

# **BAHIA BAY PROPERTY OWNERS ASSOCIATION**

## **BYLAWS**

### **ARTICLE I - INTRODUCTION**

1.01. Property. These Bylaws provide for the governance of Bahia Bay Property Owners Association (the "Association").

1.02. Declaration. The Association was created pursuant to a publicly recorded document known as Declaration of Covenants and Restrictions of Bahia Bay Subdivision, recorded at Volume 246, Page 225, Official Public Records of Aransas County, Texas, as amended and restated by the Amended and Restated Declaration of Covenants and Restrictions for Bahia Bay Subdivision, recorded at Document No. \_\_\_\_\_, Official Public Records of Aransas County, as further supplemented and amended (the "Declaration"). The definitions contained in the Declaration will have the same meaning herein.

1.03. Organization. As an organization of lot owners, the Association is created by the Declaration and such Association is a Texas nonprofit corporation governed by the Texas Business Organizations Code.

### **ARTICLE II – MEMBERS**

2.01. Member Voting Rights. Each Owner of a Lot in the Subdivision shall have one vote for each Lot owned. When more than one person holds an 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 vote be cast with respect to any one Lot.

2.02. Assessments. Pursuant and subject to the conditions and limitations of the Declaration which provide for assessments to be paid by all members hereof to a fund administered by this Association or its designated agent, the Board is hereby authorized and given full power and authority to assess and collect from the members of the Association such assessments for the performance of its objectives and purposes and to meet its obligations, subject to the provisions of these Bylaws and the Declaration. Each assessment shall be due and payable by each member at the time and in the manner determined by the Board, subject to the provisions of the Declaration. The Association may designate an individual or entity as its agent to administer the fund, including the payment of expenditures from such fund and the collection and enforcement of the assessments, and to carry out such other duties as specifically designated by the Association.

2.03. No Interest in Association Property. The Association owns all real and personal property, including improvements located on the Common Areas, acquired by the Association. A Member has no interest in specific property of the Association. Each Member waives the right to require partition of all or part of the Association's property.

2.04. Annual Meeting. The Board may, in its discretion hold an annual members' meeting at on the first Saturday in February of each year or at another time that the Board designates at such

place in Aransas County, Texas, as shall be designated in a notice of the meeting, provided notice of that meeting is given in accordance with the Texas Property Code. At the annual meeting, the Members will elect directors and transact any other business that may come before the meeting.

2.05. Special Meetings. Special meetings of the Members may be called by the president, vice-president, secretary, treasurer, or not less than 10% of the member votes that may be cast.

2.06. Notice. Not later than the 10th day or earlier than the 60th day before the date of an election or association vote, the Association shall give written notice of the election or association vote to each Owner in accordance with the provisions of the Texas Property Code.

2.07. Quorum. At any meeting of the Corporation, the presence in person or by proxy of at least 20% of the votes that may be cast constitutes a quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of Members constituting a quorum. However, no action may be approved without the vote of at least a majority of Members required for a quorum.

2.08. Votes Required. The vote of Members representing at least a majority of the votes cast at any meeting at which a quorum is present binds all Members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by applicable law. The Board may authorize Members to vote by absentee ballot or electronic ballot in accordance with these Bylaws and the Texas Property Code.

2.09. Absentee and Electronic Ballots. An absentee or electronic ballot may be counted as an owner present and voting for the purposes of establishing a quorum only for items appearing on the ballot; however, such ballot may not be counted if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot. A solicitation for votes by absentee or electronic ballot must include: (1) a ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; (2) instructions for delivery of the completed ballot; (3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

2.10. Proxies. A Member may participate in the affairs of the Association through a proxy. To be valid, each proxy must (1) be signed and dated by a Member or his attorney-in-fact; (2) identify the lot to which the vote is appurtenant; (3) designate the person or position (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (4) identify the meeting for which the proxy is given; (5) not purport to be revocable without notice; and (6) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the Board. Unless the proxy specifies a shorter or longer time, it terminates 11 months after the date of its execution. A proxy delivered by email or by fax may

be counted if any of the following occurs: (1) the proxy's authenticity can be confirmed to the reasonable satisfaction of the Board, (2) the proxy has been acknowledged or sworn by the Member, before and certified by an officer authorized to take acknowledgments and oaths, or (3) the Association also receives the original proxy within 5 days after the vote.

### ARTICLE III - DIRECTORS

3.01. Number and Term. The Association is governed by a Board which shall consist of five persons. The directors shall serve three-year, staggered terms and be elected at the annual meetings of the Association. The Board shall be comprised of Members of the Association.

3.02. Electing Directors. The directors shall be elected by a majority vote of the Members at the annual meeting of the Association, but in no event shall more than one vote be cast with respect to any one Lot. Each director will hold office until a successor is elected and qualifies. Members may not use cumulative voting in electing directors.

3.03. Vacancies. Vacancies on the Board caused by any reason are filled by a vote of the majority of the remaining directors, even if it is less than a quorum, at any meeting of the Board. A director selected to fill a vacancy will serve for the unexpired term of his or her predecessor in office.

3.04. Annual Meeting. The annual meeting of the Board shall be held following adjournment of the annual meeting of the Members. All other meetings may be held at the time and place selected by the Board.

3.05. Regular Meetings. Regular meetings, other than the annual meeting, may be held at such time as shall be determined by the Board.

3.06. Special Meetings. Special meetings of the Board may be called by the President or any other director.

3.07. Notice. The Association must give all property owners notice of the date, hour, place, and general subject of all Board meetings. The notice shall be provided to each property owner as provided by the Texas Property Code. The notice shall be: (1) mailed to each owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or (2) provided at least 72 hours before the start of the meeting by: (a) posting the notice in a conspicuous manner reasonably designed to provide notice to the Members: (i) in a place located on the Association's common property or, with the owner's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any Internet website maintained by the Association or other Internet media; and (b) sending the notice by e-mail to each owner who has registered an e-mail address with the Association.

3.08. Quorum. At all meetings of the Board, the presence of a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meetings at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by these bylaws.

3.09. Action Without Notification. The Board may meet by any method of communication, including electronic and telephonic, without prior notice to Owners, if each director may hear and be heard by every other director, or the board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Any action taken without notice to Owners must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board may not, without prior notice to the Owners, consider or vote on: (1) fines; (2) damage assessments; (3) initiation of foreclosure actions; (4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (5) increase in assessments; (6) levying of special assessments; (7) appeals from a denial of architectural control approval; or (8) a suspension of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position; (9) lending or borrowing money; (10) the adoption or amendment of a dedicatory instrument; (11) the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent; (12) the sale or purchase of real property; (13) the filling of a vacancy on the board; (14) the construction of capital improvements other than repair, replacement, or enhancement of existing capital improvements; or (15) the election of an officer.

3.10. Delegating Duties. Directors may select and hire advisors or professional managers for the Association and delegate duties and responsibilities to them. The directors have no liability for actions taken or omitted by the advisor or manager if the Board acts in good faith and with ordinary care in selecting the advisor or manager. The Board may remove or replace the advisor or manager at any time and without any cause whatsoever.

3.11. Interested Directors. Contracts or transactions between directors, officers, or Members who have a financial interest in the matter are not void or voidable solely for that reason. Nor are they void or voidable solely because the director, officer, or Member is present at or participates in the meeting that authorizes the contract or transaction, or solely because the interested party's votes are counted for that purpose. However, a director with any personal interest in the transaction must disclose all material facts concerning the transaction, including all potential personal benefit and potential conflicts of interest, to the other members of the Board. The transaction must be approved by a majority of the uninterested directors. Nothing contained herein shall prohibit any contracts or transactions with Declarant or any of the original Board regardless of any financial interest they may have.

3.12. Proxies. A director may vote by proxy. All proxies must be in writing, must bear the signature of the director giving the proxy, and must bear the date on which the proxy was executed by the director. No proxy is valid after three months from the date of its execution.

3.13. Vacancies and Removal. The Board may remove a director at any time, only for good cause. Good cause for removal of a director includes the unexcused failure to attend at least one-half of the Board meetings in any year of a director's term. A meeting to consider removing a director may be called and noticed following the procedures provided in these Bylaws for a special meeting of the Board of directors. The notice of the meeting will state that the issue of possibly

removing the director will be on the agenda. A director may be removed by the unanimous vote of the remaining Board members. Upon the death, removal, resignation, or incapacity of any member of the Board, the remaining directors shall elect his successor for the un-expired term.

3.14. Property of the Association. The property and business of the Association shall be managed by the Board which may exercise all powers of the Association and do all lawful acts.

#### ARTICLE IV - OFFICERS

4.01. Officer Positions. The officers of the Association shall be chosen by the Board. The Board shall choose from its Members a President, Vice President, Secretary and Treasurer, each of whom shall be a member of the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.02. Election and Term of Office. The Board shall elect such officers at its first meeting and at each annual meeting thereafter. The officers of the Corporation shall serve until the next annual meeting of the Board or until their successors are chosen and qualify in their stead. The Board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

4.03. Removal. Any officer elected or appointed by the Board may be removed by the Board only with good cause. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board.

4.04. President. The President shall preside at all meetings of the Board. The President shall have general supervision of the management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. President may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board authorizes to be executed. However, the President may not execute instruments on the Association's behalf if this power is expressly delegated to another officer or agent of the Association by the Board, these Bylaws, or statute.

4.05. Vice-President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board shall prescribe.

4.06. Secretary. The Secretary shall attend all sessions of the Board and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He or she shall give, or cause to be given, notice of all meetings and shall perform such other duties as may be prescribed by the Board under whose supervision he shall be.

4.07. Treasurer. The Treasurer shall have the custody of the Association funds and the securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association and shall deposit all moneys and other valuable effects in the name and

to the credit of the Association in a depository as shall be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. The Board may appoint an Assistant Treasurer to assist the Treasurer and who, in the absence or inability of the Treasurer to serve, shall perform the duties of the Treasurer.

## ARTICLE V – COMMITTEES

5.01. Establishing Committees. The Board may adopt a resolution establishing one or more committees delegating specified authority to a committee, and appointing or removing members of a committee. A committee will include at least one director and may include persons who are not directors. The Vice-President of the Board shall be a member of the Architectural Control Committee. If the Board delegates any of its management authority to a committee, the majority of the committee must consist of directors. Establishing a committee or delegating authority to it will not relieve the Board, or any director, of any responsibility imposed by these Bylaws or otherwise imposed by law. The Board may establish qualifications for membership on a committee.

5.02. Notice. Notice of a committee meeting will be delivered to each member of a committee not less than two or more than thirty days before the date of the meeting. The notice will state the place, day, time, and purpose of the meeting.

5.03. Voting. A majority of committee members constitutes a quorum for transacting business at any meeting of the committee and the act of a majority of the committee members present at any meetings at which there is a quorum shall be the act of the committee, except as may be otherwise specifically provided by these bylaws. A committee member may not vote by proxy.

## ARTICLE VI - FISCAL PROVISIONS

6.01. Fiscal Year. The Association's fiscal year will begin on the first day of January and end on the last day in December each year.

6.02. Statements. The Board shall have prepared for each annual meeting a full and clear statement of the business and condition of the Association.

6.03. Authorized Signer. The Board may authorize any person to execute instruments on behalf of the Association. In absence of the Board designation, the president and secretary are the only persons authorized to execute instruments on behalf of the Association.

6.04. Indemnification. (a) To the fullest extent permitted by Section 8.101 et seq. of the Texas Business Organizations Code, the Association shall, and the Board shall authorize the Association to, indemnify any present or former director or delegate of the Association who was, is, or is threatened to be made a respondent in a proceeding to the fullest extent permitted by Section 8.102 of said Code if it is determined that:

- (1) the person:
  - (A) acted in good faith;
  - (B) reasonably believed:
    - (i) in the case of conduct in the person's official capacity, that the person's conduct was in the Association's best interests; and
    - (ii) in any other case, that the person's conduct was not opposed to the Association's best interests; and
  - (C) in the case of a criminal proceeding, did not have a reasonable cause to believe the person's conduct was unlawful;
- (2) with respect to expenses, the amount of expenses other than a judgment is reasonable; and
- (3) indemnification should be paid.

(b) The Association also specifically extends the indemnification provided above to any officer of the Association on the same terms and conditions, regardless of whether such officer may be a member of the Board, to the extent provided under Section 8.105 of said Code.

(c) The Association may upon majority vote of the Board purchase and maintain insurance or another arrangement on behalf of any such person against any liability asserted against him and incurred by him in any such capacity or rising out of his status as such a person, whether or not the Association would have the power to indemnify him against that liability under this provision.

(d) Without limiting the preceding, a director or officer or committee member of the Association shall not be liable to the Association or its Members to the fullest extent permitted by the Texas Business Organizations Code as presently enacted, and to the fullest extent permitted by any amendment to the Texas Business Organizations Code hereinafter enacted that further limits the liability of a director or officer or committee member.

(e) Any repeal or amendment of this Article by the Members of the Association shall be prospective only, and shall not adversely affect any limitation on personal liability or the right of any person to indemnification existing at the time of such repeal or amendment.

## ARTICLE VII – BOOKS AND RECORDS

7.01. Required Books and Records. The Association will keep correct and complete books and records of account. The books and records include:

- (a) A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association;
- (b) A copy of all bylaws, and any amended version or amendments to them;
- (c) Minutes of the proceedings of the Board, and committees having any of the authority of the Board;

(d) A list of the names and addresses of the Members, directors, officers, and any committee members of the Association;

(e) A financial statement showing the Association's income and expenses for the 2 most recent fiscal years;

(f) All rulings, letters, and other documents relating to the Association's federal, state, and local tax status; and

(g) The Association's federal, state, and local tax information or income tax returns for each of the Association's 3 most recent tax years.

7.02. Inspection. Books and records of the Association will be made available for inspection and copying pursuant to applicable law, such as Section 22.351 of the Texas Business Organizations Code and Section 209.005 Texas Property Code. The Board may require a Member to submit a written demand for inspection by certified mail to the Association, stating the purpose for which the Member will inspect the books and records. The Board has the following rights: (1) to determine whether the Member's purpose for inspection is proper; (2) to deny the request if the Board determines that the Member's purpose is not proper; (3) if granting the request, to identify which books and records are relevant to the Member's stated purpose for inspection.

7.03. Copying. A Member, at Member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the Member, and to charge the Member a reasonable fee for copying. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

## ARTICLE VIII - AMENDMENTS

8.01. Amendments by the Members. These bylaws may be altered, changed or amended at any meeting of the members at which a quorum is present, provided notice of the proposed alteration, change or amendment be contained in the notice of such meeting, by the affirmative vote of a majority of the members at such meeting and present thereat, but in no event shall more than one vote be cast with respect to any one Lot. The notice of any meeting at which these Bylaws are altered, amended, or repealed, or at which new bylaws are adopted will include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions. The members may delegate to the Board the power to amend the Bylaws of the Association.

8.02. Amendments by the Board. These bylaws may be amended from time to time to comply with any and all new legislation at any meeting of the Board at which a quorum is present by the affirmative vote of a majority of the directors at such meeting; provided, however, that notice of the proposed amendment must be contained in the notice of such board meeting.



Effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

[SEE ATTACHED SIGNATURE PAGE]

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

By: \_\_\_\_\_  
Thomas Berkenkotter, President

Attest:

\_\_\_\_\_  
Deedy Studer, Secretary

THE STATE OF TEXAS

COUNTY OF ARANSAS

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
by Thomas Berkenkotter, President of the Bahia Bay Property Owners Association, Inc., a Texas  
non-profit corporation on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas