

**AMENDED AND RESTATED**  
**DECLARATION OF THE COVENANTS AND RESTRICTIONS**  
**OF THE**  
**BAHIA BAY SUBDIVISION**

**STATE OF TEXAS**

**COUNTY OF ARANSAS**

**This AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS (“Declarations”) dated February 8, 2020 amends and restates any and all recorded Covenants and Restrictions filed in Official Public Records of Aransas County, Texas, and all amendments thereto, in its entirety.**

**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. The ACC members shall be members of the BBPOA. The Board of Directors shall by a majority vote, designate one of its members to serve as one of the members 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. The Board of Directors or a majority of the record owners of the Bahia Bay POA shall have the power, at any time, 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.

**1.3 Committee Purpose.** It shall be the general purpose of the Committee to provide for maintenance of high standards of architecture and construction in such a manner as to maintain strong property values and the safety of the developed Subdivision. The Committee decisions shall be solely governed by the standards and restrictions as controlled by this Declaration and applicable Texas laws.

**1.4 Committee Approval Required.** No structure shall be erected in the Subdivision; nor shall any exterior addition to, change or alteration to any structure be made; nor shall any landscaping on any Lot or Lots that would affect drainage, obstruct safe sight lines 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 to insure full compliance with this Declaration and applicable Texas laws. The Committee may refuse to accept or may require changes, deletions or revisions in such plans and specifications in order to ensure that the architectural and general appearance of all buildings and grounds be in conformity with this Declaration. Refusal of approval of plans and specifications or required changes, deletions or revisions in same may be appealed to the Board for review and final action. Appeals must be presented in writing or by email to the Board within 30 days of the Committee's written decision. The Committee shall have the authority to enter an Owner's property during the period of construction to ensure compliance with approved standards.

**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 this Declaration, all in the exercise of its reasonable discretion. Notwithstanding, if the Committee fails to act on plans and specifications submitted within thirty (30) days, the Board of Directors shall make a required decision within twenty(20) working days as to the approval or denial of such plans and specifications.

**1.6 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 negatively affect strong property values, and are not in any way detrimental to the public welfare or to the property of other persons located in the vicinity hereof. All variances must meet final approval by a majority of the members of the Committee and Board. Variation request must be in writing to the Committee and BOD. The Committee and Board have thirty (30) days to render a decision.

## **ARTICLE TWO**

### **IMPROVEMENT STANDARDS**

**2.1 Residential Use.** No Lot in the Subdivision shall be used other than for single family residential purpose 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 building or other improvement in excess of 40 feet in height from finished floor elevation requirement may be constructed on any lot. 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 of any Lot or any guest of any such 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 utility, plumbing, electrical and sewage facilities have been fully installed, connected as required and inspected by applicable governing agents hereinafter. No commercial business shall be operated at or on a homeowner property. Homeowners may request a business variance to this restriction to the Board of Directors. If the Board of Directors determines the requested business variance does not adversely affect the value of BBPOA property, a variance may be awarded.

**2.2 Building Location.** No building or part of a 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 setback requirements for buildings on Lots bordering on Ocean Drive shall be seven (7') feet from Ocean Drive. For the purposes of this covenant, eaves, and open porches shall be considered as a part of the building.

**2.3 Fences, Plants and 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, plants 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 or safe sight lines designated by the Architectural Control Committee. Fences and plants from the rear building line to the inside of the bulkhead cap shall be no taller than four feet (4') and of an open design, so as not to obscure the view of the canal at any viewing angle.

**2.4 Minimum Floor Area.** Any single-family dwelling constructed on a Lot in the Subdivision must have a 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 at least one-half ( $\frac{1}{2}$ ) of the ground area of any such dwelling on pilings shall be enclosed.

**2.5 Topographic Alterations.** Under no circumstances shall any Owner be permitted to 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. All buildings on lots within the subdivision shall not create erosion from water runoff that damages bulkheads, curbs, streets or structures.

**2.6 Completion Time.** Any house, structure, or improvement commenced on any Lot in the Subdivision, shall be completed within 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 governing required final inspections have been approved.

**2.7 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 without prior approval of ACC and BOD.

**2.8 Plumbing and Sanitary Facilities.** All structures shall have plumbing installations that 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 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.

**2.9 Electrical.** No permanent 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. Permanent electrical services shall be underground and comply with all laws and regulations.

**2.10 Water.** Each residential dwelling constructed on any Lot shall be connected to the water system installed in the Subdivision. Individual water wells shall be allowed on individual lots in compliance with rules and restrictions of all governing agencies and such approved wells must be no higher than 36 inches and be hidden from view from street and canal.

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

**2.12 Docks, Boat Lifts and Piers.** The Committee shall review and approve the plans and specifications of all proposed additions or modification of docks, boat lifts and piers to insure compliance with the standards set forth in this paragraph. The design and manner of construction of all proposed additions or modifications of docks, boat lifts and piers shall conform with applicable construction and engineering standards, proof of which the applying homeowner must provide at the time the plans and specifications are submitted to the Committee for written approval prior to the beginning of construction. All docks, boat lifts, piers and walkways of any type shall not protrude more than (15) fifteen feet beyond the water side of the bulkhead into the channel. Pilings may be placed no more than (15) fifteen feet (inclusive of dock piers and walkways) beyond the water side of the bulkhead into the channel. In addition, the applying homeowner must obtain approval from all governing agencies prior to construction and submit written proof of that approval at the time the applying homeowner submits the plans and specifications to the Committee. 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 without approval of the BOD and ACC. This does not include the temporary docking/mooring of boats. The design of boat docks, piers and walkways shall take into account this limitation. Docks, boat lifts and piers shall be maintained in working condition and shall not be allowed to remain in non operational condition or in need of repair for more than ninety (90) days without consent of the BOD. No boat slips cut through the channel bulkheads are allowed in the Bahia Bay Subdivision.

**2.13 Bridges and Culverts.** In the event any 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

**2.14 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.

**2.15 Swimming Pools.** Swimming pools shall be permitted provided: (i) the location and design of the pool has ACC approval; (ii) the construction and maintenance of the pool is in compliance with all applicable laws, regulations and ordinances of all governing authorities asserting jurisdiction

## **ARTICLE THREE**

### **GENERAL RESTRICTIONS**

**3.1 Channels.** No Owner of any Lot or any guest of such Owner shall moor his boat in any area of any channel, except in that portion of the channel contiguous to such Owner's Lot. The channels shall be a no wake zone and the Owners of all Lots in the Subdivision shall strictly observe such no wake zone in all channels and shall endeavor to enforce all others using such channels to observe such 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.

**3.2 Nuisances.** No noxious nor offensive, unlawful or immoral activity shall be carried on upon any Lot in the Subdivision.

**3.3 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. Owners shall use all means necessary to ensure trash from trash containers or sealed bags does not escape and remain in public view. 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. Vehicle parking is only permitted in the driveway of each house or along the house side of the street curb. 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 inoperable cars or vehicles that are not being worked on shall be visible in the driveway for more than 30 days without BOD permission. No boats, boat trailers, 4-wheelers, campers, recreational vehicles shall be permitted to remain on any Lot for more than thirty (30) days in each calendar year on the street side of the house beyond the front building line. Boats, boat trailers, and campers may be parked on the side of homes within the building lines and approved by the Committee. Each Owner shall post the street number for his or her residence in front of the residence.

**3.4 Grass and Weeds.** Each Owner shall use all means necessary to keep plantings, grass, weeds and vegetation trimmed or cut so that the same shall remain in a neat, orderly and attractive condition. No grass shall be allowed to grow over a height of 8 inches. Palms and tree debris which fall to the ground shall not remain in public view. Do not dispose of debris in public view of BBPOA neighborhood. In the event an Owner shall fail to maintain the landscaped grounds in a neat and orderly manner the Committee shall have the right, through its agents and employees and with (5) days notice by mail or email, to enter the owner's Lot and to repair, maintain and restore the Lot, all at the expense of Owner.

**3.5 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 and obtain permission from lot owner prior to tying up to private property.

**3.6 Pets.** Pet owners shall pick up pet animal waste on others or common property, and insure that while outside the owner's lot the pet is under full control at all times by the pet owner.

**3.7 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.

**3.8 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.

**3.9 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 shall be allowed to be kept in the subdivision. No pets may be raised on any Lot in the Subdivision for commercial purposes. Commercial kennels are not allowed in the Subdivision.

**3.10 Exterior Lights.** The Owners of each Lot in the Subdivision shall maintain on the street side of the house in operating condition, properly maintained at all times, exterior lighting of the type and intensity to insure for safety and security as determined by the Committee. Such light shall be illuminated at the 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 fails or refuses to repair, replace light bulbs, or maintain such exterior lighting, the Association may do so with (30) days written mail/email notice and charge the Owner for such service.

**3.11 Signs.** The Committee or its assigns can remove any sign at the owner's cost violating this provision without consent of the Owner and without any liability for such action. No sign shall be permitted on any Lot without the prior written consent of the Architectural Control Committee other than two sign on front of property and canal side not in excess of twenty four (24) 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 will be allowed without prior consent and shall be ground-mounted and no larger than (24) twenty four inches by (24) twenty four inches. 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 90th day before the date of the election to which it relates and must be removed by the 10th day after such election date. No contractor or services company advertisement sign shall be displayed on member's property after completion of services and approved final inspections. This does not apply to your property security or safety signage including no wake or docking signs.

## **ARTICLE FOUR**

### **EASEMENTS AND UTILITIES**

**4.1 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 or street curbs. 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 or purchaser of the applicable Lot and without compensation or redress to the 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 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 or purchaser of said Lot. The easement area of each Lot and all improvements thereon shall be maintained continuously by the 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 permanent utility connections including but not limited to telephone and electric power service shall be underground and no Owner of any Lot shall erect any permanent poles on any Lot for aerial erection of power or telephone lines.

**4.2 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 FIVE** **RE-SUBDIVISION**

**5.1 Subdivided Lots.** No Lot or parcel of land shall be divided by the 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 re-platted 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 SIX** **PROPERTY OWNERS' ASSOCIATION**

**6.1 Property Owners' Association.** All Owners in the Subdivision shall be members of the Association, and shall be entitled to one (1) vote for each Lot owned of record. 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 Business Organizations Code. The Association shall have a Board of Directors and shall act by vote of a majority in interest of the 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 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 SEVEN** **COVENANT FOR MAINTENANCE ASSESSMENT**

**7.1 Creation of the Lien and Personal Obligation of Assessments.** Each 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.

**7.2 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.

**7.3 Annual Assessment.** Each Lot in the Subdivision shall be subject to an annual assessment of Three Hundred Ninety-Nine Dollars (\$399.00) per Lot, to be paid by the record Owner of each Lot in the year for which such 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 a majority vote 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 the annual meeting. An invoice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be (45) forty-five days from date of invoice and delinquent thereafter. 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.

**7.4 Special Assessments.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of 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 and occupants of this Subdivision. Any such special assessment must have a majority vote of the members who are voting in person or by proxy at a meeting duly called for this purpose. This approved Special Assessment invoice will be sent to every Owner subject thereto and is due (30) thirty days from the approval invoice date and considered delinquent (30) thirty days after the due date. 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.

**7.5 Notices for Any Action Authorized.** Written notice of any meeting called for the purpose of taking any action authorized shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting or as required by the Texas Property Code and all other applicable Texas laws.

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

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

**7.8 Effect of Nonpayment of Assessments: Remedies.** Any assessment not paid as per the stated dates 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, his heirs, devisees, personal representatives, successors and assigns. If the assessment is not paid within thirty (30) days after the delinquent date, a late fee of \$50 will be added to the past due assessment amount, and the Association, may either (1) wave the late fee due to rare circumstances and approved by majority of Board of Directors (2) bring an action at law against the Owner personally obligated to pay the same, or (3) foreclose the lien against the property, or (4) both, and in either event, there shall be added to the amount of such assessment 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 may be 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 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, or any political subdivision or special district thereof, and (2) valid liens securing amounts due or to become due under any purchase money Vendor's Lien and/or deed of trust filed for record prior to the date payment of such assessment for common expenses or fines become due. No such foreclosure shall affect or impair any such prior lien.
- (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 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 which have been duly recorded with the county clerk of Aransas County, Texas.

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.

**7.9 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.

**7.10 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 EIGHT**

### **MAINTENANCE**

**8.1 The Association** shall improve, maintain, repair and otherwise care for the property dedicated to the public within the Subdivision or an area owned by the Subdivision which is not being maintained by a public entity. The association upon a Special Assessment approval as stated in 7.5 shall improve, maintain, repair and otherwise care for the canals, channels and bulkheads within the Subdivision.

**8.2 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, his family, guests or invitees; the Association may recover the costs of such repair or maintenance through the powers given to the Association in Section 9.5 of these covenants and restrictions.

## **ARTICLE NINE**

### **GENERAL PROVISIONS**

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**9.1 Term.** Covenants and Conditions of this Declaration shall run with the Lots in the Subdivision subject hereto and shall be binding upon all Owners 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 sixty-seven (67%) percent of the Owners of fee title to the Lots in the Subdivision subject hereto, is filed of record in the Official Records 13 of Aransas County. 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

**9.2 Amendments.** This Declaration and any or all of the conditions set out herein may be amended as governed by the Texas Property Code by the vote of sixty-seven (67%) percent of the Owners of fee title of the Lots in the Subdivision. 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. 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 changes required by the Texas Property Code or any other governing agency, 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.

**9.3 Notices.** Any notice required to be sent to any 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 on the records of the Association at the time of such mailing. Alternatively, notice may be sent by e-mail in accordance with the Texas Property Code to each Owner who has registered an e-mail address with the Association.

**9.4 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.

**9.5 Enforcement.** If any owner of any Lot shall violate or attempt to violate this Declaration or any of the conditions, covenants or restrictions 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 or 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, 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 proceeding in law or equity or otherwise enforce this Declaration or the conditions. The Board of Directors, under all applicable governing requirements, may adopt reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of the Declaration including the adoption of reasonable fines for violations of the Declaration.

**9.6 Exemptions.** The Board of Directors with 100% approval may grant exemptions to these Documents. Exemption request must be submitted in writing. The BOD has thirty (30) days to render a decision.

**9.7 Signature Block.** The President of the Association, by signing this Amended and Restated Declaration of Covenants and Restrictions, does hereby certify that members of the Association representing (67%) sixty-seven (or as per Texas Property Code requirements) of the Lots in the Bahia Bay Subdivision have approved this Amended and Restated Declaration of Covenants and Restrictions and whose signed ballots are on file with the Secretary of the Association.

**Effective this \_\_\_\_\_ day of \_\_\_\_\_, 2020.**  
**Bahia Bay Property Owners' Association,**  
**a Texas non-profit corporation**

**By: \_\_\_\_\_**  
**Thomas E Mikulastik, President**  
**Attest**

**\_\_\_\_\_**  
**Sherry Otto, Secretary**