

~~BAHIA BAY PROPERTY OWNERS ASSOCIATION, INC.~~  
~~AMENDMENT TO AMENDED AND RESTATED~~

DECLARATION OF-  
~~COVENANTS AND RESTRICTIONS~~  
~~OF BAHIA BAY SUBDIVISION OF~~  
~~ARANSAS COUNTY, TEXAS~~

STATE OF TEXAS    §  
                                  §  
COUNTY OF ARANSAS   §

~~This AMENDED AND RESTATED DECLARATION OF ARANSAS~~

~~WHEREAS, with the power provided in paragraph 1.1 of the COVENANTS AND RESTRICTIONS (“Declaration-Covenants”) amends and Restrictions of record in restates the original Declaration of Covenants and Restrictions dated October 12, 1978, recorded at Volume 246, Page 255 of the Deed 225, Document Number 101925, Official Public Records of Aransas County, Texas and, and all amendments thereto, in its entirety.~~

~~WHEREAS, Section 209.0041(h) of the Texas Property Code provides that a declaration may be amended by a vote of sixty-seven percent (67%) of the total votes allocated to property owners in the Amendment to the Declaration of Covenants and Restrictions filed property owners’ association; and~~

~~WHEREAS, sixty-seven percent (67%) of record in Volume 287, Page 481 of the Deed Records of Aransas County, Texas, the total votes allocated to property owners (the “Owners”) in the Bahia Bay Property Owners’ Owners Association (the “Association”) has been given authority to amend the Declaration of Covenants and Restrictions; and, is equal to eighty-two (82), there being one hundred twenty (122) total lots (collectively “Lots” and individually “Lot”) in the Bahia Bay Subdivision (the “Subdivision”), which is more particularly described as follows:~~

~~WHEREAS, Section 9.2 requires this written instrument of amendment be executed and acknowledged by seventy five percent (75%) of the owners of fee title of the Lots in the Subdivision be filed of record in the Deed BAHIA BAY SUBDIVISION, UNIT 1, as shown by the plat thereof recorded in Volume 3, pages 121-122, of the Plat Records of Aransas County, Texas; and~~

~~WHEREAS, seventy five percent (75%) of the owners of fee title of Lots in the Subdivision is equal to ninety (91) Lots, there being one hundred twenty (122) Lots total in the Subdivision;~~

NOW, THEREFORE, ~~Ballots for Amendments are hereby filed with this written instrument of amendment having been executed and acknowledged by at least 91 owners; and~~

~~NOW, THEREFORE, the Bahia Bay Property Owners' pursuant to a vote of at least sixty seven percent (67%) of the Owners, the Association does hereby amend and restate the eovenantsDeclaration~~ as follows:

ARTICLE ONE

Architectural Control

1.1 Creation of Committee. There is hereby created an Architectural Control Committee (the "Committee"), which shall be composed of three (3) members. Each member shall serve until his successor is named, as provided herein, ~~and shall be as named in the attached Appendix I. (See 2002 Amendment).~~ The Vice President of the Board of Directors shall be a member of the Committee.

~~1.2 Committee Membership.~~ A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor. Each successor appointed by the Committee must be approved by the Board of Directors of the Association. No member of the Committee, or its designated representative, shall be entitled to any compensation for services performed hereunder. ~~The record owners of a majority of the Lots in such addition~~Board of Directors shall have the power, at any time, to ~~file a duly recorded written instrument to~~ change the membership of the Committee, to withdraw powers and duties from the Committee, or to restore the powers and duties of the Committee. ~~Such action shall be effective upon recordation of a written document properly reflecting the same.~~

~~1.2~~3 Committee Purpose. It shall be the general purpose of the ~~committee~~Committee to provide for maintenance of high standards of architecture and construction in such a manner as to enhance the aesthetic properties and structural soundness of the developed Subdivision. The Committee shall be guided by and, except when in ~~their~~its sole discretion good planning would dictate to the contrary, controlled by this Declaration. The judgment of the Committee shall be final, conclusive and binding.

~~1.3~~1.4 Committee Approval Required. No building, fence, wall, dock, pier, boatlift or other structure shall be erected, in the Subdivision; nor shall any exterior addition to, or change or alteration be made; nor shall any landscaping on any Lot or Lots that would affect drainage or utility easements be undertaken until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by, the Committee as to harmony of external design and location in relation to surrounding structures and, topography. The Committee may refuse to accept or may require changes, deletions or revisions in such plans and specifications in order to insure that the

architectural and general appearance of all buildings and grounds be in conformity with this Declaration and the general appearance of the Subdivision, and that such plans and specifications are not detrimental to the public health, safety, and general welfare of the community. Refusal of approval of plans and specifications or required changes, deletions or revisions in same may be based upon any reasonable grounds, including purely aesthetic grounds, which in the sole discretion of the Committee shall be deemed conclusive and controlling. The Committee shall have the authority to enter an Owner's property during the period of construction to ensure compliance with approved standards.

~~1.4 In the event that any plans and specifications are submitted to the Committee as provided herein, and the Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall be deemed to have been obtained.~~

~~1.5~~ 1.5 Committee Action. The Committee shall determine whether the provisions contained in the Declaration are being complied with; however, no act or failure or refusal of the Committee to initiate action to challenge a real or threatened violation of this Declaration or otherwise to act on its own initiative, shall be deemed to constitute waiver of any right or duty of the Committee at any time or from time to time thereafter to initiate such action and/or enforce compliance with this Declaration. The Committee may act or refuse to act in any real or threatened violation of his Declaration, all in the exercise of its sole discretion.

~~1.7~~ 6 Variations. Notwithstanding any other provisions herein, it shall remain the prerogative and in the jurisdiction of the Committee to review applications and grant approvals for exceptions to the provisions herein. Variations from these requirements and, in general, other forms of deviations from these restrictions imposed hereby, may be made when and only when such exceptions, variances and deviations do not in any way detract from the appearance of the premises, and are not in any way detrimental to the public welfare or to the property of other persons located in the vicinity hereof, all in the sole opinion of the Committee.

~~1.8~~ 7 Committee Standards. The Committee may from time to time adopt certain reasonable building and construction standards which will govern the standards by which all improvements in the Subdivision will be constructed. ~~If the Committee shall adopt~~ such standards, then the Committee and shall make copies of same available to the ~~owners~~ Owners of Lots in the Subdivision upon request. The Committee may modify or amend such building standards from time to time as in their sole discretion they shall deem appropriate.

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## ARTICLE TWO

### Improvement Standards

2.1 Residential Use. No Lot in the Subdivision shall be used other than for single family residential purposes and no building shall be designed for, or erected, placed, occupied, altered, or permitted to remain on any Lot or portion thereof other than a single family residence and attached garage. No trailer, mobile home, motor home, modular home, geodesic dome, tent,

shack, lean to or other outbuilding may be placed, moved, erected or permitted to remain on any Lot in the Subdivision, temporarily or permanently, by either an ~~owner~~Owner of any Lot in this Subdivision or any guest of any such ~~owner~~Owner. No structure or any part of the property shall be occupied or used as a residence, temporarily or permanently, until the exterior thereof is completely finished and all plumbing, electrical and sewage facilities have been fully installed and connected as required hereinafter.

2.2 Building Location. No building shall be located on any Lot nearer than twenty (20') feet from the land side of the bulkhead adjoining said Lot, nor nearer than five (5') feet from the side of any interior line of any such Lot, and shall not be nearer than twenty (20') feet from the land side of the curb adjoining such Lot.

Notwithstanding the foregoing, the set back requirements for buildings on Lots bordering on Ocean Drive shall be seven (7') feet from Ocean Drive. For the purposes of this covenant, eaves, steps, and open porches shall be considered as a part of the building.

2.3 Boat Slips. No boat slips cut through the channel bulkheads are allowed in the Bahia Bay Subdivision.

2.4 Fences or Walls. No fence or wall shall be erected, placed altered or maintained on any building site nearer to the front lot line than the minimum building setback line shown on the recorded plat of the Subdivision or in any event, forward of the front wall line of the main building. No fence or wall shall be erected, placed, altered or maintained on any Lot in such a manner that it will affect or impair the drainage areas designated by the Architectural Control Committee. Fences from the rear building line to the canal shall be no taller than four feet and of an open design, so as not to obscure the view of the water.

2.5 Minimum Floor Area. Any single family dwelling constructed on a Lot in the Subdivision must have a main floor living area of not less than one thousand five hundred (1,500) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages, unless adjusted or waived by the Committee. Any dwelling constructed on pilings shall have such pilings enclosed to the extent required by the ~~architectural~~Architectural Control Committee, and, in any event, at least one-half (½) of the ground area of any such dwelling on pilings shall be enclosed.

2.6 Topographic Alterations. Under no circumstances shall any ~~Lot owner~~Owner be permitted to deliberately alter the topographic conditions of any Lot in any way which would alter the natural drainage patterns without first obtaining the prior approval of the Committee.

2.7 Completion Time. Any house, structure, or improvement commenced on any Lot in the Subdivision, shall be completed within ~~six (6) months~~one (1) year after the beginning of such construction, or within such additional time as may be approved in writing by the Committee and no partially completed house, structure or improvement of any type shall be permitted to remain on said property beyond said period of time. Completion is defined to mean that all plumbing and electrical has been connected and tested, and all final inspections have been made and passed.

2.8 Full Lot Required. No structure or improvement of any type shall be erected, placed upon, or maintained on any building, bulkhead, or adjacent canal for any area less than one full Lot as designated on the recorded -plat of the Subdivision.

2.9 Plumbing and Sanitary Facilities. All structures shall have plumbing installations completed and approved by the Committee prior to occupancy. Such plumbing shall comply with all laws, rules and regulations of governmental authorities having and asserting jurisdiction. No outside toilet shall be installed or maintained on any Lot in this Subdivision and all plumbing shall be connected with a septic tank and adequate drain field, constructed and installed in accordance with the health regulations of the State and County and of any other governmental authority having jurisdiction. Such installations shall be constructed and maintained by the ~~owner~~Owner of the Lot upon which the same is situated so that no effluent from the same shall ever drain or flow upon the ground surface or drain in such manner above or below the surface that it will cause any degree of pollution of the channels in the Subdivision. All septic tanks and drain fields shall be located at least fifty (50') feet from the nearest channel bulkhead. The septic tank systems shall be discontinued and all sewage systems shall be connected to such public sanitary system within a reasonable time, not to exceed six (6) months from the date such public system is available, all at the expense of the ~~owner~~Owner.

2.10 Electrical. No source of electrical energy shall be brought to any Lot or used upon a Lot until the Committee has approved plans and specifications for the erection of approved improvements on such Lot. Electrical services shall be underground and comply with all laws and regulations.

2.11 Water. Each residential dwelling constructed on any Lot shall be connected to the water system installed in the Subdivision. As each residence is completed and occupied in the Subdivision, each ~~owner~~Owner shall be required to purchase water from the owner of the water system within the Subdivision, and shall pay a reasonable amount for the use of such water as the owner of such water system shall from time to time charge. No individual water wells shall be allowed on any Lot, other than an adjacent lot in compliance with Section 209.015 of the Texas Property Code.-

2.12 Gas and Liquid Storage. All tanks for storage of gases ~~or liquids~~ or fuel must comply with all State, City, County and other governmental regulations.

~~or otherwise shall be buried beneath the surface of the ground unless otherwise required by law. As, if, and when natural gas is made available to the Subdivision all houses in the Subdivision which are then using alternate fuels shall be connected to such natural gas pipeline systems within a reasonable time not to exceed six (6) months from the date such system is available, all at the expense of the owner.~~

2.13 Hunting, Fishing and Livestock. No hunting shall be allowed in the Subdivision and any discharge of firearms is strictly prohibited. No fixed net or fixed line fishing shall be permitted in any of the channels which could in any way interfere with the free navigability of such channels. No livestock or household pets may be raised on any Lot in the Subdivision for commercial purposes. Commercial kennels are not allowed in the Subdivision.

2.14 Channels. The ~~owner~~Owner of each Lot shall be responsible for maintaining that portion of any channel contiguous to his Lot free of all debris, trash, rubbish, garbage, or any other unsightly or unsanitary material or any hazard to navigation. The channels in the Subdivision shall not be used for dumping any foreign matter of ~~any type and nothing shall at any time be deposited or left in any channel other than properly tended or moored boats.~~ No ~~owner~~Owner of any Lot or any guest of such ~~owner~~Owner, shall moor his boat in any area of any channel, except in that portion of the channel contiguous to such ~~owner's~~Owner's Lot. ~~The owners channels shall be a no wake zone and the Owners of all Lots in the Subdivision shall strictly observe a 1000 RPM speed limit such no wake zone in all channels and shall endeavor to enforce all others using such channels to observe such speed limit no wake zone. A wake is defined as a movement of the water created by a boat underway great enough to disturb a boat at rest.~~ No boat used for commercial fishing purposes shall be moored in any channel within the Subdivision.

2.15 Docks and Piers. Boat docks, piers and walkways of any type shall not be allowed to protrude more than ~~five (5)~~fifteen (15) feet beyond the water side of the bulkhead into the channel, and their ~~manner of construction shall be approved by the Committee prior to their construction.~~ Pilings may be placed no more than fifteen (15') feet (inclusive of dock piers and walkways) beyond the ~~wall-water~~ side of the bulkhead into the channel and their manner of construction and location shall be approved by Committee prior to their construction. Boats moored at each Lot shall not extend more than seventeen (17) feet beyond the water side of the bulkhead, inclusive of any fenders, rigging or other appurtenances. The design of boat docks, piers and walkways shall take into account this limitation.

2.16 Nuisances. No noxious nor offensive, unlawful or immoral activity shall be carried on upon any Lot in the Subdivision, nor shall anything be done thereon which shall become an annoyance or nuisance to any part of the Subdivision. Door-to-door solicitation is considered a nuisance and is strictly prohibited within the Subdivision.

- 2.17 Appearance of Lots. No Lot shall be used or maintained as a dumping ground or rubbish or any other material. Trash, garbage or other waste or materials shall not be kept except in sanitary containers, ~~which containers shall be kept in wooden storage boxes attached to the main structure on the Lot.~~ No incinerators shall be kept on the subject property or on any Lot. Equipment for the storage or disposal of waste material shall be kept in a clean and sanitary condition and all such items shall be maintained in a neat and attractive manner. Only operable vehicles which are used multiple days of each week may be parked in the front of each house. The same should be stored in a garage, if at all possible. No vehicle (inoperable cars or vehicles that are being worked on shall be visible in the driveway. No boats, boat trailers, 4-wheelers, campers, recreational vehicles, or any other) shall be permitted to remain on any Lot or on any street adjacent to any Lot for more than thirty (30) days in each calendar year, except that, however, any such vehicle, excluding recreational vehicles, may remain longer if they are parked in the open next to the owner's house not forward of the front wall line and not behind the back wall line of the main building. Boats, boat trailers, and campers may be parked in a fenced area or garage or in a screened area approved by the Committee. Garage doors should be maintained in a closed position whenever possible and should not be left open during the day even when the Owner is at home, unless the garage is being used by the Owner, which necessitates keeping the

door open. Each Owner shall post the street number for his or her residence in front of the residence.

2.18 Bridges and Culverts. In the event any ~~Lot owner~~Owner installs any bridge or culvert in any drainage ditch that may be necessary upon the Lot, such shall be constructed of concrete pipe and be of a size not less than twelve (12) inches in diameter, or such larger diameter that may be required to provide adequate drainage. Said bridge or culvert shall be constructed in such a manner that it will not affect drainage or utility easements imposed on any Lot within the Subdivision.

2.19 Exterior Lights. The ~~owners~~Owners of each Lot in the Subdivision shall maintain good and operating condition, properly painted and maintained at all times, an exterior light of the type and in the location selected and determined by the Committee, which exterior light is to be erected at such time as a residence is constructed upon said Lot. Such light shall be illuminated at the ~~Lot owner's~~Owner's cost from dusk through daylight of every night to provide proper exterior illumination for the Subdivision as a whole. In the event that the ~~owner of the Lot~~Owner fails or refuses to repair, replace light bulbs, or maintain such exterior light, the Association may do so and charge the ~~owner~~Owner for such service.

2.20 Signs. No obnoxious, offensive, or profane sign of any kind shall be kept or displayed to the public view in the Subdivision. The Committee or its assigns can remove any sign violating this provision without consent of the ~~Lot owner and without any liability for such action.~~Owner and without any liability for such action. No sign with a commercial purpose shall be permitted on any Lot without the prior written consent of the Architectural Control Committee other than one sign not in excess of eighteen (18) inches by twenty-four (24) inches advertising a particular Lot on which the sign is situated for sale or rent. Such signs shall be removed when the home closes or the listing expires, whichever occurs first. Political signs shall be ground-mounted and no larger than four (4') feet by six (6') feet. Each Owner may display only one sign for each candidate or ballot item. Political signs may not include the painting of architectural surfaces or be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object. Political signs may not contain offensive language or graphics, roofing material, siding, paving materials, flora, one or more balloons or lights, or be accompanied by music, other sounds, streamers or anything otherwise distracting to motorists. A political sign may only be displayed on or after the 90<sup>th</sup> day before the date of the election to which it relates and must be removed by the 10<sup>th</sup> day after such election date. The Association may cause to be removed, at the Owner's cost, any political sign in violation of this provision.

2.21 Drilling and Excavations. No oil well drilling, oil development operations, oil refining, quarrying or mining operations of any-kind shall be permitted on a Lot; nor shall oil wells, tanks, tunnels, or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted on any Lot in the Subdivision.

2.22 Grass and Weeds. Each ~~Lot owner~~Owner shall keep grass, weeds and vegetation trimmed or cut so that the same shall remain in a neat, orderly and attractive condition. In the event an ~~owner of any Lot~~Owner shall fail to maintain the premises in a neat and orderly manner

the Committee shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot, all at the expense of ~~owner~~Owner.

2.23 Fences, Walls, Hedges or Utility Meters. No fence, wall, hedge or utility meter shall be placed or permitted on any Lot without first obtaining the approval of the Committee; provided that no fence or wall (other than a decorative fence or wall) may be placed nearer to any front or side street than is permitted for the house or building on such Lot; nor shall any fence or wall exceed six feet (6') in height. Furthermore, fences from the rear building line to the canal shall be no taller than four feet (4') and of an open design, so as not to obscure the view of the water.

2.24 Shrubs and Trees. No shrub or tree planting -which obstructs sight lines at elevations between two (2') feet and six (6') feet above the roadway shall be planted or permitted to remain on any corner Lot within the triangular area formed by the curb lines of such intersecting streets and a line connecting such curb line at points twenty-five ~~feet~~ (25')-feet from their intersection or, in the case of rounded corner, from the intersection of the curb lines as extended. The same sight line limitations shall apply on any Lot within ten ~~feet~~ (10')-feet of the intersection of a street curb line and the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six (6') feet above ground level.

2.25 Swimming Pools. Swimming pools shall be permitted, provided: (i) that approval of the location of same is first obtained from the Committee; (ii) that the construction and maintenance of same is in compliance with all applicable laws, rules, regulations and ordinances of state, county and/or municipal authorities asserting jurisdiction.

2.26 Driveways. No driveway shall be placed or permitted in any Lot unless such driveway is constructed of concrete.

2.27 Boats. No commercial boats, including but not limited to shrimping boats, shall be moored in the canal within the subdivision-; provided, however that vessels or barges approved by the Board of Directors for construction or maintenance projects shall be allowed to remain moored in the canal during the duration of the project so long as they do not obstruct normal boat traffic within the canal.

2.28 Compliance with Restrictions. Owners shall be responsible for ensuring that their visitors, guests or tenants follow the Declaration and other governing documents. Each Owner shall comply strictly to the provisions of the Declaration and other governing documents, as the same may be amended from time to time. Failure to comply with the Declaration and Association's governing documents may give rise to a cause of action to recover damages, injunctive relief or both. Such action may be maintained by the Board of Directors on behalf of the Association.

2.29. Pets. All pet dogs are to be enclosed in suitable fencing and be on a leash while walking outside of the Owner's lot. Pet owners are required to pick up animal waste left behind by such Owner's pet.



2.30 Hazardous Activities. No activities shall be conducted on an Owner's property or the common area which are, or might be unsafe or hazardous to any person or property. No improvements shall be constructed on an Owner's property which are, or might be unsafe or hazardous to any person or property.

### ARTICLE THREE

#### Easements and Utilities

3.1 Easements and Utilities. The Association hereby reserves a right-of-way and easement for the purpose of maintaining and keeping the canals, channels, and bulkheads located within the Subdivision fifteen (15') wide along the rear lot lines of each Lot. The Association further reserves a right-of-way and easement for utilities and drainage, including without limitation, electric, water, telephone, sewage, television and/or communication cables, as are shown on the applicable Plat or as are designated by the Committee by appropriate instrument filed for record in Aransas County, Texas. The Association further reserves the right to assign and/or dedicate, assign and/or convey said utility and/or drainage easements and any rights and interests therein at any time and from time to time in Association's sole discretion. This Declaration shall never be deemed to obligate the Association to furnish, construct or maintain or cause to be furnished constructed or maintained any road, street, utility and/or drainage easement and/or any improvements on any of the foregoing. Within these easements, no structure, fences, planting or other material shall be placed or permitted to remain which may damage, or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels. The easements include, without limitation the right of ingress and egress thereon at reasonable times to such easements for construction, maintenance, repair and replacement purposes without consent or approval of the ~~owner~~Owner or purchaser of the applicable Lot and without compensation or redress to the ~~owner~~Owner or purchaser of said Lot by reason of such construction, maintenance, repair or replacement. Any improvements placed in the easement area by the ~~owner~~Owner or purchaser of any Lot may be removed and replaced by the Association and/or any person or entity having any right, title or interest in the easement, including without limitation any public authority or utility company, all without liability to go and at the expense of the ~~owner~~Owner or purchaser of said Lot. The easement area of each Lot and all improvements thereon shall be maintained continuously by the ~~owner~~Owner of the Lot covered by said easement, except for those improvements which are owned by the owner of the easement, such as applicable public authority or utility company. Owners and purchasers shall have no cause of action against the Association, its successors, assigns, employees and/or agents, or utility companies, water districts or other authorized entity using such easements, either at law or in equity, for any damage or otherwise caused by the installing, operating, maintaining repairing and/or replacing the above utility and/or drainage easements and/or any improvements thereon. All utility connections including but not limited to telephone and electric power service shall be underground and no ~~owner~~Owner of any Lot shall erect any poles on any Lot for aerial erection of power or telephone lines.

3.2 Maintenance and Damages to Common Area. Each Owner shall be liable to the Association for any and all damages to the Common Area, or any improvements constructed on any Lot if the maintenance thereof has been assumed by the Association, which damage is

caused by the neglect, misuse or negligence of such Owner, Owner's tenant or other occupant of such Owner's lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an assessment against such Owner's lot, secured by a lien against the lot.

#### ARTICLE FOUR

##### Re-subdivision

4.1 Subdivided Lots. No ~~lot~~Lot or parcel of land shall be divided by the ~~owners~~Owners or purchasers thereof, their heirs or assigns, into smaller Lots, whether for lease, sale or rental purposes, except as may be designated or permitted on any applicable Plat. Contingent Lots may be platted into a single lot. The Owner of a Lot so replatted shall pay all dues, assessments and fees to the Association as if the Lots remained as in the original plat of the subdivision and shall have voting rights in the same manner.

#### ARTICLE FIVE

##### Property Owners' Association

5.1 Property Owners' Association. ~~All Lot owners, including the Declarant~~All Owners in the Subdivision shall be members of the Association, and shall be entitled to one (1) vote for each Lot owned in fee. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but there shall be only one (1) vote permitted for each Lot owned. The Association shall be a non-profit corporation organized under Chapter 22 of the Texas Non Profit Corporation ActBusiness Organizations Code. The Association shall have a Board of Directors and shall act by vote of a majority in interest of the ~~owners~~Owners of the Subdivision Lots, voting in accordance with its procedures established herein and in accordance with its Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this declaration. By acceptance of a deed to any Lot or Lots within the Subdivision, the ~~owner~~Owner of such Lots shall thereby expressly come bound by the terms, provisions and covenants herein contained, and shall be a member of the Association.

#### ARTICLE SIX

##### Covenant for Maintenance Assessments

6.1 Creation of the Lien and Personal Obligation of Assessments. Each ~~owner~~Owner of any Lot in the Subdivision covenants and agrees and is deemed to covenant and agree to pay to the Association; (1) annual assessments of charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late fees, fees for damage to common areas, costs and reasonable attorney's fees, shall, to the full extent permitted by law, be a charge on the Lot subject to this Declaration and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was

the Owner of each Lot in the Subdivision at the time when the assessment fell due. The Association shall have the duty and obligation to establish, collect and administer such assessments.

6.2 Purpose of Assessments. The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subdivision and for the improvement and maintenance of the road system, canals, channels and bulkheads located within the Subdivision; and any other property dedicated to the public within the Subdivision which is not being maintained by a public entity.

6.3 Annual Assessment. Each Lot in the Subdivision shall be subject to an annual ~~maintenance charge~~assessment of ~~One Three~~ Hundred ~~(\$100.00)~~Ninety-Nine Dollars (~~See amendment (\$399.00)~~ per Lot, to be paid by the record ~~owner~~Owner of each Lot on January 1 of the year for which such ~~maintenance charge~~annual assessment is due; for the improvement and maintenance of any common area and common area improvements. The Board of Directors of the Association may increase or decrease the amount of such annual assessment by ten (10%) percent above the previous year's annual assessment. By vote of at least fifty-one (51%) percent of the members who are voting in person or by proxy, at a meeting called for the purpose of increasing or decreasing the annual assessment, such annual assessment may be increased or decreased by more than ten (10%) percent per annum over the previous year's annual assessment. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days before each ~~January-March~~ 1st. Written notice of the annual assessment shall be sent to every ~~owner~~Owner subject thereto. The due date shall be March 1 of each calendar year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

6.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, ~~in any assessment year,~~ a special assessment ~~applicable to that year only~~ for the purpose of defraying, in whole or in part, the cost of ~~any~~capital improvements to the common areas that are incurred or will be incurred by the Association during the fiscal year. Such costs shall include construction, reconstruction, maintenance, repair or replacement of the canals, channels and bulkheads within the Subdivision and for any other purposes as may be deemed necessary or desirable by the Board of Directors of the Association, to maintain or improve the Subdivision in the manner which it considers to be of the greatest general benefit to the ~~owners~~Owners and occupants of this Subdivision; ~~provided that any.~~ Any such special assessment must have the vote of at least fifty-one (51%) percent of the members who are voting in person or by proxy at a meeting duly called for this purpose. For the purpose of special assessments, costs shall be considered incurred at the time a contract for the capital improvement is executed and there is no requirement that such costs be actually paid within a year. Likewise, the special assessment may provide that the Owners may pay in installments over a period greater than one year.

6.5 Notice for Any Action Authorized Under 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under 6.3 and 6.4 shall be sent to all members not less than ~~fifteen (15)~~ten (10) days nor more than ~~fifty (50)~~sixty (60) days in advance of the meeting.

6.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots.

6.7 Date of Commencement of Annual Assessments. The annual assessments shall be for the duration of this Declaration unless further amended.

6.8 Effect of Nonpayment of Assessments: Remedies. Any assessment not paid on the date when due, shall be immediately delinquent and shall, together with such interest and cost of collection as is hereinafter provided, immediately become a continuing lien on the property which shall, to the full extent permitted by law bind such property in the hands of the then ~~owner~~Owner, his heirs, devisees, personal representatives, successors land assigns. If the assessment is not paid within thirty (30) days after the due date, ~~an additional assessment~~assessment late fee of \$15-50 will be added ~~for the first month and \$10 per month for each full or partial month thereafter~~to the past due assessment amount, and the Association, may either (1) bring an action at law against the ~~owner~~Owner personally obligated to pay the same, or (2) foreclose the lien against the property, or (3) both, and in either event, there shall be added to the amount of such assessment ~~interest as provided and~~all costs of collection, including reasonable attorney's fees, ~~and the assessment shall bear interest from the date it becomes due at the rate of ten percent (10%) per annum until it is paid.~~ The lien for assessments herein ~~Provided~~provided may be ~~foreclosed, without prejudice~~enforced through any available remedy, including foreclosure pursuant to the Texas Property Code. The Owners expressly grant to the Board of Directors a power of sale in connection with and ~~subject to all~~in enforcement of the Association's lien. The priority and the Association's foreclosure of the lien shall be as follows:

(a) The Association's lien for assessments is created by recordation of these restrictions which shall constitute record notice and perfection of the lien. No other recordation of a lien or notice of lien is required.

(b) By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney for the Association to exercise the power of sale on behalf of the Association to the extent authorized by the Texas Property Code.

(c) The power of sale and foreclosure of the Association's lien shall be exercised as provided by Section 51.002 or Chapter 209 of the Texas Property Code.

(d) The Association lien shall be prior to other liens, except that such liens shall be subordinate, secondary, and inferior to (1) all valid liens for taxes or special assessments levied by the city, county and ~~the state governments,~~ or any political subdivision or special district thereof, and (2) valid liens securing amounts due or to become due under any ~~mortgage, vendor's lien-purchase money~~ Vendor's Lien and/or deed of trust filed for record prior to the date payment of such ~~assessment becomes due; by the holder thereof in~~assessment for common expenses or fines become due. No such foreclosure shall affect or impair any such prior liens.

(e) The Association shall have power to bid on the Lot foreclosed on at the foreclosure sale, and to acquire, hold, lease, mortgage and convey the same ~~manner as either a vendor's lien, or as is provided for foreclosure of a contract~~on behalf of the Association. The purchaser acquiring title to such lot at such foreclosure sale, whoever he may be, and his successors and assigns, shall

not be liable for the share of the unpaid common expenses or assessments remaining unpaid after the application thereto of the proceeds of the foreclosure sale, such common expenses or assessments shall be deemed to be common expenses collectible from all of the Owners, including purchaser or acquirer, his successors and assigns, on a per Lot basis.

(f) Upon foreclosure of a Lot, all unpaid assessments against the Owner shall be first paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature except assessments, liens and charges in favor of the state and any political subdivision thereof for taxes due and unpaid on the Lot; and amounts due under any purchase money lien and/or deed of trust lien on real property under Texas Property Code, Section 51.001, or by judicial foreclosure. In the event of foreclosure under Section 51.001, the Committee, or the Association, if formed, shall be entitled to designate a trustee by instrument which have been duly recorded in with the Office of the County Clerk county clerk of Aransas County, Texas, and upon such recording, such trustee shall, at the request of the Committee or the Association, if formed, give notice of sale as required by section 51.001 and sell such Lot or interest therein to the highest bidder for at the Courthouse door of Aransas County, Texas, at public vendue and at the time provided in said statute, it being understood that the recitations contained in the Trustee's deed shall be conclusively presumed true and correct. No owner, \_\_\_\_\_

No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the canals, channels, bulkheads or any other Property dedicated to the public within the Subdivision which not maintained by a public entity or by abandonment of his Lot.

~~6.9 Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot owner from liability for any assessments thereafter becoming due or from the lien thereof. No extinguishment of the lien shall relieve the delinquent Lot owner from personal obligation and liability therefore.~~

~~6.10.9 Non-Abatement of Assessments.~~ No diminution or abatement of assessments shall be allowed or claimed for inconveniences or discomfort arising from the making of repairs or improvements to the canals, channels, bulkheads, or any other property dedicated to the public within the Subdivision which is not being maintained by a public entity, or from any action taken to comply with any law, ordinance or order of a governmental authority.

~~6.10.10 Right to Waive Collection.~~ The Association, shall have the right to waive the collection of the annual fee in the event the County of Aransas elects to undertake the maintenance, improvement and repair of the canals, channels, bulkheads or any other property dedicated to the public within the Subdivision which is not being maintained by a public entity.

## ARTICLE SEVEN

### Maintenance

7.1 Canals, Channels and Bulkheads. The Association shall improve, maintain, repair and otherwise care for the canals, channels and bulkheads within the Subdivision, and any other

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property dedicated to the public within the Subdivision or an area owned by the Subdivision which is not being maintained by a public entity.

7.2 Willful or Negligent Acts. In the event that the need for maintenance or repair is caused through the willful or negligent act of any ~~owner~~Owner, his family, guests or invitees, the Association shall add the cost of such maintenance, as a Special Assessment, to the normal assessment of such Owner.

## ARTICLE EIGHT

### ~~Right to Annex Additional Properties~~

~~8.1 Adding and Removing Property Owned by Declarant. Declarant reserves, and shall at all times have the right, without the consent or approval of any other person, to make additional real property located adjacent to the above Subdivision now or hereafter owned by the Declarant subject to this Declaration. However, the Declarant makes no representation or warranty that any such adjacent properties will be annexed to this Declaration or that the development of such adjacent properties will be developed in accordance within the scheme of this Declaration.~~

~~8.2 Procedure for Adding Property Owned by Declarant. The additions authorized pursuant to Article 8.1 above shall be effectuated by the recordation in the Deed Records of Aransas County, Texas of a Supplementary Declaration of Covenants and Restrictions (the "Supplementary Declaration").~~

~~8.4 Contents of Supplementary Declaration. The Supplementary Declaration shall describe the properties to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of the Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of the Declaration and extending the jurisdiction of the Association to cover the property so described in such Supplementary Declaration. The Supplementary Declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the real property being annexed and as are not inconsistent with the general scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants and agreements established by this Declaration with regard to any real property subject to the Declaration prior to the recordation of such Supplementary Declaration; provided, however, that Owners of Lots within the existing Bahia Bay Subdivision shall, upon recordation of any Supplementary Declaration, have a right and non-exclusive easement of enjoyment in and to the canals and channels described in the plat of the property being annexed. Any Supplementary Declaration recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Supplementary Declaration in accordance with the provisions hereof, the real property described therein shall be subject to the provisions of this Declaration, and the jurisdiction of the Association pursuant to the terms of this Declaration, the By-Laws and the Articles of such Association.~~

## ARTICLE NINE

### General Provisions

98.1 Term. Covenants and Conditions of this Declaration shall run with the Lots in the Subdivision subject hereto and shall be binding upon all ~~owners~~Owners of such Lots and all persons claiming under them for a period of twenty (20) years from the date this Declaration is filed of record in the Deed Records of Aransas County, Texas; after which time these Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument of termination in writing, executed and acknowledged by ~~seventy five (75)~~sixty-seven (67%) percent of the ~~owners~~Owners of fee title to the Lots in the Subdivision subject hereto, is filed of record in the ~~Deed~~Official Records of Aransas County, Texas. The instrument of termination shall be effective to terminate this Declaration at the expiration date of the initial twenty (20) year term, if said instrument is filed of record as set forth above during the initial twenty (20) year term, or if such instrument is filed of record as set forth above during any ten (10) year period of extension, this Declaration shall terminate at the end of said ten (10) year period of extension.

98.2 Amendments. This Declaration and any or all of the conditions set out herein may be amended by ~~an instrument~~the vote of ~~amendment meeting the following requirements:~~ amendment meeting the following requirements: ~~The instrument of amendment shall be in writing and shall be executed and acknowledged by seventy five (75)~~sixty seven (67%) percent of the ~~owners~~Owners of fee title of the Lots in the Subdivision ~~subject hereto, and must be filed of record in the Deed Records of Aransas County, Texas; provided, however, the Declarant hereby reserves and shall at all times have right to amend this Declaration without the consent of any other person for the purpose of correcting any typographical or other error in this Declaration.~~ Without limitation, the instrument of amendment may amend Sections 8.1 and 8.2 hereof. The instrument of amendment shall be deemed to be effective on the date instrument is filed of record in Aransas County, Texas. ~~No amendment to this Declaration shall be binding on all Lots in the Subdivision subject hereto and the owners thereof, after the effective date thereof. The Board shall have and reserve the right at any time, and from time to time, without the joinder or consent of any 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, ambiguity, or inconsistency appearing herein, provided that any such amendment shall be consistent with and in conformity with the general plan of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.~~

98.3 Notices. Any notice required to be sent to any ~~owner~~Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid, certified mail, receipt requested, to the last known address of the person who appears as ~~owner~~Owner on the records of the Association at the time of such mailing. ~~This Section shall never. Alternatively, notice may be deemed to obligate Declarant and/or sent by e-mail in accordance with the Committee, or Texas Property Code to each Owner who has registered an e-mail address with the Association, when formed, to maintain records of addresses or to give notices. It shall be the duty of each owner to keep Declarant and/or the Committee, or Association, when formed, currently advised as to the addresses of owners.~~

~~9.4 Article 9.4 is deleted in its entirety.~~

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9.5 Severability. In the event that any of the provisions of this Declaration conflict with any other provisions hereof and/or with the applicable Plat, the more restrictive provisions shall govern. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been imposed and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses and phrases shall become or be illegal, null or void.

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8.5 Enforcement. If any ~~owner~~Owner of any Lot shall violate or attempt to violate this Declaration or any of the conditions or covenants herein, it shall be lawful for the Association, Committee, or any members of the Association, to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate this Declaration or any such conditions or covenants and to prevent such violation or threat of violation and/or to recover damages for such violation of threat of violation, including reasonable attorney's fees and in general to pursue and seek such other remedies and/or relief as may be permitted at law and/or in equity, including, without limitation, specific performance. Without limitation, in order to enhance and protect the value of the Lots described herein, the right to prosecute any proceeding at law or in equity against any person or persons violating or attempting to violate any conditions either to prevent such violations or to recover damages or other dues for each violation is also expressly reserved to the Association; however, this Section shall never be deemed to obligate the Association to threaten or prosecute any proceedings in law or equity or otherwise enforce this Declaration or the conditions. The Board of Directors may adopt reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of the Declaration including the adoption of fines for violations of Declaration.

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9-78.6 Signature Block. The President of the Association, by signing ~~these~~this Amended and Restated Declaration of Covenants and Restrictions, does hereby certify that members of the Association representing more than ~~seventy five~~sixty-seven percent (~~75~~67%) of the ~~lots~~Lots in the Bahia Bay ~~subdivision~~Subdivision have ~~signed the amendments~~approved this Amended and Restated Declaration of Covenants and Restrictions and whose ~~acknowledged signatures~~signed ballots are on file with the Secretary of the Association.

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Effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Bahia Bay Property ~~Owners~~Owners Association, a Texas non-profit corporation

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By: \_\_\_\_\_

Attest: \_\_\_\_\_  
Pat Kenny

Thomas Berkenkotter, President  
Dee Burk

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Attest:

Deedy Studer, Secretary

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THE STATE OF TEXAS

COUNTY OF ARANSAS

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This instrument was acknowledged before me on this the \_\_\_\_\_ day of

~~February, 2000~~, 2017, by Thomas Berkenkotter, President of the Bahia

Bay Property ~~Owners~~Owners Association, Inc., a Texas non-profit corporation on

|

\_\_\_\_\_  
Behalfbehalf of said corporation.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
State of Texas

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