Class A Members that are not Sub-developers;

2. December 31, 2030; or

3. At such earlier time as the holder of the Class "B" votes may, in its sole discretion, elect, as evidenced by a document recorded in the Office of the County Clerk of Brazoria County, Texas.

C. Reinstatement of Class "B" Votes. Notwithstanding the prior provisions of subsection B above, if additional land is made subject to the jurisdiction of the Association pursuant to a Supplemental Declaration, or if Declarant repurchases any Lots and/or Tracts, such that Declarant again owns any Lots and/or Tracts, then the provisions in said paragraph B of Article VI, regarding Class B votes shall be automatically reinstated *ipso facto*.

**ARTICLE VII**  
**BOARD OF DIRECTORS**

The number of Directors constituting the initial Board of Directors of the Association is three (3) and the names and addresses of the persons who are to serve as the initial Directors are:

<u>Name</u>	<u>Address</u>
Gary Cook	c/o Shadow Creek Ranch P.O. Box 95398 Las Vegas, Nevada 89193-5398
Carlo Ferreira	c/o Shadow Creek Ranch P.O. Box 95398 Las Vegas, Nevada 89193-5398
Kerry R. Gilbert	15810 Park Ten Place, Suite 160 Houston, Texas 77084

**ARTICLE VIII**  
**INCORPORATOR**

The name and street address of the incorporator is:

<u>Name</u>	<u>Address</u>
Sarah Ann Powers	Hoover, Bax & Slovacek, L.L.P. 5847 San Felipe, Suite 2200 Houston, Texas 77057

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ARTICLE IX  
NON-PROFIT CORPORATION

The Association is a non-profit corporation, without capital stock organized solely for the purposes specified in Article V, and no part of its property, whether income or principal, shall ever inure to the benefit of any director, officer, Member or employee of the Association, nor shall any such director, officer, Member, employee, or individual receive or be lawfully entitled to receive any profit from the operations of the Association for reimbursement of expenses except to the extent permitted by the Bylaws or the Declaration.

ARTICLE X  
PROHIBITED ACTS

The Association shall not pay dividends or other corporate income to its Members, directors, or officers or otherwise accrue distributable profits or permit the realization of private gain. This prohibition shall not apply to acquiring, constructing, or providing management, maintenance, and care of Association property, or the rebate of excess membership dues, fees, or assessments to the Members of the Association.

The Association shall have no power to take any action prohibited by the Texas Non-Profit Corporation Act.

ARTICLE XI  
LIMITATION ON LIABILITY OF DIRECTORS

A director is liable to the Association and/or its members for monetary damages for an act or omission in the director's capacity as director only as provided in the Declaration.

ARTICLE XII  
INDEMNIFICATION

The Association may indemnify a person who was, is, or is threatened to be named defendant or respondent in litigation or other proceedings because the person is or was a director or other person related to the Association, as provided by the Bylaws of the Association. The terms and conditions of such indemnification shall be set forth in the Declaration or the Bylaws.

ARTICLE XIII  
ACTIONS WITHOUT MEETINGS

Any action required by the Texas Non-Profit Corporation Act to be taken at a meeting of the Members or Directors of the Association or any action that may be taken at a meeting of the Members or Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Members, directors, or

committee members as would be necessary to take that action at a meeting at which all of the Members, directors, or members of the committee were present and voted.

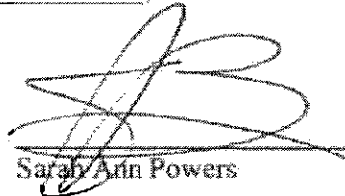
**ARTICLE XIV**  
**DISSOLUTION**

Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created or shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization devoted to such similar purposes.

**ARTICLE XV**  
**AMENDMENTS**

Amendments of these Articles of Incorporation shall require the approval of two-thirds (2/3) of the votes which members of the Association, present at a meeting of the Association, in person or by proxy, are entitled to cast.

IN WITNESS WHEREOF for the purpose of forming this Association under the laws of the State of Texas, I, the undersigned incorporator of this Association, have executed these Articles of Incorporation this 13 day of June, 2001.

  
\_\_\_\_\_  
Sarah Ann Powers

Address: Hoover, Bax & Slovacek, L.L.P.  
5847 San Felipe, Suite 2200,  
Houston, Texas 77057

550-85-1923

**BYLAWS  
OF  
VILLAGE OF EMERALD BAY HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**GENERAL PROVISIONS:  
REFERENCES AND DEFINITIONS**

Section 1.1. References. Reference is made for all purposes to the Declaration of Covenants, Conditions and Restrictions for Village of Emerald Bay recorded in the office of the County Clerk of Brazoria County, Texas (said Declaration and any amendments or Supplemental Declarations thereto being herein collectively called the "Declaration").

Section 1.2. Association. This corporation is the identical corporation which is referred to as the "Association" in the Declaration. This corporation (hereinafter, the "Association") shall have all the rights, powers, privileges, and authority vested in it under the Declaration and shall carry out all the functions and responsibilities therein assigned and those which may hereafter be assigned to the Association under the Declaration or otherwise.

Section 1.3. Definitions. Except as otherwise defined in these Bylaws, all terms which are defined in the Declaration shall, when used herein, have the same meaning as that set forth in the Declaration.

**ARTICLE II**

**FUNCTIONS OF THE ASSOCIATION**

Section 2.1. Purposes. The purposes for which the Association is formed are to promote maintenance, administration and preservation of the Lots and other portions of the Properties; to exercise the duties and prerogatives provided for the Association in the Declaration; to have and to exercise any and all powers, rights, and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Texas may now or hereafter have or exercise; and, to the extent permitted by law, to do any and all other things necessary to implement or accomplish the purposes set forth in the Declaration and these Bylaws. To carry out said purposes properly, the Association shall, to the extent permitted or required by the Declaration, at the discretion of its Board of Directors, perform the following functions, and the exercise of such functions shall be deemed to be within the scope of activities contemplated by the Articles of Incorporation and the Declaration:

(a) Accept conveyances of, own, sell, and encumber Common Area, subject to the terms of the Declaration and these Bylaws.

(b) Exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration and Articles of Incorporation and pay all expenses incidental thereto.

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- (c) Enforce decisions and ruling of the Association.
- (d) Enforce all restrictions, covenants, easements, and liens provided in the Declaration, and pay all of the expenses in connection therewith.
- (e) Reimburse the Declarant under the Declaration for all costs and expenses incurred or paid by it in connection with the enforcement of any of the conditions, covenants, restrictions, charges, Assessments, or terms set forth in the Declaration.
- (f) Lease, provide, control, maintain, and operate the Common Area.
- (g) Create, construct, and maintain private streets, alleys, road, rights-of-way, and easements.
- (h) Do all things necessary for the upkeep, repair, and maintenance of all Common Area and the Area of Common Responsibility and the placement of improvements, fixtures, and equipment thereon, including the replacement of obsolete or damaged improvements, fixtures, and equipment.
- (i) Provide for the landscaping of the Common Area necessary to provide a uniform scheme of landscaping for the Properties as a whole.
- (j) Do all things necessary for the upkeep, repair, and maintenance of the Common Area, including obtaining the agreement of any appropriate governmental entity to assume the maintenance obligation for the street within the Common Area.
- (k) Pay legal and other expenses incurred in connection with the enforcement of all recorded charges, covenants, restrictions, and conditions affecting property to which the Assessments apply.
- (l) Provide patrol services, including but not limited to, the employment of courtesy officers, supplemental municipal services; and/or to provide and operate a communications system.
- (m) Do all things necessary to enforce the provisions of the Declaration, including but not limited to provide for the enforcement of exterior maintenance of all Dwelling Units, to the extent provided for by the Declaration, and send invoices or take other necessary action to collect the cost of such exterior maintenance from the Owner of the Lot or Tract.
- (n) Fix, levy, collect, and enforce payment by any lawful means, of all charges and assessments (including, but not limited to, the Assessments) pursuant to the terms of the Declaration, including, but not limited to, the right to foreclose the lien against any Lot(s) or Tract(s); pay all expenses in connection therewith and all administrative and other expenses incident to conducting the business of the Association, including all licenses, taxes, assessments, or other governmental charges levied or imposed against the Properties of the Association.

(o) Participate and enforce the results of the Architectural Control Committee, to the extent provided in the Declaration.

(p) Do all other things necessary or desirable in the opinion of the Association to keep the Properties in neat and good order, or which it considers of general benefit to the Owners of the Lots and/or Tracts, it being understood that the judgment of the Association with respect to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

(q) Set and establish the amount of the Assessments or charges which may be imposed by the Association pursuant to the Declaration, and hold and administer the funds generated by such Assessments and other charges in the manner and for the purposes contemplated by and in accordance with the terms and provisions of the Declaration and these Bylaws.

(r) Acquire by gift, purchase, or otherwise own, hold, improve upon, build, enjoy, operate, maintain, convey, sell, lease, transfer, mortgage, dedicate for public use, or otherwise dispose of, real or personal property in connection with the business of the Association, subject to the terms of the Declaration and these Bylaws.

(s) Borrow money in the name of the Association for the purpose of carrying out the corporate affairs, with the consent (either by written instrument or by voting at a meeting duly called for such purpose) of a majority of the Board of Directors. However, in no event may the Association lend, contract for a loan, or issue evidences of indebtedness to any member of the Board of Directors, officers, or Disqualified Persons (as that term is defined in Section 4946[a] of the Internal Revenue Code of 1986 [the "Code"] or any amendment or successor thereto). Moreover, the Board of Directors of the Association who vote for or assent to the making of a loan to a member of the Board or officer of the Association or to such Disqualified Person and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the full repayment thereof.

(t) Participate in mergers and consolidations with other non-profit Associations organized for the same purposes.

(u) Exercise jurisdiction and control over any property made subject to the jurisdiction of the Association in accordance with the terms of the Declaration.

Section 2.2. Area. The activities of the Association shall be limited to (i) the Properties, and (ii) such other areas as may hereafter voluntarily or through the operation of conditions, covenants, restrictions, Supplemental Declaration, easements, reservations or charges pertaining to the same be placed under or submitted to the jurisdiction of the Association.



## ARTICLE III

### MEMBERSHIP

Section 3.1. Membership. Every Owner of a Lot or Tract in Village of Emerald Bay, a subdivision set forth on a Map or Plat thereof recorded in the office of the County Clerk of Brazoria County, Texas, and areas annexed thereto pursuant to the recorded Declaration, shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot or Tract. When ownership of any Lot or Tract is held by more than one person or by a legal entity which is not a natural person, all such Owners shall be Members of the Association, however, the voting rights of such Members shall be limited to one (1) vote for each Lot or two (2) votes for each Tract owned and shall be exercised as they among themselves shall determine.

Section 3.2. Suspension of Membership. A Member must be current in the payment of the Assessments and any duly adopted special assessment to validate the Membership and entitle the Member to all rights and privileges of same. During any period in which a Member shall be in default in the payment of any annual or special assessment levied by the Association, the voting rights and right to use of the recreational facilities of such Member may be suspended by the Board of Directors until such assessment has been paid. Such other rights of a Member may also be suspended pursuant to the Declaration, for a period not to exceed sixty (60) days, for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, these Bylaws, or the Rules and Regulations of the Association.

## ARTICLE IV

### VOTING RIGHTS AND MEMBERSHIP CATEGORIES

Section 4.1. Voting Rights and Membership Categories. The Association shall have two classes of voting Membership, Class A Membership which shall include all Owners of Lots and Tracts with the exception of Declarant and Class B Membership which shall be the Declarant, all as more fully set forth in the Declaration. Class A Members shall be entitled to one (1) vote for each Lot and two (2) votes for each Tract owned and the Class B Member shall be entitled to 5,000 votes, under such conditions and for such periods of time as more specifically set forth in the Declaration.

## ARTICLE V

### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 5.1. Number. The affairs of the Association shall be managed by a Board of at least 3 but no more than 5 directors, who need not be Members of the Association. The initial Board of Directors shall consist of 3 persons.

Section 5.2. Election Term. The initial directors shall be appointed by the Declarant and the Declarant shall retain the right to appoint and remove members of the Board of Directors of the Association until ninety (90) days after the termination of Class B voting status of Declarant, or the Declarant has surrendered its authority to appoint and remove directors. Thereafter, a meeting of the

Association shall be called the express purpose of electing a new Board of Directors, consisting of five (5) directors. At such meeting, the Members shall elect three (3) directors for a term of two (2) years; and two (2) directors for a term of one (1) year; and at each annual meeting thereafter the Members shall elect a director for a term of three (3) years to fill each expiring term.

Section 5.3. Removal. During the period of Declarant control, i.e. the period set forth in 5.2 above, a director may only be removed by Declarant. Thereafter, any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation, or removal of a director, his successors shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 5.4. Reimbursement. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 6.1. Regular Meetings. Meetings of the Board of Directors shall be held at such intervals, place, and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, that meeting shall be held at the same time on the next day which is not a legal holiday. Any such meeting, whether regular or special, may be held by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting in such manner shall constitute presence in person at such meeting.

Section 6.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 6.3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 6.4. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 6.5. Meeting Organization. At each meeting of the Board, the president, or if he or she is absent therefrom, the vice president, or if he or she is absent therefrom, a director chosen by a majority of the directors present, shall act as Chair and preside over such meeting. The secretary, or if he or she is absent, the person whom the Chair of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

ARTICLE VII

NOMINATION AND ELECTION OF DIRECTORS; RESIGNATIONS OR VACANCIES

Section 7.1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting. After the termination of Class B voting status, the Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 7.2. Election. Election to the Board of Directors shall be by secret written ballot cast at the annual meeting. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 7.3. Resignations. Any director may resign at any time by giving written notice of his or her resignation to the Association. Any such resignations shall take effect at the time specified therein, or, if the time when it shall become effective is not specified therein, it shall take effect immediately upon its receipt by the president or the secretary; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.4. Vacancies on the Board.

(a) Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of the majority of the remaining directors though less than a quorum or by a sole remaining director, and any director so chosen shall hold office until the next election of directors when his or her successor is elected and qualified. Any newly created directorship shall be deemed a vacancy. When one (1) or more directors resigns from the Board, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, vote on the vacancy to take effect when such resignation becomes effective. If by reason of death, resignation, or otherwise, the Association has no directors in office, any officer or Member may call a special meeting of Members for the purpose of electing the Board of Directors.

(b) Should an elected director fail to assume office by reason of death, disability, declination prior to the beginning date of the term to which elected, then the unsuccessful candidate in such election receiving the next highest number of votes shall be deemed elected in his or her stead.

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## ARTICLE VIII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 8.1. Powers. The Board of Directors shall have the power:

- (a) To take the appropriate action in furtherance of those powers of the Association enumerated in Article II of these Bylaws;
- (b) To adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties and fines for the infraction thereof;
- (c) To exercise for the Association all power, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws and the Articles of Incorporation;
- (d) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors without just cause having been furnished to and accepted by the Board;
- (e) To establish, disburse, and maintain such petty cash fund as necessary for efficiently carrying on the business of the Association; and
- (f) To engage the services of a manager, an independent contractor, or such employees as it deems necessary, and to prescribe the conditions, compensation, and duties of their work. Such power shall include authority to enter into management agreements with other parties to manage, operate, or perform all or any part of the affairs and business of the Association.

Section 8.2. Duties. It shall be the duty of the Board of Directors:

- (a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;
- (b) To supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
- (c) To establish annually a budget and membership fees or assessments;
- (d) To procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (e) To cause all officers, employees, or agents, having fiscal responsibility to be bonded, as it may deem appropriate;

(f) To use the Common Area to be maintained

(g) Perform such other duties as may be established by the Membership from time to time or set forth in these Bylaws, the Articles of Incorporation, or the Declaration.

## ARTICLE IX

### COMMITTEES

Section 9.1. The Board of Directors may appoint committees as deemed appropriate in carrying out its purposes, which may include for example, but not by way of limitation, the following:

(a) A Nominating Committee as provided for in Section 7.1 of these Bylaws;

Section 9.2. It shall be a function of each committee to receive complaints from members on any matter involving Association duties and activities within its field of responsibility. It shall make a recommendation and refer all information to the Board of Directors for action and/or disposition.

## ARTICLE X

### MEETINGS OF MEMBERS

Section 10.1. Annual Meetings. The first annual meeting of the Members shall be held at a time to be designated by the Board of Directors, and each subsequent regular annual meeting of the Members shall be held in the same month of each year thereafter, the place and time to be provided by the Board of Directors by giving written notice to the Members in accordance with the Texas Non-Profit Corporation Act. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. Until such time as Declarant has relinquished control of the Association, the annual meeting of the Membership shall be of a purely informal and informational nature and not for purposes of electing directors. Upon transfer of control of the Board of Directors to Owners other than Declarant, the annual Membership meeting shall, among other things, be used for the purpose of electing directors and conducting other official business of the Association.

Section 10.2. Special Meetings. Special meetings of the Members may be called at any time by the president or by a majority of the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the entire membership.

Section 10.3. Notice of Meetings. Except as otherwise provided in the Articles of Incorporation, or these Bylaws, written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 10 days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member designating an alternate address to the Association for the purpose of notice. Such

notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 10.4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast ten percent (10%) of the votes, shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid, shall be present or be represented.

Section 10.5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon cessation of membership or restriction of the Member's voting rights.

Section 10.6. Canvas in Lieu of Meeting. In the event that a quorum of Members is not achieved at any scheduled meeting, the Board of Directors may authorize a door-to-door canvas of all Members whose votes shall be duly recorded, and any action so taken shall have the same force and effect as if taken at a meeting at which a quorum of Members was present. Any such canvas must be completed within 30 days of the Board's decree.

Section 10.7. Majority Vote; Withdrawal of Quorum. When a quorum is present at any meeting of the Members, the vote of the holders of a majority of the votes, present in person or represented by proxy, shall be sufficient to take action and decide any question validly brought before such meeting unless the question is one upon which by express provision of the statutes, the Articles of Incorporation, or these Bylaws, a different vote is required, in which case such express provision shall govern and control the deciding of such question. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 10.8. Voting.

(a) Voice Vote. A voice or standing vote or show of hands of Members shall prevail on all matters of business, except the following items which require a ballot vote:

- (i) The election of all directors.
- (ii) When a majority of the Board of Directors requests a ballot vote.
- (iii) When a ballot is requested by a majority vote of the eligible Members of the Association attending the meeting.

(b) Ballot Vote. When a ballot vote is required the following will apply:

- (i) Voting shall proceed under the supervision of the Board of Directors.

(ii) At least two (2) of the Board of Directors and/or agents for the Association shall be in attendance at all times during voting and they shall determine eligibility of all voters, issue all official ballots, and witness the casting of the ballots.

(iii) Ballots shall be opened and tabulated in the presence of at least three (3) Members of the Board of Directors and/or agents for the Association. Upon completion of the tabulation of ballots, the results shall be certified by the Board of Directors and kept at the offices of the Association.

(iv) Any Member may be present as an observer at the tabulation of votes.

(c) Mail Vote.

(i) A majority of the Board of Directors may authorize use and implementation of a mail-in ballot on any election or issue it deems appropriate, including the election of directors.

(ii) When mail-in ballots are authorized by the Board, said ballots shall be prepared and mailed to the Members no later than twenty (20) days prior to the date of the election, the date set for the tabulation of the ballots shall be stated on the ballot. Ballots received on or after the date set for tabulation of the ballots shall not be counted.

(iii) The determination of eligibility and tabulation of votes shall proceed under the supervision of the Board of Directors and/or its agent, manager, etc.

(iv) Following tabulation, all ballots will be sealed and stored for a period of thirty (30) days in the custody of the Board of Directors or in the office where the records of the Association are maintained.

(d) Tie Votes. Except for the votes in connection with the election of directors, a tie vote shall be decided by lot. In the event of a tie vote in the election of directors, the director candidates receiving the same number of votes (unless such tie vote does not affect the outcome of the election) shall be submitted to a second ballot vote. If a tie vote occurs at the second ballot vote (unless such tie vote does not affect the outcome of the election), the election of such director candidates receiving the same number of votes will be decided by lot.

## ARTICLE XI

### OFFICERS AND THEIR DUTIES

Section 11.1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be Members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create. The treasurer need not be a Member of the Association.

Section 11.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 11.3. Term. The officers of this Association shall be elected annually by the Board and shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 11.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 11.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; the acceptance of such resignation shall not be necessary to make it effective. The Board may declare an office vacant in the event three (3) meetings in a row are missed.

Section 11.6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election of officers. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 11.7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 11.8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out, shall sign all easements, contracts, leases, mortgages, deeds, and other written instruments; and shall co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

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Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

ARTICLE XII

ASSESSMENTS

Section 12.1. Assessments in Accordance with the Declaration. The Declaration sets forth the obligation of each Member to pay to the Association Assessments. The payment of such Assessments is secured by a lien upon each Member's Lot against which the Assessment is made, and the Association's rights pertaining to such lien may be enforced in the manner provided for in the Declaration. No Owner may exempt himself from payment of Assessments by waiver of the use or enjoyment of all or any portion of the Common Area or abandonment of his Lot or Tract.

ARTICLE XIII

BOOKS AND RECORDS

The books, records, and papers of the Association shall, during normal business hours, be subject to inspection by any Member upon reasonable notice to the Association, but in no event sooner than one (1) business days' notice to the Association. The Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Members at the principal office of the Association, during normal business hours, where copies may be purchased at reasonable cost.

ARTICLE XIV

FISCAL YEAR

The Fiscal Year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XV

AMENDMENTS

Section 15.1. Prior to the conveyance of the first Lot or Tract, Declarant may unilaterally amend these By-Laws. Thereafter, these Bylaws may be amended, by a vote of a majority of the Board of Directors or by the affirmative vote or written consent, or any combination thereof, of a

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majority of the total Class. . . . . in the Association and the consen. . . . . = Class B Member, as long as such Membership exists. Further, as long as Declarant owns any Property described on Exhibit "A" to the Declaration or located in the Declarant Annexation Property for development as a part of Village of Emerald Bay, the Declarant may unilaterally amend these By-Laws for any purpose; provided that the amendment has no material adverse effect upon the right of any Owner unless such Owner shall have given its consent.

Section 15.2. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XVI

GENDER AND GRAMMAR

The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

ARTICLE XVII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify its officers and directors to the maximum extent allowable pursuant to Texas Civil Statutes, Article 1396-2.22A (Section B), as the same now exists or may be hereafter amended.

ARTICLE XVIII

CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned Secretary of Village of Emerald Bay Homeowners Association, Inc., hereby certifies that these Bylaws are the true and correct Bylaws of the Association voted upon and adopted at the Organizational Meeting of the Association.

\_\_\_\_\_  
Secretary of Association

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped below by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

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*Dorely L. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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