

BAY DEVELOPMENT
18193 HWY. 105 W
MONTGOMERY, TX 77356

541-00-1779

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
99044866 BLUE HERON BAY, SECTION TWO**

STATE OF TEXAS §
COUNTY OF MONTGOMERY §
KNOW ALL MEN BY THESE PRESENTS:

This Declaration of Covenants, Conditions and Restrictions, made on the date hereinafter set forth by BAY DEVELOPMENT, L.L.C., hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of that certain tract of land known as "BLUE HERON BAY" being a Subdivision of 28.843 acres of land situated in the William Atkins Survey, A-3, Montgomery County, Texas, as more fully described on Exhibit "A" attached hereto and according to the plat ("Plat") of said Blue Heron Bay, Section Two, recorded in the office of the County Clerk of Montgomery County, Texas on the ____ day of _____, 1999, after having been approved as provided by law, and being recorded in Cabinet _____, Sheet(s) _____, of the Map Records of Montgomery County, Texas (hereinafter referred to as the "Property" or the "Subdivision"); and

WHEREAS, it is the desire of Declarant to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in said Subdivision;

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon the Subdivision known as Blue Heron Bay, Section Two, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to the areas identified or platted as a Reserve on the Plat or to any area not included in the boundaries of said Plat. Declarant also declares that this Subdivision shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I

DEFINITIONS

Section 1.01. "Annexable Area" shall mean and refer to any additional property made subject to the jurisdiction of the Association pursuant to the provisions set forth herein, including, without limitation any other Sections of Blue Heron Bay subdivision, if any, Declarant may plat and any property adjacent to or in the proximity of the Property which the Declarant may wish to include in the jurisdiction of the Association.

Section 1.02 "Association" shall mean and refer to Blue Heron Bay Property Owners Association, and its successors and assigns.

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COMMUNITY DEVELOPMENT

Section 1.03 "Blue Heron Bay" shall mean and refer to this Subdivision and any other sections of Blue Heron Bay hereafter made subject to the jurisdiction of the Association.

Section 1.04 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.05 "Committee" shall mean and refer to the Architectural Control Committee for the Subdivision as set forth in Article IV hereof.

Section 1.06 "Builders" shall mean and refer to persons or entities that purchase Lots and build speculative or custom homes thereon for third party purchasers.

Section 1.07 "Common Area" shall mean all real property (including the improvements thereto) within the subdivision owned by the Declarant and/or the Association for the common use and enjoyment of the Owners and/or any other real property and improvements, including, but not limited to, roads, parks, open spaces, greenbelt areas and other facilities and areas designated on the Plat within the Common Area to which the Owners may hereafter become entitled to use.

Section 1.08 "Lake" shall mean and refer to the body of water known as Lake Conroe.

Section 1.09 "River Authority" or "SJRA" shall mean and refer to the San Jacinto River Authority.

Section 1.10 "Utility District" shall mean and refer to the Stanley Lake Municipal Utility District.

Section 1.11 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot.

Section 1.12 "Declarant" shall mean and refer to Bay Development, L.L.C., and any/or a successor(s) and assign(s) of Bay Development, L.L.C., with respect to the voluntary disposition of all (or substantially all) of its right, title and interest in and to the Properties. However, no person or entity merely purchasing one or more Lots from Bay Development, L.L.C. in the ordinary course of business shall be considered a "Declarant."

Section 1.13 "Lot" shall mean and refer to any plot of land identified as a Lot or tract on the plat of the Subdivision (whether identified, for example, as Lot 1, 2, 3, etc.). For purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Reserves," "Restricted Reserves" or "Unrestricted Reserves," (defined herein as any Reserves, Restricted Reserves or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area.

Section 1.14 "Lakefront Lot" shall mean and refer to Lots adjoining any portion of Lake Conroe, shown on the Plat as Lots 1-30, Block 1 of the Subdivision.

Section 1.15 "Interior Lot" shall mean and refer to all Lots in the Subdivision which do not adjoin any portion of Lake Conroe, shown on the Plat as Lots 1-4, Block 2 and Lots 1-13, Block 3 of the Subdivision.

Section 1.16 "Residential Dwelling" shall mean and refer to a single residential dwelling with garage and/or servants quarters.

Section 1.17 "Improvement" shall mean and refer to any dwelling, garage, carport, swimming pool, boat slip and any other object or structure placed on, in or under the Properties.

Section 1.18 "Resident" shall mean and refer to every person or entity occupying a Residential Dwelling within the Properties.

Section 1.19 "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.20 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, and (ii) Declarant (except as otherwise provided herein).

ARTICLE II

RESTRICTIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 The Plat dedicates for use as such, subject to the limitations set forth therein, the private streets and easements shown thereon and such Plat further establishes certain restrictions applicable to the Properties including, without limitation, certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof, whether specifically referred to therein or not.

Section 2.02 Declarant reserves the easements and roadways as shown on the Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, water lines, sewers, storm sewers, drainageways or any other utility Declarant sees fit to install in, across and/or under the Properties.

Section 2.03 Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant, without the joinder of any other Owner, shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 2.04 Declarant reserves the right, during installations of concrete paving of the streets as shown on the Plat, to enter onto any Lot or Lots for the purpose of disposing of excavation from dredged material from the shoreline of the Properties and street excavation, including the removal of any trees, if necessary, whether or not the Lot or Lots have been conveyed to and/or contracted for any other Owner or Owners.

Section 2.05 Neither Declarant nor any utility company using the easements herein referred to, shall be liable for any damages done by them or their assigns, their agents, employees or servants to fences, shrubbery, trees, flowers or any other property of the Owner situated on the land covered by said easements.

Section 2.06 It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land within the Properties by contract, deed or

other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm drainageways, electric light electric power, cable service, telegraph or telephone purposes and shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances, thereto constructed by or under Declarant or any easement owner, or their agents through, along or upon the premises affected thereby, or any part thereof, to serve said land or any other portion of the Properties, and where not affected, the right to maintain, repair, sell or lease such appurtenances to any municipality, other governmental agency or any public service corporation or any other party, and such right is hereby expressly reserved.

Section 2.07 Utility Easements

(a) A sixteen foot (16') utility easement has been dedicated along the front of all Lots. In addition, a sixteen foot (16') utility easement has been dedicated along the rear of the Interior Lots as shown on the Plat.

(b) No building shall be located over, under, upon or across any portion of any utility easement; however, the Owner of each Lot shall have the right to construct, keep and maintain drives and similar improvements across the utility easement along the front of the Lot and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots.

(c) With the prior approval of the Committee, the Owner of a Lot with a utility easement along any side lot line also shall have the right to construct, keep and maintain driveways, walkways, steps, air conditioning units and equipment over, across or upon any utility easement along the side of such Lots (the "Side Lot Utility Easement"), and shall be entitled, at all times, to cross, have access to and use the improvements located thereon; however, any such improvements placed upon such Side Lot Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and the location of such improvements shall not impede the natural flow of water across the Lot. The Owner of each Lot subject to said Side Lot Utility Easements shall be responsible for (i) any and all repairs to the driveways, walkways, steps, air conditioning units and equipment which cross or are located upon such Side Lot Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing or removing its facilities located within the Side Lot Utility Easements.

(d) The Owner of each Lot shall indemnify and hold harmless Declarant, the Utility District and public utility companies having facilities located over, across or under utility easements from any loss, expense, suit or demand resulting from injuries to persons or damage to property in any way occurring, incident to, arising out of, or in connection with said Owner's installation, maintenance, repair or removal of any permitted improvements located within utility easements, including where such injury or damage is caused or alleged to be caused by the sole negligence of such public utility or its employees, officers, contractors or agents.

(e) In no event shall any Owner construct, maintain or use any of the above described improvements or any other improvements within any utility easements located along the rear of such Owner's Lot.

(f) In addition to the utility easements shown on the recorded Plat, there is hereby dedicated a five foot (5') wide Mid-South Electric Cooperative ("Mid-South") easement, extending from the surface of the ground downward, and said easement being two and one-half (2½) feet on each side of underground electric service lines as now or hereafter constructed and will extend along the route selected by Mid-South from Mid-South's distribution facilities to the electric meter when and as located upon

Lots and Reserves in the Subdivision. Mid-South shall have the right to excavate said Lot easement strip, and to remove objects, structures, growth or protrusions thereon.

Section 2.08 Road and Street Easements. The roads and streets in the Subdivision are not dedicated to the public, but shall be operated as private streets by the Association with each Owner having an easement for the use and benefit of such Owner of a Lot fronting thereon or adjacent thereto, which easements shall include rights of ingress, egress and passage over and along said streets in favor of the Declarant, the Association, the Owners and their respective legal representatives, successors and assigns, guests, invitees, licensees, designees and the successors-in-title to each Lot Owner and in favor of the invitee and designees of each successor-in-title to each Lot Owner, but not in favor of the public. In addition to the other provisions appearing within these Restrictions, the Declarant and upon Transfer of Control, the Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the entry gate, streets and roads covering items such as (but not necessarily limited to):

- (a) identification and entry programs for Owners and their respective immediate families, their guests and invitees and vehicles owned or driven by any of them;
- (b) speed limits, designated parking areas, restricted parking areas and no-parking;
- (c) signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- (d) a "fines" system through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations; and
- (e) disclaimers of liability for any and all matters or occurrences on or related to the Common Areas.

Subject to the terms and conditions of this Section, the private roads and streets in the Subdivision as shown on the Plat are hereby dedicated as utility easements strictly for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utilities that the Declarant sees fit to install (or permit to be installed) in, across and/or under the Subdivision. The dedication of the private roads and streets as utility easements shall not affect the Association's operation of the roads and streets in this Subdivision as private roads and streets.

Notwithstanding the Association's operation of the roads and streets in the Subdivision as private streets, Declarant hereby grants to Law enforcement agencies and officers of Montgomery County and the State of Texas, other governmental law enforcement bodies, fire department officials and fire protection personnel, vehicles and equipment, ambulances, school buses, Montgomery County officials and personnel and other governmental officials and personnel, and to the authorized agents of the Association for performance of the Association's duties and obligations and exercise of the Association's rights in respect to the Subdivision, rights of ingress and egress and passage over and along said private roads and streets of the Subdivision in connection with the performance of their official functions.

Upon the affirmative vote of the owners of a majority of the lots located within the Subdivision, the Association shall have the right to dedicate the roads and streets in the Subdivision to the public. Neither the City of Conroe nor any other public entity shall be required to accept the public dedication of such streets. If accepted, all access control facilities shall be removed and unrestricted public access to such streets shall be permitted. The roads and streets will be dedicated and accepted in an "as is" condition and acceptance shall not be deemed to obligate the accepting public entity

to improve such streets above their then existing condition, the method and manner of street maintenance or improvements being at the sole discretion of the accepting public entity.

Section 2.09 Restricted Open Space Reserve A. The area designated as Restricted Open Space Reserve A on the Plat is Common Area to be used by the Owners as may be determined and regulated by the Association.

Section 2.10 Lake Reserve B. The area designated as Lake Reserve B on the Plat is Common area to be used by Owners in any section of the Subdivision, their guests and invitees as a portion of Lake Conroe.

Section 2.11 Lake Reserve C. The area designated as Lake Reserve C on the Plat is Common area to be used by Owners in any section of the Subdivision, their guests and invitees as a portion of Lake Conroe.

Section 2.12 Restricted Open Space Reserve D. The area designated as Restricted Open Space Reserve D on the Plat is Common Area to be used by the Owners as may be determined and regulated by the Association.

ARTICLE III

USE RESTRICTIONS

Section 3.01 Land Use and Building Type. All Lots shall be known and described as Lots for single family detached residential dwellings only (hereinafter sometimes referred to as "Residential Lots"), and no structure shall be erected, altered, placed or permitted to remain on any Residential Lot other than one (1) single family dwelling with a detached or an attached fully enclosed garage for not less than two (2) nor more than three (3) cars. The garage will be available for parking automobiles at all times without any modifications being made to the interior of said garage. Such garage or carport shall be constructed at the same time as the dwelling and act as an integral part of the residential structure, constructed with the same design, color and materials as the residence. Occupancy of the dwelling shall not be authorized until the garage is complete. The residential dwelling shall not exceed a height of thirty-five (35) feet. The height shall be measured from where the highest point of natural grade of the Lot abuts the structure, except where the slab must be elevated above the natural grade to achieve minimum slab elevation as required by the Committee. In this situation the height shall be measured from the minimum slab elevation established by the Committee. A detached garage or carport shall not exceed one story in height provided, however, if a bona fide servants quarters is constructed above the garage, the total height will not exceed the main dwelling in height or number of stories.

Except as otherwise provided herein, all attached garages shall open to the side or to the rear of the Lot upon which it is built, except that no garage may open to the rear of a Waterfront Lot unless otherwise approved by the Architectural Control Committee. All garages may open to the front of the Lot if the front of the garage is set back at least fifty (50) feet from the front lot line unless otherwise approved by the Committee. However, no garage may extend over the rear building line. All garages opening to the front of the Lot must be set back ten (10) feet behind the main Residential Dwelling. All detached garages where permitted in this Article must be attached to the main residence with a covered walk.

As used herein, the term "Residential Purposes" shall be construed to prohibit the use of said Lots for garage apartments or apartment houses; and no Lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purpose. Each lot and improvement thereon shall be used only as a single family residence. The rental of a dwelling for occupancy as a residence shall not be construed as a business. No building of any kind or character shall ever be moved onto any Lot within said Properties without written permission of the Committee; however, no Residential Dwelling shall be moved onto any Lot within said Properties.

Section 3.02 Carports. Carports are acceptable, however, in no case shall they substitute for the two car garage requirement. No carport shall be erected or permitted to remain on any Lot without the expressed prior written approval of the Committee. Approval will be denied unless the carport is an integral part of the residential structure and the carport is constructed with the same design, color and materials as the Residential Dwelling. Only motor vehicles, as identified in Section 3.20 of this Article, shall be parked or stored in a carport.

Section 3.03 Architectural Control. No improvement shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the improvement thereon have been approved by the Architectural Control Committee with respect to harmony with existing structures, design, color, location with respect to topography and finished grade elevation and compliance with minimum construction standards more fully provided for herein.

Section 3.04 Dwelling Size. The minimum square footage of the total living area of the main residential structure, exclusive of open porches, garages and/or carports, and servants quarters, shall be as follows:

(a) **Interior Lots** - The minimum living area of a one (1) or one and one-half (1 ½) story residential structure shall be 2200 square feet. The minimum living area of a two (2) or two and one-half (2 ½) story residential structure shall be 2400 square feet.

(b) **Waterfront Lots** - The minimum living area of a one (1) or one and one-half (1 ½) story residential structure shall be 2400 square feet. The minimum living area of a two (2) or two and one-half (2 ½) story residential structure shall be 2600 square feet.

Section 3.05 Type of Construction, Materials and Landscaping.

(a) **Residences, garages and carports** shall be of 80 percent masonry construction or its equivalent on its exterior wall area, unless approved in writing by the Committee, except that detached garages and carports of interior Lots may have wood siding of a type and design approved by the Committee (stucco is considered masonry). All chimneys shall be of masonry construction.

(b) **No external roofing material other than slate, tile, metal, built up roof, composition (where the type, weight, quality and color has been specifically approved by the Committee) shall be used on any building in any part of the Properties without the written approval of the Committee.** All roofing material must be applied in accordance with the manufacturer's specifications. Roof vents, vent stacks, galvanized roof valleys and other roof items must be painted to match the roof materials. Galvanized roof valleys must be primed before being painted to insure the prevention of peeling.

(c) **No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building in any part of the Properties.**

(d) **Each kitchen in each dwelling or living quarters situated on any Lot shall be equipped with a garbage disposal unit, which garbage disposal unit shall at all times be kept in a serviceable condition.**

(e) **Landscape layout and plans shall first be approved by the Committee before work commences.**

(f) **All roof ventilation (other than ridge ventilators) shall be located to the rear of the roof ridge line and/or gable of any structure and shall not extend above the**

highest point of such structure, so as not to be visible from any street. The Committee shall have the right to approve the exceptions to the foregoing in cases where energy conservation and heating/cooling efficiency require ventilators that, because of the particular roof design, cannot be hidden from view.

Section 3.06 Building Location. No main residence, garage or carport nor any part thereof shall be located on any Lot nearer to the front or rear Lot line than the minimum building lines as shown on the Plat. No main residence, garage or carport or any other out building or any part thereof shall be located nearer than five (5) feet to any interior side Lot line. An arbor or other out building or structure which has been approved by the Committee may be constructed beyond said rear building line. A satellite dish is not considered a structure (see Section 3.22 of this Article for satellite dish location). Said out building or structure shall contain no more than four hundred (400) square feet and be no less than sixty-five percent (65%) open in its total wall surfaces unless otherwise approved by the Committee. All materials used in constructing any out building or other such structure shall be in harmony with the main residence. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of a building on any Lot to encroach upon another Lot, except that any Owner of one or more adjoining Lots may, with the written permission of the Committee, merge such Lots into one building site with the privilege of placing or constructing improvements on such resulting site, in which case side setback lines shall be measured from the resulting side property lines rather than the Lot lines as indicated on the recorded plat and such composite building site shall thereupon be regarded as a "Lot" for the purposes of this Article III, Section 3.06 only. For the purpose of these restrictions, the front of each Lot shall coincide with and be the property line having the smallest or shortest dimension abutting a street. Unless otherwise approved in writing by the Committee, each main residential dwelling will face the front of the Lot.

Upon written request, the Committee may approve deviations from the single family detached building location requirements provided such deviations do not alter the scope and intent of the restrictions.

Section 3.07 Slab Requirements. All building foundations shall consist of a concrete slab, unless the Committee approves a different type of foundation when circumstances, such as topography of the Lot, make it impractical to use a concrete slab for all or any portion of the foundation of the building improvements constructed on the Lot. The finished slab elevation for all structures shall be a minimum of 207.00 as established by Commissioner's Court of Montgomery County, Texas, the Montgomery County Engineers Office, and other applicable governmental authorities. All residential foundations/slabs for all Lots in the subdivision must be a minimum of eight inches above finished grade of the Lot at the foundation perimeter. The Committee does not determine whether the structural integrity of the slab is adequate. A structural engineer should be consulted on these matters. Sufficient soil investigation should be obtained for proper slab design.

The Committee may make deviations in the above foundation requirements provided such deviations do not alter the scope and intent of the restrictions.

Section 3.08 Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No exterior speaker, horn, whistle, bell or other sound device, except security and fire devices used exclusively for security and fire purposes, shall be located, used or placed on a Lot. Activities especially prohibited, including but not limited to the following, are:

(a) The performance of work on automobiles or other vehicles upon the Lot or in driveways or streets abutting Lots except as permitted in Section 3.21 of this Article.

(b) The use or discharge of firearms, firecrackers or other fireworks within the Properties.

(c) Storage of flammable liquids in excess of five gallons.

(d) Activities which may be offensive by reason of odor, fumes, dust, smoke, vision, vibration or pollution which are hazardous by reason of excessive danger, fire or explosion.

The Board of Directors shall have the final decision as to determining what constitutes a nuisance or annoyance.

Section 3.09 Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Properties as in its sole discretion which may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include but not necessarily be limited to sales and construction offices, storage areas, and signs. Portable toilet facilities shall be placed at the construction site of all Residential Dwellings. Upon approval of the Committee, a Builder or a contractor building a Residential Dwelling on a Lot for the Owner of such Lot may place a temporary construction office on the Lot. No garage, servant's quarters or other permitted accessory structure shall be erected, placed or maintained on any Lot until construction of the main residential dwelling has commenced. Any structure on which construction has commenced must be completed within a reasonable length of time.

Section 3.10 Signs and Billboards. No signs, billboards, posters, or advertising devices of any character shall be erected, permitted or maintained on any Lot or plot without the express prior written consent of the Association. All signs, billboards, posters and other advertising devices shall conform to the Committee's predetermined sign policy. The Association, Declarant or their agents shall have the right to remove any sign not complying with the above referenced policy and in so doing, shall not be liable and are expressly relieved from any liability for trespass or other tort in connection therewith or arising from such removal. The right is reserved by Declarant and its designated agent to construct and maintain such signs, billboards or advertising devices as is customary in connection with the general sale of property.

Section 3.11 Oil and Mining Operations. No oil drilling or development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 3.12 Storage and Disposal of Garbage and Refuse. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time

construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Section 3.13 Electric Distribution System. The type of electric service supplied to Owners will be alternating current at approximately 60 cycles per second, single phase, three wire, 120/240 volts and metered at 240 volts. It is understood and agreed that only electrical service of the characteristics described above, will be furnished by Mid-South Electric Cooperative in Blue Heron Bay Subdivision, and that such service will be from the electric distribution system to be installed by Mid-South, and Owners agree that only electric service at 120/240 volts, single phase, three wire, will be available for Lots. The locked rotor current of any motor connected to this service will be limited in accordance with the standard service practices of Mid-South. The utility easement areas dedicated and shown on the recorded map of Blue Heron Bay Subdivision, may be cleared and kept clear by any utility of all trees, bushes and other growth, including overhanging branches from trees or protrusions from structures located upon adjacent property, without payment to Owners by such utility for such clearance, cutting or trimming. The provisions of this paragraph shall constitute a covenant running with the land as to each Lot and Owner in the Properties.

Declarant does hereby require that individual underground electrical service drops be installed to each residence. The Owners of each residence will therefore comply with Mid-South's policy regarding such underground service installations, and the Owners do hereby agree to pay any charges which might be incurred for the installation of the underground service as set forth in the policy. Mid-South's policy is subject to change from time to time without notice. The Owners shall ascertain the location of said service drops and keep the area over the route of said drops free of excavations and clear of structures, trees and other obstructions; and Mid-South may install, maintain, repair, replace and remove said underground service drops, and open the ground for any such purpose or purposes; and no payment will be due or made by any utility for such use or activity.

Declarant hereby reserves the right to grant upon, across and over each Lot and easement and license along the perimeter boundaries of each Lot to the width of five feet measured from each boundary of each Lot, protruding from each boundary into the interior portion of each Lot, for the purpose of erection, construction, maintenance, repair and the continuous placement of an electrical lighting system throughout the Property. This reserved right is expressly reserved on behalf of and for the benefit of Declarant and any public utility company, including but not limited to Mid-South Electric Cooperative. This reserved right includes expressed right of Declarant and each public utility company to clear, grade and remove such obstructions including, but not limited to, trees, brush and other landscaping that the Declarant or the public utility company deems necessary in order to effectuate the construction, erection, maintenance and continuous placement of the electrical lighting system hereby contemplated. Declarant further reserves hereby, unto themselves and to any such public utility company, the expressed right to enter upon any Lot for the purpose of construction, installation, maintenance, repair and continuous placement of the electrical lighting contemplated hereunder and to remove any obstruction as might exist within this designated area, and such shall not be deemed to be trespass in any respect to the rights of the Owner of the Lot. Each Owner, by acceptance of a Deed to a Lot in these Properties, does acknowledge the existence of this reserved right and the rights hereunder created, such right being for the expressed benefit of each other Lot in the Properties. Neither Declarant nor any public utility company acting under the easement license or rights referred to herein shall be liable for any damages done by themselves or their assigns, agents, employees or servants to any fences, shrubbery, trees, flowers or any other property of the Lot Owner situated on the property by this easement and license.

Section 3.14 Views to and from Lake Conroe. Views to and from Lake Conroe are encouraged so that each view can become a positive addition to the environment of the Properties. Except for approved trees, no view obstruction plant material greater than two (2) feet in height shall be permitted on any Waterfront Lot beyond the rear building line. It is not the intent of these restrictions to remove any existing trees from the Property. The removal of existing trees from Lots must be approved by the Committee.

Section 3.15 Walls, Fences and Hedges. All walls, fences and hedges must be approved by the Committee. Except as otherwise provided herein, no walls or fences shall be erected or maintained nearer to the front of any Lot than the front of the Residential Dwelling constructed on the lot as shown on the recorded Plat. Except as otherwise provided herein, all walls and fences on any Lot must be of ornamental iron, wood or masonry construction unless otherwise approved by the Committee. The Declarant may construct fencing eight (8) feet tall at entrances to the Properties. Unless otherwise approved by the Committee, all ornamental iron fences shall be black in color and of a design that conforms to the Committee's pre-determined plan for such improvements. No chain link fences shall be erected placed or permitted to remain on any residential Lot. All wooden fences shall be constructed on No. 1 Western Cedar. Where approved herein, all wooden fences exposed to view from the street adjacent to the Lot shall be built so the finished side faces said street. No fence shall be installed which will impede the natural flow of water across the Lot. Unless otherwise approved by the Committee, pilasters which are in harmony with the main residential structure shall be used in conjunction with ornamental iron fences. A small patio which is an integral part of the dwelling may be enclosed with a fence or wall. Ownership of any wall, fence or hedge erected as a protective screening on a Lot shall pass with title to the Lot, and it shall be the Owner's responsibility to maintain said protective screening thereafter. In the event of default on the part of the Owner or occupant of any Lot to maintain said protective screening and such failure continuing after ten days written notice thereof, the Association, at its option, without liability to the Owner or occupant in trespass or otherwise, may, in its discretion, enter upon said Lot and cause said protective screening to be repaired or maintained or do any other thing necessary to secure compliance with these restrictions, so as to place said protective screening in a satisfactory condition and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the lot to pay such statement immediately upon receipt thereof, and all such payments by The Association, shall, likewise, be secured by a Vendor's Lien for the benefit of the Association in the same manner as the maintenance charges payable in accordance with Article VI herein. In addition to the provisions above, the following restrictions shall apply to the following lots:

Waterfront Lots - Unless otherwise approved by the Committee, no wall or fence shall be erected or maintained nearer to the rear of any Waterfront Lot than the rear of the Residential Dwelling constructed on the Lot. Except as provided otherwise herein or as may be approved by the Committee, all fences constructed on Waterfront Lots shall be five (5) feet tall and will be made of ornamental iron of a design that conforms to the Committee's pre-determined plan for such improvements. Unless otherwise approved by the Committee, all hedges planted and/or maintained adjacent to fences shall not exceed five (5) feet in height.

Interior Lots - Unless otherwise approved by the Committee, all walls and fences on any Interior Lot must be six (6) feet tall except that ornamental iron fences must be five (5) feet tall.

Section 3.16 Mailboxes. The Declarant or the Committee, as the case may be, shall have the right to designate the exclusive design, motif and materials for mail

boxes within the Properties and may at its option purchase such items in bulk and resell them to each Owner at cost.

Section 3.17 Utilities. Improvements situated on a Lot shall be connected to the water and sewer lines as soon as practical after same are available at the property line. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. The installation and use of any propane, butane, LP gas or other gas tank, bottle or cylinder of any type (excluding those normally associated with outdoor barbecue grills) shall require the prior written approval of the Committee and shall be screened from public view. All telephone, electric cable or other service lines shall be installed underground.

Section 3.18 Views, Obstructions and Privacy. In order to promote the aesthetic quality of "views" within Blue Heron Bay, and particularly the views of Lake Conroe, the Committee shall have the right to review and approve:

- (a) The location of all windows and the type of proposed window treatments and exposed window coverings.
- (b) The probable view from second story windows and balconies and decks (particularly where there is a potential invasion of privacy to an adjoining neighbor).
- (c) Sunlight obstructions.
- (d) Roof top solar collectors.
- (e) Flagpoles, flags, pennants, ribbons, streamers, wind sock and weather vanes.
- (f) Exterior storage sheds.
- (g) Fire and burglar alarms which emit lights or sounds.
- (h) Children's playground and recreational equipment.
- (i) Exterior lights.
- (j) Ornamental statuary, sculpture and/or yard art visible from a street or common area excluding those which may be part of an otherwise approved landscape plan.
- (k) The location of the Residential Dwelling on the Lot.

Prohibited Items. The following items are prohibited from appearing within the properties:

- (a) Clotheslines, reels, hanging circles and other exterior clothes drying devices.
- (b) Above ground swimming pools.
- (c) Window unit air conditioners.
- (d) Signs (except for certain "For Sale" and "For Lease" signs).
- (e) Storage of more than five gallons of fuel outside of regular vehicle gas tanks.

(f) Unregistered or inoperable motor vehicles.

Section 3.19 Lot/Yard Maintenance. The front and rear yard of all Lots, shall be landscaped. Such landscaping shall be in accordance with the Committee's Standards. The Committee's decision shall be final. Unless otherwise provided for herein, such landscaping is to be completed within three months of the date of occupancy of the dwelling. The Owners or Residents of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash or rubbish of any kind thereon and shall not burn anything. The Owners or Residents of any Lots at the intersection of streets or adjacent to the Lake, or other facilities where the rear yard or portion of the Lot is visible to full public view shall construct and maintain suitable enclosure to screen the following from public view: yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. In the event of default on the part of the Owner or Resident of any Lot in observing the above requirements or any of them, such default continuing after ten (10) days written notice thereof, the Association or their assigns may, at their option, without liability to the Owner or Resident in trespass or otherwise, enter upon said Lot and cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions so as to place said Lot in a neat, attractive, healthful and sanitary condition and may charge the owner or occupant of such Lot for the cost of such work. The Owner or Resident, as the case may be, agrees by the purchase or occupancy of the property to pay such statement immediately upon receipt thereof, and all such payments by The Association shall, likewise, be secured by a Vendor's Lien for the benefit of The Association in the same manner as the Maintenance Charges payable in accordance with Article VI herein.

The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with the landscaping of or construction on such Lot. Unless otherwise approved by the Committee, no trees shall be cut or removed except to provide room for construction of improvements, to present a hazard to the structural integrity of the slab or to remove dead or unsightly trees.

During the construction of a residence, the Owner is required to remove and haul all trees, stumps, limbs, branches, etc. from the Properties except that the Declarant during construction of the water, sewer and drainage facilities as well as paving, may burn and dispose of in other methods, trees, stumps, underbrush and other trash cleared during the construction process and the Declarant may act in accordance with Article II, Section 4 of this Declaration.

No Owner or contractor may enter upon the Lot adjacent to the one on which he is building for the purposes of ingress or egress to his Lot during or after construction unless such adjacent Lot is also owned by such Owner or such Owner has written approval from the adjacent Lot Owner. Such approval must be furnished to the Committee. All such adjacent Lots shall be kept free of any trees, underbrush, trash, rubbish and/or any other building debris during or after construction of improvements.

Section 3.20 Motor Vehicles. No unlicensed motor vehicles shall be allowed within the subdivision. No motor bikes, motor cycles, motor scooters, "go-carts," or other similar vehicles shall be permitted to be operated on the Properties, if, in the sole judgment of the Association, such operation, for reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or jeopardize the safety of the Owners, his tenants, and their families.

Section 3.21 Storage and Repair of Automobiles, Boats, Trailers and other Vehicles. No motor vehicle shall be parked or stored on any part of any Lot, easement, right-of-way, or any other area in the Subdivision unless such vehicle is concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans or pickup trucks that: are in operating condition; have current license plates and inspection sticker; and are in daily use as motor vehicles on the streets and highways of the State of Texas; and which do not exceed seven (7) feet in height or seven (7) feet, seven (7) inches in width or twenty-one (21) feet in length, may be parked in the driveway on such lot. No non-motorized vehicle, trailer, boat, marine craft, hover craft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way or any other area unless such object is concealed from public view inside the garage or other approved enclosure. The term "approved enclosure" shall mean an enclosure that has been previously approved by the Committee. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway, or any portion of the Properties. If a complaint is received about a violation of any part of this section, the Association will be the final authority on the matter. This restriction shall not apply to any vehicle, machinery, or maintenance temporarily parked and in use for the construction, repair or maintenance of the subdivision facilities or of a house or of any other structure. No Owner of any Lot or visitor or guest of any Owner, occupant or resident shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature.

Section 3.22 Antennas and Satellite Dishes. No electronic antenna or device for receiving or transmitting any signal of any type other than an antenna for receiving normal marine signals from a water craft located on Lake Conroe shall be erected, constructed, placed or permitted to remain on any Lot, house, garage or other buildings unless otherwise approved by the Committee. All marine radio antennas must be attached to the main residential structure. Only one antenna per Lot shall be permitted. In all cases, no antenna shall be erected as a free standing or guide structure. No antenna of any style shall be permitted on the Lot which extends more than ten (10) feet above the roof of the main residential structure on said Lot. The Committee may allow the installation of satellite dishes if in the sole opinion of the Committee the location of said dish does not unnecessarily effect the views or aesthetics within Blue Heron Bay. The Committee's decision shall be final. Unless otherwise approved by the Committee, no satellite dish may be maintained on any portion of any Lot outside the building lines of said Lot or forward of the front of the improvements thereon. A satellite dish may not exceed two (2') feet in diameter and must be mounted on the roof of the dwelling below the roof line and concealed from view if possible. However, in no event may the top of the satellite dish be higher than the roofline of the dwelling. All dishes shall be of one solid color of black or earth tones of brown, grey or tan. No multicolored dishes shall be permitted. No advertising or the printing of names of any type shall be permitted. No more than one satellite dish shall be permitted on each Lot. No transmitting device of any type which could cause electrical or electronic interference in the neighborhood shall be permitted. Architectural approval is required prior to the installation of any satellite dish. The Association reserves the right to seek the removal of any dish that was installed without first obtaining approval or any dish that violates these restrictions.

Section 3.23 Solar Panels. All solar panels installed shall be framed in such a manner so the structural members are not visible. The framing material shall be one that is in harmony with the rest of the structure. Architectural approval is required prior to the installation of any solar panels. The Association reserves the right to seek the removal of any solar panel that was installed without first obtaining approval or any solar panel that violates these restrictions.

Section 3.24 Septic Tanks. No septic tank may be installed on any Lot which is served by a central sanitary sewer system. If a central sanitary sewer system is not available to a Lot, a septic tank may be installed as a temporary measure, but must tie into the central system as soon as it becomes available to the Lot. No septic tank may be installed unless approved by the Committee, Montgomery County Health Unit and all governmental agencies or authorities having jurisdiction. No septic tank may drain into road ditches, either directly or indirectly.

Section 3.25 Pets. No horses, cows, hogs, poultry, or livestock of any kind (other than house pets of reasonable kind and number) may be kept on any Lot. Should such pets become a nuisance in the opinion of the Association, they must be removed from the premises and the Properties. No pets are to run at large in the Subdivision.

Section 3.26 Drainage. Each Owner of a Lot agrees that he will not in any way interfere with the established drainage pattern over his Lot from adjoining Lots or other Lots in the Properties. Any changes necessary in the established drainage pattern must be included on the Owners plans and specifications when submitted to the Committee. Such drainage plans shall be subject to the Committee's approval. Each Owner agrees that he will take all necessary steps to provide for additional drainage of his Lot in the event it becomes necessary. Established drainage shall be defined as drainage that exists at the time the Declarant completes all grading and landscaping within the Properties. If an Owner wishes to change the established drainage and is not at that time constructing a home, a drainage plan must be provided to the Committee for approval. No pockets or low areas may be left on the Lot where water will stand following a rain or during normal yard watering. With the approval of the Committee, an Owner may establish an alternate drainage plan for low areas by installing underground pipe and area inlets or other such methods as approved by the Committee.

Section 3.27 Concrete Curb/Driveway Maintenance. The Owner or occupant shall at all times keep his entrance lip, driveway curbs, curb ties, and curbs along the street adjacent to his property in a good state of repair and attractive in appearance. In the event of any default by the Owner or other occupant of a Lot in observing the above requirements which default is continuing after thirty days' written notice thereof to the Owner or occupant as applicable, the Association or their designated agents may at their option, without liability to the Owner or occupant in trespass or otherwise enter upon said Lot and make such repairs as deemed necessary by the Declarant or the Association to insure compliance with this declaration, so as to place such driveway entrance items and street curb in a good state of repair and attractive appearance and may charge the Owner or occupant of such Lot for the cost of such work. Such charge, together with interest thereon at the highest rate permitted by applicable laws from the date due until paid and all costs of collection, including reasonable attorney's fees, shall be secured by a Vendors Lien for the benefit of the Declarant or The Association, whichever the case may be, which is hereby retained against each Lot in Blue Heron Bay, which lien shall only be extinguished by payment of such sum. Said lien shall be deemed subordinate to the lien or liens or any bank, insurance company or other institutional lender, which hereinafter lends money for the purchase of any property for Blue Heron Bay, and or for the construction (including improvements) and/or permanent financing of improvements on such property, provided, however, that said lien shall not be extinguished by any foreclosure sale or other extinguishment of a senior lien but shall remain in full force and effect until paid or released by the Association through appropriate proceedings at law.

Concrete curbs that are chipped, cracked or broken during the construction of the residence are to be repaired or replaced by the Builder/Owner or Owner of the dwelling on each Lot prior to occupancy of the dwelling on said Lot. Chipped curbs may be repaired with an "epoxy grout" mixture. Where several chipped curbs appear

in the same area, the entire section of curb (i.e. driveway to driveway) must be overlaid with the "epoxy grout" mixture. Cracked or broken curbs shall be saw cut on both sides of the crack or break, the cracked or broken area removed, reformed and poured "using five sack concrete mix" to match existing curb.

Section 3.28 Driveways. Driveways may be built of brick, stone, concrete, or other materials approved by the Committee. All concrete driveways shall be constructed with Portland Cement concrete, four and one-half (4 ½) sack cement per cubic yard and be reinforced with a minimum of #6, 6" x 6" welded wire mesh. Driveways width shall be a minimum of ten (10) feet and a maximum of thirty-five (35) feet from the street adjacent to the Lot to the Property line. Beyond the Property line, the minimum width of the driveway shall be nine (9) feet. If more than one driveway is constructed on a common Property, such driveways shall be separated by a minimum distance of at least twenty (20) feet. Driveways shall be constructed so as to prevent normal street flooding from entering upon the adjoining Property accessed by the driveway. The Committee shall have the right to approve the location of the driveway on the Lot.

Driveways connecting into subdivision streets shall be saw cut and not broken when constructing the concrete driveway. An expansion joint shall be installed at each saw cut and at the property line.

Section 3.29 Walkways/Sidewalks. No walkways or sidewalks shall be constructed across the front of any Lot. Walkways may be constructed from the street adjacent to the front of the Lot to the front entrance of the residence constructed on the Lot.

Section 3.30 Swimming Pools. No swimming pool may be constructed on any Lot without the prior written consent of the Committee. Two sets of plans and specifications for the proposed pool shall be submitted to the Committee including a plot plan showing the location and dimensions of the pool and related improvements together with the plumbing and excavation disposal plan. No pool shall be constructed on Waterfront Lots nearer than twenty (20) feet of the bulkhead constructed by the Declarant except as may be approved by the Committee. Swimming pool drains shall be piped into the Lake, storm sewer or the street in front of the Lot. In no case shall the street curb be broken or cut to facilitate a pool drain without the prior written approval of the Committee. Excavation required for swimming pools shall be hauled from the site to a place outside of Blue Heron Bay.

Section 3.31 Docks and Boat Slips. No dock, boat slip or other structure shall be constructed which projects beyond the bulkhead installed by the Declarant unless approved by the Committee. Architectural approval shall be granted or withheld based upon (i) architectural design and character of improvements (ii) engineering design and specifications of plan structures and (iii) whether or not the proposed improvements conform to the Committee's predetermined plan for such improvements. No pier may be built adjacent to any Waterfront Lot. All boat slips must be constructed within the Lot. To protect the view of adjoining Lob, only low profile boat covers may be placed over the aforementioned boat slips All boat covers will be dark brown or green in color as may be approved by the Committee and shall be no higher than five (5) feet above the existing bulkhead constructed by the Declarant and shall conform to the Committee's predetermined plan for such boat covers. Unless otherwise approved by the Committee, no more than two boat slips capable of docking one boat each or a double boat slip capable of docking two boats will be permitted on any single Waterfront Lot. No house boat may be permanently or semi-permanently moored adjacent to the rear of any Waterfront Lot.

Ownership of any dock, boat slip, boat cover or bulkheading installed on a Lot (including but not limited to the bulkheading installed by the Declarant) shall pass with title to the Lot, and it shall be the owners responsibility to maintain such dock, boat slip, boat cover and bulkheading thereafter. In the event of default on the part of the Owner or occupant of any Lot in maintaining said items and such failure continuing after ten (10) days written notice thereof, the Association, at its option, without liability to the Owner or occupant in trespass or otherwise, may, in its discretion, enter upon said Lot and cause said items to be repaired or maintained or do any other thing necessary to secure compliance with these Restrictions so as to place said item in a satisfactory condition and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the property to pay such statement immediately upon receipt thereof and all such payments by the Association shall, likewise, be Secured by a Vendor's Lien for the benefit of the Association in the same manner as the maintenance charges payable in accordance with Article VI, herein.

No "homemade" type dock, boat slip, boat cover or bulkheading will be allowed. Should permission for the construction of the above items be given, the Owner agrees to maintain such items and keep them in a sightly manner. Request and permission shall be given in writing and all requests must be accompanied with complete plans and specifications.

Section 3.32 Hazardous Substances. No Lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. Notwithstanding the foregoing, no Hazardous Substance shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the Lots or the Subdivision, and all activities on the Lots shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Approval of Improvement Plan.

(a) No improvement shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the improvement have been approved in writing as to harmony of exterior design and color with existing structures, as to location with respect to topography and finished ground elevation, and as to compliance with minimum construction standards by Blue Heron Bay Architectural Control Committee. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Committee or its designated representative prior

to commencement of construction. The Committee may require the submission of such plans, specifications and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its entire discretion. The Committee may charge a reasonable fee to cover the administrative expense of its review and comment, such fee to be payable to Blue Heron Bay Architectural Control Committee. A form survey prepared by a registered surveyor in the State of Texas shall be submitted to the Committee prior to pouring the foundation of any building or other improvement that is to be erected, placed or altered on any Lot.

(b) Each application made to the Committee shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Declarant or the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The Committee may set a reasonable application fee.

Section 4.02 Committee Membership. The Declarant, in its sole discretion, shall appoint the members of the Committee which will consist of three (3) members, none of whom shall be required to be residents of Blue Heron Bay. The Committee shall and will act independently of the Blue Heron Bay Property Owners Association until such time as the Declarant assigns its rights of appointment to Blue Heron Bay Property Owners Association Board of Directors (the "Control Transfer Date"). This section may not be amended without the written approval of the Declarant.

Section 4.03 Replacement. In the event of death or resignation of any member or members of said Committee, the Declarant shall appoint its successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority.

Section 4.04 Minimum Construction Standards. The Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and may be amended from time to time.

Section 4.05 Disclaimer. No approval of plans and specifications and no publication or designation or architectural standards shall ever be construed as representing or implying that such plans, specifications or standards will result in a properly designed structure or satisfy any legal requirements.

Section 4.06 Non-Liability for Committee Action. No member of the Committee, the Association Board of Directors, their successors or assigns, or the Declarant shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of any improvement or modification to any improvement on a Lot be deemed approval of the improvement or modification of the improvement from the standpoint of safety, whether structural or otherwise, or conformance of building codes or other governmental laws or regulations.

Section 4.07 Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration

shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Declarant or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.08 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

Section 4.09 Variance. The Declarant or the Committee, upon the Transfer Control Date, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Declarant or the Committee, when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Declarant and the Committee reserve the right to grant variances as to building set-back lines, minimum square footage of the residence, fences, and other items. Such variances must be evidenced in writing and shall become effective when signed by the Declarant or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

ARTICLE V

BLUE HERON BAY PROPERTY OWNERS' ASSOCIATION

Section 5.01 Membership. Every person or entity who is an Owner of any of the Lots shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as security of performance or an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership. The membership shall be pertinent to and may not be separated from ownership of the land which is subject to assessment by the Association. Ownership of such land shall be the sole qualification for membership.

Section 5.02 Voting Rights. The Association shall have two classes of membership: Class A. Class A members shall be all those owners as defined in Section 1, with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among

themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Class B. Class B members shall be the Declarant as defined above. The Class B member shall be entitled to three (3) votes for each Lot in which they hold the interest required for membership by Section 5.01; provided that Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, which ever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) January 1, 2008.

The Class A and Class B members shall have no rights as such to vote as a class except as required by the Texas Non-Profit Corporation Act and both classes shall vote together upon all matters as one group.

Section 5.03 Non-Profit Corporation. The Association, a non-profit corporation, will be organized; and all duties, obligations, benefits, liens and rights herein in favor of the Association shall vest in said corporation.

Section 5.04 By-Laws. The Association may make whatever rules or by-laws it may choose to govern the organization, provided that same are not in conflict with the terms and provisions hereof.

Section 5.05 Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours.

ARTICLE VI

MAINTENANCE CHARGES

Section 6.01 The Association Maintenance Fund. Each Lot in Blue Heron Bay is hereby subjected to an annual maintenance charge and assessment, for the purpose of creating a fund to be designated and known as "Blue Heron Bay Maintenance Fund" which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within Blue Heron Bay, the Association. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association, in advance, an annual maintenance charge on January 10th of each year, (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made. Every person or entity who is an owner of one or more Lots other than the Declarant shall pay the full assessed rate as provided in this Section 6.01 on each Lot. The rate at which each Lot will be assessed will be determined annually, and may be adjusted from year to year by the Association, as provided below, as the needs of the Properties may require; provided that such assessment will be uniform as to each Lot within Blue Heron Bay. The Association shall use the proceeds of said maintenance fund solely for the use and benefit of all residents of Blue Heron Bay or to the Property therein.

From January 1, 1999 until January 1, 2000, the maximum annual assessment per Lot shall be \$300.00. Provided, the 1999 assessment shall be prorated as of July 1 and one-half of the total annual assessment shall be due and payable on such date. From and after January 1, 2000, the maximum annual assessment per Lot may be

increased by the Association on an annual basis, effective January 1 of each year, without a vote of the membership. Each year thereafter the annual assessment per Lot may not be increased by more than ten percent (10%). The Association may elect not to collect a maximum amount in any one year but that shall not affect the rights of the Association to increase and collect an assessment to the maximum cumulative amount permitted hereunder in any subsequent year.

The uses and benefits to be provided by said Blue Heron Bay Property Owners Association may include, by way of clarity and not limitation and at its sole option, any and all of the following: maintenance and repair of streets, entry gates, security devices, improvements, rights-of-way, easements, greenbelt, esplanades and other public or common areas, payment of all legal and other expenses incurred in connection with the enforcement of all charges and assessments, conveyances, restrictions, and conditions affecting the properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments, landscaping in common areas, utilities, insurance, taxes, employing policemen and a security force and doing any other things or things necessary or desirable in the opinion of the Association to keep the Properties neat and in good order, or which is considered a general benefit of the Owners or occupants of the properties, it being understood that the judgment of the Association in the expenditure of said fund shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Charge is for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Subdivision and other portions of the Annexable Area which may hereafter become subject to the jurisdiction of the Association.

Section 6.02 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in

default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgement for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

Section 6.03 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorneys' fees, which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

Section 6.04 Liens Subordinate to Mortgages. The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third party lender, including Declarant, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such transferee of title to a Lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt

requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI.

Section 6.05 Exempt Property. The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Declarant or the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge.

Section 6.06 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Declarant until the Control Transfer Date, at which time the Declarant shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Declarant and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually, information on the Maintenance Fund.

Section 6.07 Enforcement of Maintenance Fee Collection. Each such assessment, or installment thereof, not paid when due shall incur a late fee of Ten Dollars (\$10.00) or ten percent (10%) of the amount due, whichever is greater. Each such assessment and late fee if not paid when due, and interest at the highest legal rate as permitted by Texas law together with costs of collection, including reasonable attorney's fees, shall be the personal obligation of the Owner against whom they were assessed and shall be secured by a lien as provided herein. To secure the payment of the maintenance fund established hereby and to be levied on individual Lots, there shall be reserved in each Deed (whether specifically stated therein or not) by which the Declarant shall convey such Lots, a Vendor's Lien for the benefit of the Association. Said lien is to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each such lien shall be secondary, subordinate, and inferior to all liens, present and future, given granted and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the construction or improvements on any such Lot to the extent of any such maintenance fund charge accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien sixty (60) days' written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U.S. certified mail, and shall contain a statement of the delinquent maintenance charges upon which the proposed action is based, provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of these Restrictions.

Section 6.08 Collection after Default by Purchaser. It is specifically stated and agreed that any Lot sold to persons or entities by the Declarant by contract for sale of land, or deed with lien and note, or other instrument and the purchaser defaults in the contract canceled by Declarant, its successors or assigns, the Association will release their right to collect the past due maintenance charges, assessments and penalties on such Lots from the Declarant. Nothing herein contained shall relieve the purchaser in default from whom the Lot was repossessed from his obligation to pay such delinquent charges, assessments and penalties to the Association.

ARTICLE VII

DECLARANT'S RIGHTS AND RESERVATIONS

Section 7.01 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Lake and other Common Areas from the date hereof, until the earlier to occur of (i) the Control Transfer date or (ii) Declarant's written notice to the Association of Declarant's termination of the rights described in Article VII hereof. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a Lot by Declarant to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Declarant. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 Declarant's Rights to Grant and Create Easements. Declarant shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Declarant, (ii) the Common Area, and (iii) existing utility easements. Declarant also reserves the right, without the consent of any other Owner or the Association, to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to and from State Highway 105 or other public roads for the benefit of owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Association and (ii) permit owners of property within the Annexable Area which is not made subject to the jurisdiction of the Association to use the recreational facilities of the Association and other Common Area, provided that said owners pay to the Association their proportionate share of the cost of operating and maintaining said recreational facilities and Common Areas.

Section 7.03 Annexation of Annexable Area. Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Declarant into the real property which becomes subject to the jurisdiction and benefit of the Association, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Association by the Declarant. The owners of Lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Areas that are or may become subject to the jurisdiction of the Association, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

Section 7.04 Disclaimer of Warranty. DECLARANT MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE BLUE HERON BAY SUBDIVISION OR ANY IMPROVEMENT TO OR IMPROVEMENTS ON SAID SUBDIVISION, THE CONDITION OF SAID SUBDIVISION, ANY SAFETY OR SECURITY MATTERS, THE SUFFICIENCY OF UTILITIES, SECURITY DEVICES, THE WORKMANSHIP, DESIGN OR MATERIALS USED IN ANY IMPROVEMENTS THEREIN, INCLUDING WITHOUT LIMITATION ANY COMMON AREA, AND INCLUDING WITHOUT LIMITATION ANY COMMON AREA, AND INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTY OF

MERCHANTABILITY, LIABILITY, FITNESS, OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR USE OR ANY WARRANTY OF QUALITY.

ARTICLE VIII

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 8.01 General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision and any portion of the Annexable Area which becomes subject to the jurisdiction of the Association. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 8.02 Duty to Accept the Property and Facilities Transferred by Declarant. The Association shall accept title to any real property, including any improvements thereon and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Association by Declarant shall be within the boundaries of the Property or Annexable Area. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by the Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burdens of ownership of property, including the management, maintenance, replacement and operation thereof.

Section 8.03 Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Private Streets, Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Private Streets and Common Areas shall include, but not be limited to the following: establishment, operation and maintenance of a security system, if any, for the Subdivision; maintenance, repair and replacement of the drainage easements; mowing of street right-of-ways and other portions of the Subdivision; and management, maintenance, repair and upkeep of the Private Streets and Common Areas.

Section 8.04 Other Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 8.05 Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas.

Section 8.06 Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 8.07 Duty to Provide Annual Review. The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 8.08 Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 8.09 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements.

Section 8.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

Section 8.11 Power to Enforce Restrictions and Rules and Regulations. The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Resident. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member or Resident from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Resident, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the

voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Resident of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Resident which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Resident for breach of this Declaration or such Rules and Regulations by such Member or a Resident; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give registered or certified notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Declarant, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 8.12 Power to Grant Easements. In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area. Additionally, the Association, from and after the Control Transfer Date, shall have the power to grant access, utility, drainage, water facility and other similar easements in, on, over and under Lots provided that such easements do not unreasonably interfere with the rights of the Owner of such Lots.

Section 8.13 Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised (i) prior to the Control Transfer Date by the Board of Directors and (ii) from and after the Control Transfer Date by the Association, with the approval of not less than two-thirds (2/3rds) of the Members agreeing in writing or by voting at any scheduled meeting of the Members and with the prior written approval of the Declarant. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01 Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including the Declarant) of the Lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

Section 9.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Declarant) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Declarant) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Declarant) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Declarant) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination.

Section 9.03 Amendments by the Declarant. The Declarant shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Declarant shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Declarant shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision.

Section 9.04 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 9.05 Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that (i) prior to the Control Transfer Date any such

merger or consolidation shall be approved (in writing or at a meeting duly called for such purpose) by two-thirds (2/3rds) of the Directors and (ii) from and after the Control Transfer Date any such merger or consolidation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Members of the Association and the Declarant.

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of the other association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association will be subject to the covenants and restrictions established by this declaration within the Subdivision, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration, except as changed by amendment of this Declaration or by the plan of merger or consolidation. In the event of any inconsistency between the terms and provisions of this Declaration and the terms and provisions of any of the merger or consolidation documents, the terms and provisions of this Declaration shall control.

Section 9.06 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 9.07 Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Declarant and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9.08 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 9.09 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein," "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

Section 9.10 Effect on Annexable Area. The provisions of this Declaration do not impose any restrictions whatsoever or otherwise encumber the Annexable Area, unless and until portions of the Annexable Area are made subject to the jurisdiction of the Association by a separate instrument executed solely by Declarant or its successors and assigns and any lienholders, which instrument is recorded in the Real Property Records of Montgomery County, Texas.

Section 9.11 Declarant's Rights and Prerogatives. Prior to the Control Transfer Date, the Declarant may file a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for the Declarant's (i) discontinuance of the exercise of any right or prerogative provided for in this Declaration to be exercised by the Declarant or (ii) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Declarant's specific rights and prerogatives provided in this Declaration to be exercised by Declarant. The assignee designated by Declarant to exercise one or more of Declarant's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the earlier to occur of the (i) Control Transfer Date or (ii) date that said assignee files a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Declarant discontinues its exercise of any right or prerogative hereunder and/or assigns its right to exercise one or more of its rights or prerogatives to an assignee, the Declarant shall not incur any liability to any Owner, the Association or any other party by reason of the Declarant's discontinuance or assignment of the exercise of said right(s) or prerogative(s). Upon the Declarant's Assignment of its rights as of the Transfer Control Date to the Association, the Association shall be entitled to exercise all the rights and prerogatives of the Declarant.


9.12 Utility Service Fees. Prior to beginning any construction on a Lot, each Lot owner, at his expense, shall be required to install electric service lines from the transformer or source of feed to the meter location on said Lot. Further, each Lot owner may expect to pay a charge for connection to such electric utility service, and the owner is obligated to contact Mid-South or the appropriate public utility company to determine such charge and make arrangements for the installation of said service lines and connection to the electrical distribution system. Owner shall be responsible for all charges for any and all utility service furnished to Owner's Lot, including but not limited to, sewer tap fees, water meters, standby fees, gas, telephone and cable connection fees and any and all other utility connection fees.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand as of this 27th day of April, 1999.

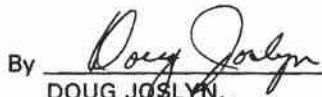
DECLARANT:

BAY DEVELOPMENT, L.L.C.

By: Herald Investments, Inc.
Manager

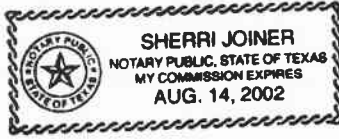
By 
ALFRED C. HERRMANN,
President

By: Blue Heron Bay Corp.
Manager

By 
DOUG JOSLYN,
President

STATE OF TEXAS §
§
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 28th day of April, 1999, by ALFRED C. HERRMANN, President of Herald Investments, Inc., Manager of Bay Development, L.L.C., on behalf of said corporation.



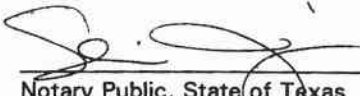


Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 27th day of April, 1999, by DOUG JOSLYN, President of Blue Heron Bay Corp., Manager of Bay Development, L.L.C., on behalf of said corporation.





Notary Public, State of Texas

PLEASE ATTACH AS LAST PAGE
OF RESTRICTIONS.

541-00-1810

JOINDER OF LIENHOLDER

The undersigned, FIRST BANK OF CONROE, N.A., is the owner and holder of an existing mortgage and lien upon and against a portion of the real property described in the foregoing Declaration as "Property," and as such mortgagee and lienholder, does hereby consent to and join in this Declaration.

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Lots and all appurtenances thereto, subject to the Restrictions hereby agreed to, with however, the express stipulation that the mortgage and liens owned and held by the undersigned are and shall remain superior to any and all liens or charges imposed or created by this Declaration or provided for in this Declaration. In no event shall FIRST BANK OF CONROE, N.A. be required to enforce any restrictions, covenants, easements and/or any other matters appearing in this Declaration, nor shall the failure to enforce such restrictions, covenants, easements and/or other matters, if any, give claim or cause of action against FIRST BANK OF CONROE, N.A..

Notwithstanding anything to the contrary contained herein, the undersigned FIRST BANK OF CONROE, N.A., does not release, subordinate or impair, by this consent and joinder, any and all rights it may have under its liens to succeed to any and all rights, powers and authority of the Developer hereunder in the event of a foreclosure of its mortgage or liens.

Signed by the undersigned officer of FIRST BANK OF CONROE, N.A. duly authorized, this 28 day of April, 1999.

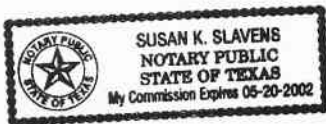
FIRST BANK OF CONROE, N.A.

By: J. E. Crow
Name: J. E. Crow, Jr.
Title: Exec. V. P.

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 28 day of April, 1999, by J. E. Crow Jr., Exec. V. P. of First Bank of Conroe, N.A., on behalf of said Bank.



Susan K. Slavens
Notary Public, State of Texas

G:\SHERR\RESTRICT\BLUEHER.JND

EXHIBIT "A"

**METES AND BOUNDS
BLUE HERON BAY - SECTION TWO**

Being a 28.843 acre tract of land, situated in the William Atkins Survey, A-3, Montgomery County, Texas and being out of and a part of a called 34.2519 acre tract (34.1906 acres found by re-survey), recorded under Deed of Trust instrument in Clerk's File No. 9437422, Real Property Records, Montgomery County, Texas. Said 28.843 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for the Southeast corner of the above mentioned 35.2519 acre tract;

THENCE N 44°32'39"W (called N 44°32'19"W by the above mentioned Deed of Trust instrument, along the south line of said 34.2519 acre tract, a distance of 389.07 feet to a 5/8" iron rod set for corner;

THENCE N 44°32'25"E, leaving the south line of said 34.2519 acre tract, a distance of 15.48 feet to a 5/8" iron rod set for corner on the proposed south R.O.W. line of a cul-de-sac on Blue Heron Drive;

THENCE along said cul-de-sac following a convex curve to the right, having a radius of 50.00 feet, a central angle of 74°39'48", an arc length of 65.16 feet, a chord length of 60.64 feet, a chord bearing of N 44°59'52"W to a 5/8" iron rod set for corner. Same being a point of reverse curvature;

THENCE following a curve to the left along said proposed south R.O.W. line, having a radius of 25.00 feet, a central angle of 36°52'41", an arc length of 16.09 feet, a chord length of 15.81 feet and a chord bearing of N 26°06'18"W to a 5/8" iron rod set for corner and the end of said curve;

THENCE N 44°32'39"W, continuing along said proposed south R.O.W. line, a distance of 506.95 feet to a 5/8" iron rod set for corner on the 201 contour fee line of Lake Conroe as established by the San Jacinto River Authority;

THENCE with the following meanders of the 201 contour Fee line of Lake Conroe to points for corners;

- 1.) N 36°13'10"E 52.17 FT.
- 2.) N 32°48'13"E 84.97 FT.
- 3.) N 24°17'31"E 102.91 FT.
- 4.) N 59°18'35"E 63.25 FT.
- 5.) N 11°49'09"E 54.12 FT.
- 6.) N 28°29'01"W 44.91 FT.
- 7.) N 85°29'29"W 55.00 FT.
- 8.) N 65°10'42"W 51.89 FT.
- 9.) N 04°33'11"E 64.33 FT.
- 10.) N 27°56'43"E 77.22 FT.
- 11.) N 25°19'12"E 108.37 FT.
- 12.) N 43°41'19"E 69.77 FT.
- 13.) N 77°32'22"E 71.88 FT.
- 14.) S 85°45'30"E 191.08 FT.
- 15.) N 82°58'24"E 100.38 FT.
- 16.) S 47°12'46"E 51.83 FT.
- 17.) N 48°30'40"E 91.21 FT.
- 18.) N 86°05'32"E 101.20 FT.
- 19.) N 89°03'25"E 91.40 FT.
- 20.) S 31°01'34"E 79.26 FT.

(EXHIBIT "A" CONT.) 541-00-1812

THENCE N 23°29'52"E, continuing along the 201 contour fee line, a distance of 41.94 feet to a 5/8" iron rod set for corner;

THENCE S 45°28'03"E, leaving the 201 contour line of Lake Conroe, along the north line of the herein described tract, a distance of 805.38 feet to a 5/8" iron rod set for corner;

THENCE S 44°31'57"W (S 44°41'41"W - Deed of Trust call), along the east line of called 34.2590 acre tract, a distance of 1170.46 feet to the POINT OF BEGINNING and containing 28.843 acres of land.

PART 2 OF 2 is the Final Plat of Blue Heron Bay, Section Two

All bearings called out herein are based on the south line of the herein described tract

(N 44°32'39"W) called as N 44° 32'19"W by the called 34.2519 acre tract recorded in Clerk's File No. 9437422, Real Property Records, Montgomery County, Texas.

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in
File Number Sequence on the date and at the time
stamped herein by me and was duly RECORDED in
the official Public Records of Real Property of
Montgomery County, Texas.

JUN 3 1999



Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

FILED FOR RECORD

99 JUN -3 PM 2:57

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS

DEPUTY

10

2004-128804

712-10-1156

**RESTATED BYLAWS OF BLUE HERON BAY PROPERTY
OWNER'S ASSOCIATION**

**THE PROPERTY AFFECTED BY THESE RESTATED BYLAWS OF
BLUE HERON BAY PROPERTY OWNER'S ASSOCIATION IS
ENCUMBERED BY THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR BLUE HERON BAY,
SECTION TWO, RECORDED UNDER CLERK'S FILE NO. 99044866
IN THE MONTGOMERY COUNTY REAL PROPERTY RECORDS.**

After Recording Return To:

Marc D. Markel
Roberts Markel Guerry, P.C.
2500 City West Blvd.
Suite 1350
Houston, Texas 77042

Copyright © 2004 by Roberts Markel Guerry, P.C., all rights reserved.

**RESTATED BYLAWS OF
BLUE HERON BAY PROPERTY OWNER'S ASSOCIATION**

These Bylaws are being restated to include a notarized signature block required for recording in the real property records and to comply with Texas Property Code §202.006.

ARTICLE I. SHARE OWNERSHIP
Qualifications of Members

1.01 The Association may issue authorized shares for certificate membership only to individuals who are duly licensed or otherwise legally authorized to render the specific professional services for which the Association was organized. Except as otherwise restricted in any applicable purchase or redemption agreement, authorized certificates of membership shall be freely transferable by any member to any other member, or to the Association, or to any other person who is duly licensed or qualified to render the specific professional services for which the Association was organized; the transferee shall on the transfer become a member of the Association entitled to participate in the management, affairs, and profits of the Association.

1.02 Certificates of membership owned by a person who dies or becomes a disqualified member shall be sold and transferred to the Association or its members on the terms agreed on by the Association and its members. The sale or transfer shall occur not later than two (2) months following the death of any member, or within sixty (60) days following the disqualification of any member to practice the profession of medicine.

1.03 Members may enter into voting trusts, proxies, or any other arrangement vesting authority to exercise the voting power of any or all of their certificates of membership in another person only if that other person is a member of the Association. Any voting trust, proxy, or other arrangement with any other person is void.

ARTICLE II. MEETINGS OF MEMBERS
Annual Meetings

2.01 The annual meeting of the Association's members shall be held at the principal office of the Association, or at another place as is determined from time to time by the Board of Directors. The annual meeting shall be held at 10:00 A. M., on the first Monday in February each year if not a legal holiday but if a legal holiday, then on the next day not a legal holiday, or at another time in each year as the Board of Directors may from time to time determine. The annual meeting shall be for the purpose of electing directors and considering reports. On due notice, matters that may properly be considered and acted on at a special meeting may also be considered and acted on at an annual meeting, in which case the annual meeting shall also be considered as, and shall be, a special meeting. In the event the annual meeting is not held or if directors are not elected at the annual meeting, a special meeting may be called and held for that purpose.

Special Meetings

2.02 Special members' meetings may be called by the Chairman of the Board, the President or a Vice-President, or by the Board of Directors pursuant to a meeting, or by a majority of the directors acting without a meeting, or by the person or persons who hold not less than twenty-five (25 %) percent of all shares in certificates of membership outstanding and entitled to be voted on any proposal to be submitted at the meeting. On request in writing by registered or certified mail or delivered in person to the Secretary by any person or persons entitled to call a shareholders' meeting, it shall be the duty of the Secretary to cause to be given to the members notice of a meeting. If the Secretary fails to set the meeting within twenty days after the delivery of the request, or fails to give notice of it as provided in Paragraph 2.03, the person or persons requesting the meeting may fix the time of the meeting and give, or cause to be given, notice in the manner provided in Paragraph 2.03. No business other than that specified in the notice shall be considered at any special meeting.

Notice of Meetings

2.03 A written notice of each annual or special members' meeting, stating the time, place, and, in the case of a special meeting, the purpose or purposes of the meeting, shall be given by or at the direction of the President, Vice-President, Secretary, or Assistant secretary to each member of record entitled to vote at the meeting. The record date for the determination of members who are entitled to vote at the meeting shall be the close of business on the date preceding the date on which notice is given. Notice shall be delivered not more than 60 nor less than 10 days before the date fixed for the meeting to the members' address on the books of the association. Notice shall be deemed to have been delivered when deposited in the mail with the member's address and prepaid postage on it. Notice of a meeting may be waived by any member or by all the members either in writing or by attendance at the meeting.

Any notice required to be given to a member need not be given to that member if either (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a 12-month period have been mailed to that member, addressed at the address as shown on the records of the Association, and have been returned undeliverable. Any action or meeting taken or held without notice to such a member shall have the same force and effect as if the notice had been duly given and, if the action taken by the Association is reflected in any articles or document filed with the Secretary of State, those articles or that document may state that notice was duly given to all persons to whom notice was required to be given. If such a member delivers to the Association a written notice setting forth his or her then current address, the requirement that notice be given to him or her shall be reinstated.

Quorum

2.04 To constitute a quorum at any members' meeting, with respect to any matter, the members or record, in person or by proxy, of a majority of the outstanding shares entitled to vote on that matter must be present. The members present in person or by proxy, whether or not a quorum, may adjourn the meeting from time to time.

Voting

2.05 In all cases except when otherwise provided by statute, the Articles, or these Bylaws, a majority of the votes cast shall control. Cumulative voting in the election of directors shall be permitted as provided by Texas Business Corporation Act Article 2.29 § D. However, cumulative voting is not allowed in an election of directors unless a member who intends to cumulate votes has given written notice of the intention to the Secretary on or before the day preceding the election at which the member intends to cumulate votes has given written notice of the intention to the secretary on or before the day preceding the election at which the member intends to cumulate votes. Any member entitled to vote cumulatively may do so if any member has given the required written notice.

Action Without a Meeting

2.06 Any action that may be authorized or taken at a members' meeting may be authorized or taken without a meeting if a written consent setting forth the action taken is signed by all of the members who would be entitled to vote with respect to the subject matter of that action. The writing shall be filed with or entered on the records of the Association.

ARTICLE III. DIRECTORS **Number and Qualifications**

3.01 The number of directors shall be determined by resolution of a majority of the members entitled to vote approved from time to time at members' meetings where a quorum is present and which are called for the purpose of electing directors. The number of directors shall not be less than three unless all the shares or certificates of membership of the Association are owned of record by one or two members, in which case the number of directors may be less than three but not less than the number of members. In case the members at any meeting for the election of directors fail to fix the number of directors to be elected, the number elected shall be deemed to be the number of directors so fixed. Directors need not be members, but they must be duly licensed or otherwise authorized to render the professional service performed by the Association.

Election and Term of Office

3.02 The directors shall be elected at the annual members' meeting, or if not so elected, at a special members' meeting called for that purpose. Each director shall hold office until the expiration of the term for which he or she was elected and shall continue in office until a successor is elected, or until resignation, removal from office, or death. The director's term of office shall be one year, from the annual meeting date to the next succeeding annual meeting date.

Vacancies

3.03 Any vacancy occurring in the initial Board of Directors before the issuance of shares may be filled by the affirmative vote or written consent of a majority of the incorporators or by the affirmative vote of a majority of the remaining directors, even though they constitute less than a quorum of the Board of Directors. A director elected to fill a vacancy must be elected

for the unexpired term of the director's predecessor in office. Any vacancy that occurs in the Board of Directors after the issuance of shares shall be filled either by a majority vote of the remaining members of the Board, even when less than a quorum, or by election at an annual or special members' meeting called for that purpose. Directors selected in this manner shall hold office until the next annual members' meeting. If the vote of the remaining members of the Board results in a tie, the vacancy may be filled by a vote of the members at a special meeting called for that purpose.

Meetings

3.04 Regular meetings of the Board of Directors shall be held on dates that the Board may designate. The Secretary shall give at least three days' notice of the time and place of each regular meeting to each member of the Board. Special meetings of the Board of Directors may be held on call of the President, or the Chairman of the Board, and shall be called by the President on request of not less than one third of the members of the Board of Directors. A special meeting may be held at any place, within or without the State of Texas, on twenty-four hours notice. The notice shall specify the time, place, and general purposes of the meeting and shall be served on each director personally or by telephone, mail, or telegram addressed to his or her last place of residence known to the Association. At any meeting at which all directors are present, notice shall be deemed waived. Notice may likewise be waived by absent directors by written instrument or telegram prior to or after the meeting.

Quorum

3.05 A majority of the number of directors fixed in the manner provided in these Bylaws shall constitute a quorum for the transaction of any business except the filling of vacancies. The act of the majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a different number is required by law, the Articles of Association, or by these Bylaws. If less than a quorum is present at any meeting of the directors, a majority of those present may adjourn the meeting, from time to time, without notice other than an announcement made at the meeting of the meeting's adjournment until a quorum shall attend.

Action Without a Meeting

3.06 Any action that may be authorized or taken at a meeting of the directors may be authorized or taken without a meeting if a written consent setting forth the action authorized or taken is signed by all of the directors. The written consent or consents shall be filed with or entered on the records of the Association.

Compensation of Directors

3.07 Directors shall not receive any stated salary for their services as members of the Board of Directors; but on resolution of the Board, a fixed sum for attendance may be allowed for regular or special meetings. Nothing contained in this provision shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation from the Association for those services.

ARTICLE IV. OFFICERS

The Association shall have a President and a secretary. The Association may also have one or more Vice-Presidents, a Treasurer, and any other officer and assistants deemed desirable by the Board of directors. All officers and assistant officers shall be elected by the Board of Directors at its annual meeting for a term of one year unless a shorter term is designated. Two or more offices may be held by the same person.

ARTICLE V. INDEMNIFICATION

Right to Indemnification

5.01 The Association shall indemnify any person who was, is, or is threatened to be made a named defendant of respondent in a proceeding, whether civil, criminal, administrative, arbitrative, or investigative, including all appeals, by reason of the fact that that person is or was a director, officer, employee, or agent of the Association. Indemnification shall be against all expenses, including, without limitation, attorneys' fees, court costs, expert witness fees, judgments, decrees, fines, penalties, and reasonable expenses actually incurred by the person in connection with the proceeding, except that if the person is found liable to the Association or is found liable on the basis that he or she improperly received personal benefit, indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding, and shall not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his or her duty to the Association.

Limitations on Indemnification

5.02 (a) No indemnification shall be made in respect of a proceeding in which he person is found liable on the basis that personal benefit was improperly received by him or her, or form a proceeding in which the person is found liable to the Association.

(b) Indemnification under this Bylaw shall be available only after a determination has been made that the person acted in good faith and:

(1) In the case of conduct in an official capacity, reasonable believed his or her conduct to be in the best interests of the Association, or

(2) In all other cases, reasonable believed his or her conduct to be at least not opposed to the best interests of the Association.

The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent, shall not of itself be determinative that the person failed to act in accordance with these requirements. A person shall be deemed to have been found liable in respect of any claim, issue, or matter only after the person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals from the judgment.

(c) The Determination of indemnification required by Paragraph (b), above, must be made:

(1) By majority vote of a quorum of directors not named as defendants or respondents in the proceeding; or

(2) If such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated by majority vote of all directors, consisting of two or more directors not named defendants or respondents in the proceeding; or

(3) By special legal counsel selected by the Board of Directors or by a committee of the Board by vote as set forth in Subparagraphs (1) or (2), above, or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

(4) By the members in a vote that excludes the shares held by directors who are named defendants or respondents in the proceeding.

Authorization of indemnification and determination of reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified in Subparagraph (3), above, for the selection of special legal counsel.

Indemnity for Successful Defense

5.03 In spite of any limitations set forth in Paragraphs 5.01 and 5.02, above, to the extent that any person has been wholly successful on the merits or otherwise in defense of any proceeding referred to in those Paragraphs, that person shall be indemnified against all reasonable expenses incurred by him or her, including, without limitation, attorneys' fees, court costs, and expert witness fees.

Advancement of Expenses

5.04 Reasonable expenses incurred by a director, officer, employee, or agent of the Association who was, is, or is threatened to be made a named defendant or respondent in an action, suit, or proceeding may be paid or reimbursed by the Association in advance of the final disposition as authorized by the Board of Directors. Before authorizing the advance, the Board of Directors must determine that under the facts then known indemnification would not be precluded under these Bylaws. In addition, the Board must receive:

(1) A written affirmation by the director, officer, employee, or agent involved of that person's good faith belief that he or she had met the standard of conduct necessary under these Bylaws for indemnification; and

(2) A written undertaking by or on behalf of the director, officer, or employee involved to repay the expenses if it is ultimately determined that he or she had not met the standard of conduct necessary under these Bylaws for indemnification.

Indemnification Not Exclusive

5.05 The indemnification provided by this Article shall not be deemed to be exclusive of any other rights to which any person indemnified may be entitled under any regulation, agreement, vote of the members or disinterested directors, or otherwise. The indemnification provided by this Article shall not be deemed exclusive of any other power to indemnify or right to indemnification that the Association or any person referred to in this Article may have or acquire under the laws of the state of Texas. Indemnification shall continue and inure to the benefit of the heirs, executors, and administrators of any person entitled to indemnification under this Article.

Liability Insurance

5.06 The Association may purchase and maintain insurance or another arrangement on behalf of any person who is or was a director, officer, employee, or designated agent of the Association or who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, against any liability asserted against and incurred by that person in his or her status as such, whether or not the Association would have the power to indemnify him or her under the provisions of this Article. If the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Association would not have the power to indemnify the person only if including coverage for the additional liability has been approved by the shareholders. Without limiting the Association's power to procure or maintain any kind of insurance or other arrangement, the Association, for the benefit of persons it has indemnified, may (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the Association's assets; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Association or with any insurer or other person deemed appropriate by the Board of directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or in part by the Association. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive, and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

ARTICLE VI. AMENDMENTS

Vote Required to Amend

6.01 These Bylaws may be adopted, amended, or repealed by the affirmative vote of a majority of the directors at a meeting at which a quorum is present. The action of the Board of Directors adopting, amending, or repealing Bylaws is subject to repeal or change by vote of the holders of a majority of the shares entitled to vote at a regular or special meeting called for that

purpose, or without a meeting, by the written assent of the holders of two thirds of the shares or certificates of members of the Association entitled to vote.

Articles to Govern

6.02 In case any provision of this Article is inconsistent with the Articles of Association, the Articles shall govern.

ASSENT TO THE ADOPTION OF BYLAWS

The undersigned, being all of the members of the Board of Directors do hereby assent, in writing, to the adoption of these Restated Bylaws for the government of this Association, this 15th day of November, 2004.

APPROVED BY:


KATHY JOSLYN, DIRECTOR


BILL WARD, DIRECTOR


DON BURT, DIRECTOR


GARY BURNS, DIRECTOR


ALLEY THOMAS, DIRECTOR


CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Blue Heron Bay Property Owner's Association, Inc., a Texas non-profit corporation;

That the foregoing Restated By-Laws constitute the official By-Laws of said Association, as unanimously adopted by the Board of Directors.

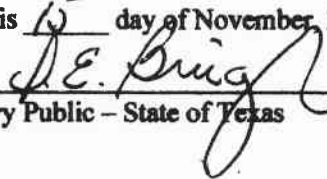
IN WITNESS WHEREOF, I have hereunto subscribed my name this the 15th day of November, 2004.


ALLEY THOMAS, Secretary

STATE OF TEXAS §
 §
 §
COUNTY OF MONTGOMERY §

BEFORE ME, on this day personally appeared Alley Thomas, the Secretary of Blue Heron Bay Property Owner's Association, Inc. known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

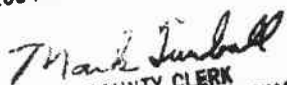
Given under my hand and seal of office, this 15 day of November, 2004.


Notary Public - State of Texas

E:\REAL\WDA\BlueHeronBay\Bylaws-Restated final.doc



FILED FOR RECORD
2004 NOV 18 PM 4: 08


COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property at Montgomery County, Texas.

NOV 18 2004

RECORDS MEMORANDUM
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.




County Clerk
Montgomery County, Texas

2005-019491

770-10-2497

MANAGEMENT CERTIFICATE FOR BLUE HERON BAY

STATE OF TEXAS §
COUNTY OF MONTGOMERY §

- 1. Name of Subdivision: BLUE HERON BAY
2. Name of Homeowners Association: BLUE HERON BAY PROPERTY OWNERS' ASSOCIATION, INC.
3. Recording Data for Declaration: Clerk's File No.: 99044866
4. Mailing Address of Association or Name and Mailing Address of Managing Agent, telephone number of Managing Agent: Blue Heron Bay Property Owners Association; P.O. Box 833, Montgomery, TX 77356. Telephone: 936-448-6000
5. Other information the Association considers appropriate for the governing, administration or operation of the subdivision and homeowners association: Articles of Incorporation filed with the Texas Secretary of State February 5, 1998; Restated By-Laws recorded under Montgomery County Clerk's File Number 2004128804.

RECORDER'S MEMORANDUM: At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

BLUE HERON BAY PROPERTY OWNERS ASSOCIATION, INC.

By: [Signature]
Print Name: Alley Thomas
Title: Secretary

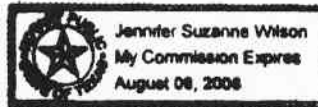
STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged and signed before me on this the 15 day of February, 2005 by Alley Thomas, the Secretary of Blue Heron Bay Property Owner's Association, Inc. on behalf of the Association.

[Signature]
Notary Public - State of Texas

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After Recording Return To:
Marc D. Markel
Roberts Markel Guerry P.C.
2500 City West Boulevard, Suite 1350
Houston, Texas 77042



RECORDED
2005 FEB 25 PM 4:11

[Signature]
COUNTY CLERK
MONTGOMERY COUNTY TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property at Montgomery County, Texas.

FEB 25 2005



[Signature]
County Clerk
Montgomery County, Texas