

K629277

AMENDMENT TO RESTATED COVENANTS  
AND RESTRICTIONS OF BAL HARBOUR

052-66-0764

THE STATE OF TEXAS           §  
COUNTY OF HARRIS           §

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/

The members of Bal Harbour Association, acting in accordance with the "Restated Covenants and Restrictions of Bal Harbour" dated the 3rd day of May, 1978, under Clerk's File No. F-587686 and File Code No. 194-09-0983 through 194-09-0995, of the Official Public Records of Real Property of Harris County, Texas, as heretofore amended and supplemented by Agreement to Supplement Restated Covenants and Restrictions of Bal Harbour effective as of June 1, 1979, and recorded on January 31, 1980, under Clerk's File No. G412975, and Film Code No. 149-98-0834 through 149-98-0838 by Amendment to Restated Covenants and Restrictions of Bal Harbour dated 20th day of December, 1979, and recorded under Film Code No. 149-98-0839 through 149-98-0840, Amendment to Restated Covenants and Restrictions of Bal Harbour dated the 31st day of October, 1980, and recorded under Film Code No. 170-93-2014 through 170-93-2019, Correction to the Amendment to Restated Covenants and Restrictions of Bal Harbour dated the 2nd day of February, 1981, and recorded under Film Code No. 178-90-1616 through 178-90-1621, and the Amendment to Restated Covenants and Restrictions of Bal Harbour dated the 1st day of June, 1984, and recorded under Film Code No. 089-84-1346 through 089-84-1347, all in the Official Public Records of Real Property of Harris County, Texas, do hereby adopt and agree to be bound by the following amendments to "Restated Covenants and Restrictions of Bal Harbour", as heretofore amended and supplemented, which amendments are a restatement and amendment of all prior documents and shall replace and supersede all prior Covenants and Restrictions for Bal Harbour and all previous amendments thereto and restatements thereof, effective upon the adoption of these Restated Covenants and Restrictions.

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RE STATED  
COVENANTS AND RESTRICTIONS  
FOR  
THE BAL HARBOUR ASSOCIATION

FILED FOR RECORD  
8:30 A.M.

JUL 11 1986

*Quita Roddenberry*  
County Clerk, Harris County, Texas

MAY 1986

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RECITALS

WHEREAS: MEMBERS and DEVELOPER are the OWNERS of the real property described in Article II of this declaration and have created thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, MEMBERS and DEVELOPER desire to provide for the preservation of the values and amenities of said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desire to subject the real property described in Article II, together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each OWNER thereof; and

WHEREAS, MEMBERS and DEVELOPER have deemed it desirable, for the efficient preservation of the values and amenities of said community properties and facilities and administering and enforcing these Covenants and Restrictions and collection and disbursing the assessments and charges hereinafter created; and

WHEREAS, there has been incorporated under the laws of the State of Texas, as a nonprofit corporation, The Bal Harbour Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the MEMBERS and DEVELOPER declare that the real property described in Article II and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

Definitions

1. "ASSOCIATION" shall mean and refer to The Bal Harbour Association.

2. "THE PROPERTIES" shall mean the real property platted as "Bal Harbour Cove" and later changed to "Bal Harbour" by plat recorded on July 26, 1974, in Volume 218, pages 65 and 66, Map Records of Harris County, Texas, and all additions to such subdivisions.

3. "COMMON PROPERTIES" shall mean and refer to the open areas, utility reserves and common facilities such as tennis courts and club house as shown on the attached plat of Bal Harbour. The COMMON PROPERTIES shall include but are not limited to the following:

Reserves "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "Y", "Z", "AA", "BB", "DD", "EE", "FF", "GG", "HH", "JJ", "KK", "LL", Club Site Reserve "W", Canal Reserve "C", and all streets and access ways; and property designated as common property for recreational or other common use in any replatting of a portion of Bal Harbour subdivision.

4. "LOT" shall mean and refer to any plot of land included in THE PROPERTIES which is shown by LOT and Block numbers on the "Bal Harbour" subdivision plat, as now existing or hereafter replatted in accordance with the ordinances of the City of Nassau Bay.

5. "LIVING UNIT" shall mean and refer to a building or any portion of a building situated upon THE PROPERTIES designed and intended for use and occupancy as a residence by a single family, including without limitation a condominium unit if condominium units are added to THE PROPERTIES pursuant to Article II. When improvements have been constructed upon any LOT, the LOT shall become part of the LIVING UNIT situated upon it.

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6. "OWNER" shall mean and refer to the record OWNER, whether one or more persons or entities, of the fee simple title to any LOT or LIVING UNIT situated upon THE PROPERTIES but notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or proceeding in lieu of foreclosure.

7. "MORTGAGE" shall include a deed of trust and "mortgagee" shall include the holder of indebtedness secured thereby.

8. "MEMBER" shall mean and refer to all those OWNERS who are MEMBERS of the ASSOCIATION as provided in Article III, Section I, hereof.

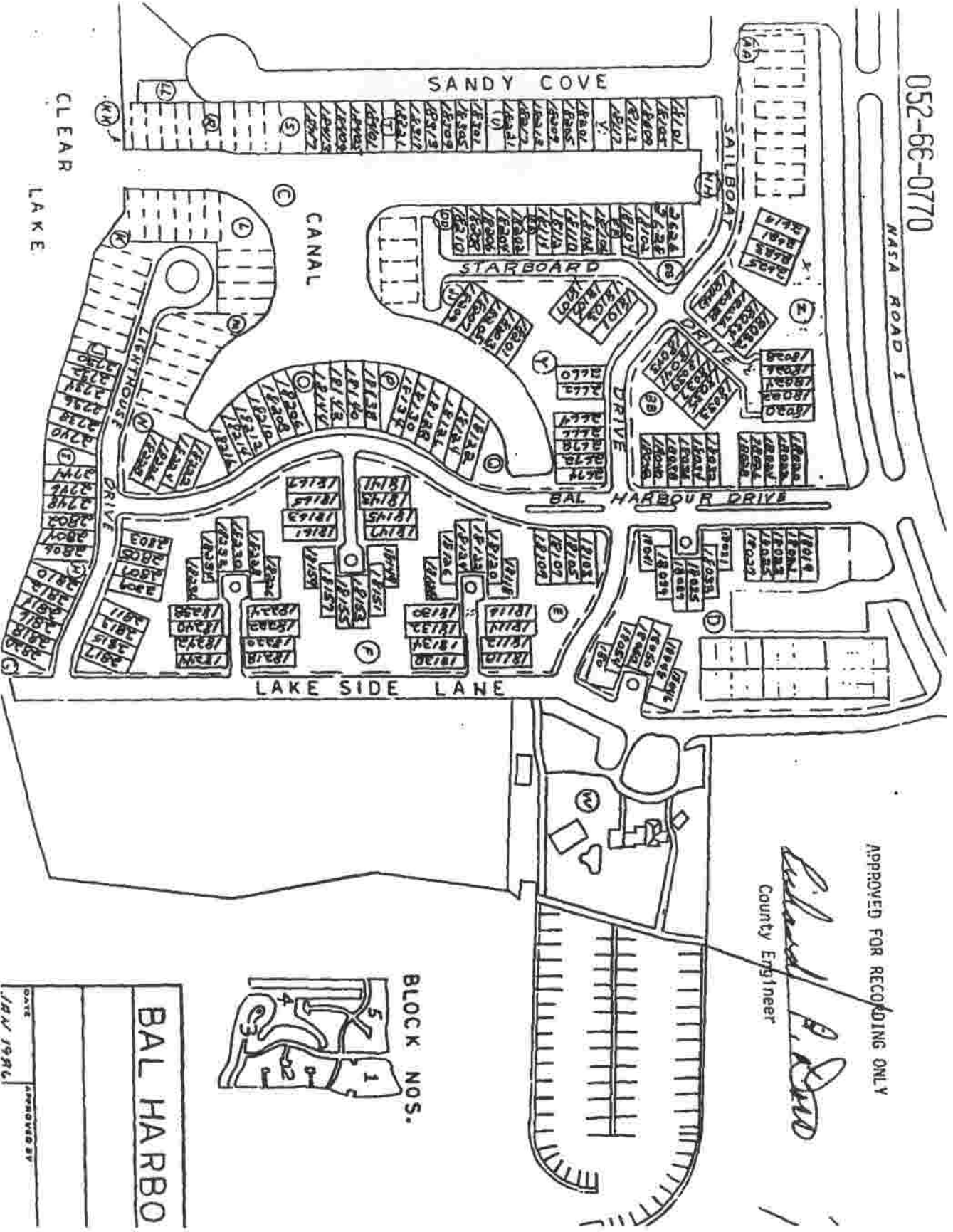
9. "MAINTENANCE FEE" shall be a fee to be set by the ASSOCIATION and MEMBERSHIP to defray the cost of operation and maintenance of THE PROPERTIES as decided from time to time by the Board of Directors.

10. "DEVELOPER" shall mean and refer to any individual or organization that owns more than one undeveloped LOT which is a part of THE PROPERTIES.

11. "CONSTRUCTION PERIOD" shall mean and refer to that period or time from the date hereof until all LOTS within THE PROPERTIES are conveyed to OWNERS other than a DEVELOPER.

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NASA ROAD 1



APPROVED FOR RECORDING ONLY

*Richard A. Davis*  
 County Engineer

BLOCK NOS.



BAL HARBO

DATE: JAN 1986  
 APPROVED BY:

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ARTICLE II

Property Subject to this Declaration

Section 1. Property Subject to this Declaration: All of THE PROPERTIES are and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration.

Section 2. Additions to THE PROPERTIES: Additional lands may become subject to this Declaration in the following manner:

2.1 Additions: Any DEVELOPER, with the approval of the ASSOCIATION, shall have the right to bring within the scheme of this Declaration additional properties adjacent to Bal Harbour by placing a declaration to such effect on record or by replatting Bal Harbor to include such additional properties. Any addition must meet filling, zoning and density requirements of the appropriate municipal or county regulatory agencies. It is contemplated that properties used or to be used for condominium development, townhouse development, commercial development, or for recreational uses may be added to THE PROPERTIES.

2.2 Mergers: Upon a merger or consolidation of the ASSOCIATION with another association as provided in its Articles of Incorporation, the ASSOCIATION'S properties, rights and obligations may, or alternatively, the properties, rights and obligations of the other association included in such merger or consolidation may, by operation of law, be added to the properties, right and obligations of the new consolidated or merged association as a surviving corporation. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration without the approval of the ASSOCIATION.

Section 3. Changes and Replats in the Subdivision: It is understood that the name of "Bal Harbour Cove" subdivision has been changed to "Bal Harbour" and that the DEVELOPER expressly reserves the right to replat portions of such subdivision and of additions thereto owned by DEVELOPER



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subject to compliance with all applicable zoning and other ordinances of the City of Nassau Bay, Texas, without the joinder or consent of any other persons whatsoever.

Section 4. Architectural Conformance: Each DEVELOPER shall attempt to maintain exterior architectural conformance in all future construction and submit such design to the Architectural Control Committee for its approval which shall not be unreasonably withheld or delayed as specified in Article VIII. At all times the DEVELOPER shall comply with the ordinances, codes and building regulations of the City of Nassau Bay, Texas, and all other governmental authorities.

Section 5. Further Development of the Subdivision: During the CONSTRUCTION PERIOD, DEVELOPER (and/or parties authorized by the DEVELOPER):

5.1 May maintain in, upon or about such portions of the LOTS and/or LIVING UNITS owned by DEVELOPER, such facilities as in the sole discretion of DEVELOPER may be necessary and/or convenient to facilitate and complete the development of THE PROPERTIES and the sale of LOTS and/or LIVING UNITS owned by DEVELOPER, including, but not limited to, use of such areas as storage areas, model units, temporary field office(s) for sales, construction and/or other related purposes (the location of which field office may, from time to time, be changed as LOTS are sold). DEVELOPER may likewise place signs advertising the sale of LOTS or LIVING UNITS in, on or about any of such areas. During the CONSTRUCTION PERIOD, DEVELOPER shall maintain all LOTS and/or LIVING UNITS owned by DEVELOPER (and any adjacent COMMON PROPERTY) in a good state of repair.

5.2 May, subject to the provisions of Article IV, Section 1, utilize the streets for any construction equipment, facilities or materials or for the transporting of supplies or materials or for any other lawful purposes that, in the sole discretion of DEVELOPER, is necessary or convenient to the construction of additional improvements upon THE PROPERTIES.

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5.3 May, subject to the provisions of Article IV, Section I, have unlimited access at all times to the swimming pool, tennis courts, tennis shop, marina, and clubhouse generally and to all green space COMMON PROPERTIES for the purpose of showing said facilities to prospective purchasers.

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ARTICLE III

Membership and Voting Rights in the ASSOCIATION

Section 1. Membership: Every person or entity who is a record OWNER of fee simple title of any LOT or LIVING UNIT in Bal Harbour shall be a MEMBER of the ASSOCIATION, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a MEMBER.

Section 2. Voting Rights: MEMBERS shall be entitled to one (1) vote for each LOT or LIVING UNIT in which they hold the interests required for membership in Section 1. When more than one person holds such interest or interests in any LOT, all such persons shall be MEMBERS, and the vote for such LOT or LIVING UNIT shall be exercised as they among themselves determine. But in no event shall more than one (1) vote be cast with respect to any such LOT nor shall fractional votes be permitted. One (1) vote shall be cast for a LOT with a LIVING UNIT on it.

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ARTICLE IV

COMMON PROPERTIES

Section 1. Members' Beneficial Interest of Enjoyment:  
The ASSOCIATION shall continue to use all of the COMMON PROPERTIES for the purposes for which they are presently being utilized (e.g., the tennis courts shall continue to be used as tennis courts, the swimming pools as swimming pools, etc.) unless the MEMBERS, at any meeting of the MEMBERS of the ASSOCIATION approve a different use. Every MEMBER of the ASSOCIATION (including DEVELOPER) shall have a beneficial interest of use and enjoyment in the COMMON PROPERTIES, and such interest shall be appurtenant to and shall pass with the title to every LOT and LIVING UNIT subject to the following provisions:

1.1. The right of the DEVELOPER to dedicate or transfer all or any part of the COMMON PROPERTIES contained within platted but undeveloped properties owned by DEVELOPER to any public agency, authority or utility, provided, however, that such dedication or transfer is in accordance with a general plan of development for all of Properties in Bal Harbour.

1.2. The right of the ASSOCIATION to establish reasonable rules and regulations governing the use of the COMMON PROPERTIES and the improvements and facilities located thereon, and to establish and enforce nondiscriminatory penalties for infractions thereof; provided, however, that the ASSOCIATION shall not, without the amendment of these covenants as specified herein:

1.2.1. Sell, transfer, convey, assign or lease (except as provided in Article XI, "Concessions" and in Article XIII, "Boat Slip Leases") the COMMON PROPERTIES or any portion thereof.

1.2.2. Limit or hinder the DEVELOPER'S access to and uses of the COMMON PROPERTIES permitted herein above or any portion thereof, in connection with sales of LOTS and/or LIVING UNITS to show the COMMON PROPERTIES to prospective purchasers of such LOTS and/or LIVING UNITS.

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Section 2. Title to COMMON PROPERTIES: As of June 30, 1980, the ASSOCIATION assumed title and the responsibility for management, insurance, maintenance and repairs, including labor, personnel and materials, of all COMMON PROPERTIES with the exception of COMMON PROPERTIES platted but undeveloped and the bulkheads adjacent to unsold DEVELOPER owned units.

Additionally, the ASSOCIATION assumed responsibility for all of the ad valorem taxes on the common grounds, elements, properties and improvements as indicated above beginning with the 1980 tax year.

The ASSOCIATION and DEVELOPER agree that DEVELOPER shall deed all common grounds, elements, properties and improvements to the ASSOCIATION free and clear of all liens and encumbrances except utility easements, these Covenants and Restrictions, and other items shown on any amended plat of the PROPERTIES.

Section 3. Easements for Encroachments: All reserves for open spaces, access ways, and utilities shall be subject to easements not to exceed five (5) feet in width, along and parallel with the common boundaries of any such reserve and LOTS, which easement shall be available for use for walls, wall extensions, overhanging eaves, fireplaces and other portions of LIVING UNITS. Each LOT and/or LIVING UNIT and the COMMON PROPERTIES shall be subject to an easement not to exceed five (5) feet in width for encroachments created by construction, settling and overhang of the structures built by DEVELOPER. A valid easement for said encroachments and for the maintenance of same so long as they shall stand, shall and does exist. Each LOT and/or LIVING UNIT adjacent to undeveloped LOTS owned by DEVELOPER and the COMMON PROPERTIES adjacent thereto shall be subject to an easement not to exceed five (5) feet in width for temporary construction purposes until completion of improvements on said undeveloped LOTS thereby eliminating the necessity for said temporary easement. DEVELOPER shall restore said properties burdened with said temporary easement to their original condition should damage to landscaping or improvements occur during construction use.

Section 4. Maintenances and Taxes: Unless otherwise specified herein, the ASSOCIATION shall maintain the COMMON PROPERTIES in a good state of repair, the cost of which shall be part of the MAINTENANCE FEE. The ASSOCIATION shall also pay, prior to delinquency, all ad valorem and other taxes (if any) assessed against or levied upon the COMMON PROPERTIES.

ARTICLE VMaintenance and Operating Fees and Assessments

Section 1. Fees: Each LOT and LIVING UNIT not owned by DEVELOPER is subject to and obligated to pay a MAINTENANCE FEE each month into the Association's maintenance fund, such FEE to be paid on the first day of each month. The OWNER or OWNERS of each such LOT or LIVING UNIT shall be personally obligated to pay such FEE into the maintenance fund. Beginning November 1, 1982, the MAINTENANCE FEE is set at \$175.00 per month per LIVING UNIT and 50 per cent of said MAINTENANCE FEE for undeveloped, non DEVELOPER owned LOTS, subject to adjustment to reflect increases in the Consumer Price Index of the Bureau of Labor Statistics for the Houston Standard Metropolitan Statistical Area (the "Index"), as follows:

1.1 Fee Adjustment: On January 1, 1984, and on the first day of January of each year thereafter, the MAINTENANCE FEE may be computed by multiplying \$175.00 by a fraction, the numerator of which will be the Index for the month of October of the immediately preceding year and denominator of which will be the Index for the month of October, 1982. In the event that the Index ceases to be formulated for the month of October in any year for which MAINTENANCE FEE computations are being made, the numerator of the fraction to be used in computing the MAINTENANCE FEE will be the Index for the next preceding month or period for the year in question. In the event that the Index, itself, is no longer formulated, the ASSOCIATION shall use such other cost-of-living index, as the ASSOCIATION in its discretion deems fair and equitable.

Notwithstanding the foregoing, the MAINTENANCE FEE may be set by the affirmative vote of a majority of the MEMBERS entitled to vote at annual or special meetings.

The Board of Directors of the ASSOCIATION may, after consideration of current operating and maintenance costs and future needs of the ASSOCIATION, fix the MAINTENANCE FEE at a lesser amount.

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1.2 Fee as Lien: The MAINTENANCE FEE, capital assessments, and other assessments made under these covenants, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the OWNER of such LOT or LIVING UNIT at the time when the assessment fell due.

Section 2. Maintenance by DEVELOPER: DEVELOPER, will be responsible only for the direct maintenance of LOTS and LIVING UNITS owned by DEVELOPER and will not be responsible for the MAINTENANCE FEE specified above in Section 1. DEVELOPER will, however, be responsible for maintaining LOTS and LIVING UNITS owned by DEVELOPER in good condition and repair, including any COMMON PROPERTIES controlled by DEVELOPER, and will undertake upon the reasonable request by the ASSOCIATION to maintain properties in good condition.

Section 3. Purposes of MAINTENANCE FEE: The MAINTENANCE FEE levied by the ASSOCIATION as provided above shall be for:

3.1. The purpose of promoting the recreation, health, safety and welfare of the residents in THE PROPERTIES; and in particular for the improvement, operation and maintenance of the COMMON PROPERTIES, services, and facilities devoted to this purpose and related to the use and enjoyment of the COMMON PROPERTIES and of the LIVING UNITS situated upon THE PROPERTIES, including, but not limited to, the payment of taxes for COMMON PROPERTIES and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

3.2. The maintenance of the exterior of the individual townhomes (as further defined in Article IX) except those owned by DEVELOPER and including but not limited to the cost of materials, labor, equipment, management and supervision required to provide such maintenance.

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Section 4. Special Assessments for Capital Improvements:  
In addition, to the MAINTENANCE FEE authorized by Section 1 hereof, the ASSOCIATION may levy in any assessment year a special assessment on OWNERS other than DEVELOPER, applicable to that year only, for the purpose of defraying, the whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the COMMON PROPERTIES, including the necessary fixtures and personal property related thereto, provided that such assessment shall have the assent of two-thirds (2/3rds) of the votes of the MEMBERS who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all MEMBERS at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Quorum for Any Action Authorized Under Section 4: The quorum required for any action authorized by Section 4 hereof shall be as follows:

At the first meeting called, as provided in Section 4 hereof, the presence at the meeting of MEMBERS, or of proxies, entitled to cast sixty (60) percent of all the votes of the MEMBERSHIP shall constitute a quorum. If the required quorum is not forthcoming at the first meeting, another meeting may be called, subject to the notice requirements set forth in Section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of MAINTENANCE FEE: The MAINTENANCE FEE provided for herein shall commence on the date of the closing for each LOT or LIVING UNIT sold to a person other than a DEVELOPER. The amount of the MAINTENANCE FEE which may be levied for the balance remaining in the first month of assessment shall be an amount which bears the same relationship to the MAINTENANCE FEE provided for in Section 1 hereof as the remaining number of days in that month bear to thirty (30). The same reduction in the amount of the MAINTENANCE FEE shall apply to the first payment levied against any property which is hereafter added to THE PROPERTIES now subject to the FEE at a time other than the beginning of any period.



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Section 7. Duties of the Board of Directors with Respect to MAINTENANCE FEE and Assessments: The Board of Directors of the ASSOCIATION shall maintain a current roster of the OWNERS and their properties and the respective fees and assessments applicable thereto which shall be kept in the office of the ASSOCIATION and shall be open to inspection by any OWNER. Subject to vote of OWNERS where required by other provisions, such Board shall fix the amounts and due dates of fees and assessments. Written notice of fees and assessments shall thereupon be sent to every OWNER subject thereto. The ASSOCIATION shall upon demand at any time furnish to any OWNER liable for fees or assessments a certificate in writing signed by an officer of the ASSOCIATION, setting forth whether said fees and assessments have been paid. Such certificate shall be conclusive evidence of payment of any fee or assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Fees and Assessments; The Personal Obligation of the OWNER; The Lien; Remedies of ASSOCIATION: If fees and assessments are not paid on the date when due then such fees and assessments shall become delinquent and shall, together with such interest thereon and late charges thereof as hereinafter provided thereupon, become a continuing lien on the property which shall bind such property in the hands of the then OWNER, his or her heirs, devisees, personal representatives and assigns. The personal obligation of the then OWNER to pay such past due fees and assessments, however, shall remain his personal obligation and shall not pass to his successor in title as a personal obligation of such successor unless expressly assumed.

If the fees and assessments are not paid within twenty (20) days after the first of the month, which is the delinquency date, there shall be added to the amount due a late charge in an amount to be set by the Board of Directors of The Bal Harbour Association and which may from time to time be increased or decreased by said Board. Said late charge shall be added to the original amount due each month following the original (20) day delinquency. If the amount due is not paid within thirty (30) days after the delinquency date, the amount due shall bear interest from the date of delinquency at the maximum interest allowed by law. Such interest shall be charged on the amount due alone and shall not be charged on the late charge amount. There shall be added to the amount due any late charges and interest, the cost of collection and of attorney's fees reasonably incurred by the

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ASSOCIATION with respect to such collection. The ASSOCIATION may bring an action at law against the OWNER personally obligated to pay the same or to foreclose the lien against the property, and in the event a judgment is obtained, such judgment shall include the late charge and interest as above provided and a reasonable attorney's fee together with the court cost, and other reasonable costs of collection.

Section 9. Subordination of the Lien to MORTGAGES: The lien of the fees and assessments provided for herein shall be subordinate to the lien of any MORTGAGE or MORTGAGES now or hereafter placed upon THE PROPERTIES subject to fees and assessments; provided, however, that such subordination shall apply only to the fees and assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any fees and assessments thereafter becoming due, nor from the lien of any such subsequent fees and assessments.

Section 10. Exempt Property: The following property subject to this Declaration shall be exempted from the fees and assessments, charges and liens created herein:

10.1. All properties to the extent of any easement or other interest therein dedicated and accepted by the local authority and devoted to public use;

10.2. All COMMON PROPERTIES as defined in Article I hereof;

10.3. Any property exempted from ad valorem taxation by the law of the State of Texas, provided such property is totally exempt under such laws.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said fees and assessments, charges or liens.

ARTICLE VIParty Walls

Section 1. General Rules of Law to Apply: Each wall which is built as part of the original construction of the homes upon THE PROPERTIES and placed on the dividing line between the LOTS shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared by the OWNERS who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any OWNER who has used the wall may restore it, and if the other OWNERS thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such OWNERS to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing: Notwithstanding any other provision of this Article, an OWNER who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land: The right of any OWNER to contribution from any other OWNER under this Article shall be appurtenant to the land and shall pass to such OWNER'S successors in title.

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## ARTICLE VII

### Insurance

Section 1. Insurance on Property: The Board of Directors of the ASSOCIATION shall obtain and continue in effect blanket property insurance to insure the buildings and structures in the Common areas. This insurance to be equal to the maximum replacement value of said buildings and structures. The costs, charges and premiums for this insurance shall be a common expense of all OWNERS and be a part of the maintenance assessment in addition to the MAINTENANCE FEE set in Article V, Section 1, and voted upon by the OWNERS.

Section 2. Public Liability Insurance: The Board of Directors of the ASSOCIATION will obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the ASSOCIATION, its Board of Directors, agents and employees, and each OWNER, from and against liability in connection with the COMMON PROPERTIES and other ASSOCIATION activities. The cost, charges and premiums for this insurance shall be a common expense of all OWNERS and also be a part of the MAINTENANCE FEE in addition to other increments.

Section 3. Personal Liability for Insurance Expense: Unless the Board of Directors has decided otherwise, each OWNER will be held responsible at his own expense and cost for his personal insurance on the contents of his own residence including decorations, furnishings and personal property therein; and his personal property stored elsewhere on THE PROPERTIES; and for his personal liability not covered by liability insurance for all OWNERS obtained as a part of the common expense.

Section 4. Additional Provisions: The Board of Directors of the ASSOCIATION has the authority to obtain property insurance on all LIVING UNITS, carports, additions and improvements. Provided the Board of Directors elects to insure the LIVING UNITS of the MEMBERS, the insurance shall be by a solvent, reputable insurance company licensed to do business in the State of Texas and having a rating of "A+ 12-15" for the maximum insurable value of said property under a master policy. The ASSOCIATION shall be named in said policy as the insured, together with the OWNER or OWNERS of the property and any lien holders. Said master policy shall also contain a clause by the terms of which said policy cannot be canceled except upon sixty (60) days written notice to the ASSOCIATION. The ASSOCIATION will furnish evidence that such insurance is in force,

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satisfactory to a MEMBER and any lien holder, from time to time as requested in writing by the MEMBER or any lien holder.

If the Board of Directors elects to obtain a master insurance policy, each MEMBER shall pay as part of the MAINTENANCE FEE provided for in Article V, but in addition to increments otherwise set, a pro rata portion of the annual premium of said master insurance policy. Such proration shall be in the same proportion as the "insurable value" of all improvements owned by such MEMBER and the "insurable value" shall be determined by the Board of Directors in its discretion based upon the approximate relative values of the improvements, including but not necessarily limited to the square footage of the LIVING UNIT.

By becoming a MEMBER of the ASSOCIATION, the MEMBER appoints the ASSOCIATION as its agent and attorney-in-fact for the MEMBER and all other insured, to receive, receipt for, and collect any and all proceeds payable under such insurance policies on account of damage to or destruction of the insured premises. Pursuant to this authority, the ASSOCIATION may, in good faith, compromise with the insurance carrier any disputed claim and execute such releases, acquiescence and discharges as may be necessary to effect such compromise, or litigate to collect said proceeds on behalf of itself and the other insured.

To the extent that any insurance proceeds are received by it, the ASSOCIATION will, at its expense, repair or replace any damaged or destroyed improvements to their same condition existing just prior to the damage or destruction for which the proceeds are received. Such repair or replacement shall be commenced and completed within a reasonable time and in a good and workmanlike manner using suitable materials. The ASSOCIATION shall not be liable for any delay in the completion of any repairs or improvements due to causes beyond its reasonable control or the reasonable control of its subcontractors. By way of illustration but not limitation, the ASSOCIATION shall not be liable for delay occasioned by weather, shortage and unavailability of materials, strikes or labor shortage or contractual obligations of the same type. In any event, the sole liability of the ASSOCIATION for delay shall be the reasonable rental value of the premises for the number of days delay beyond a reasonable period of time. Reasonable rental value shall be what the same or similar premises located in Houston, Texas, would rent for on a one (1) year lease beginning at the commencement of the unreasonable delay.

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By becoming a MEMBER of the ASSOCIATION, the MEMBER, together with his or her spouse, if any, grants to the ASSOCIATION an express mechanic's and materialmen's lien in the amount by which the reasonable cost (including extras, if any, agreed upon by and between the ASSOCIATION and the MEMBER) of repairing or replacing the premises damaged or destroyed exceeds the insurance proceeds realized by the ASSOCIATION. As a condition precedent to the obligation of the ASSOCIATION to repair or replace any damaged or destroyed premises, the OWNER thereof together with his or her spouse, if any, agrees to ratify and confirm the express mechanic's and materialmen's lien herein provided for by a separate instrument, in the form and manner required by law. Such liens shall not relate back to the date of this instrument of restrictions but shall take effect as of the date of each contract for repair or replacement or as of the date labor or materials are first performed or furnished, whichever occurs first.

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## ARTICLE VIII

### ASSOCIATION Organization and Control

Section 1. Organization: The business and property of the ASSOCIATION shall be controlled and managed by a Board of Directors and subject to the restrictions imposed by any law, by these Covenants and Restrictions and by the Bylaws of the ASSOCIATION.

Section 2. Committees: The Board of Directors may appoint committees to oversee various facilities and operations of the ASSOCIATION. Typical such committees might be:

- Finance
- House and Grounds
- Marina or Yacht
- Tennis or Recreation
- Architectural Control
- Emergency Preparedness

Section 3. Architectural Control: No building, fence, wall or other structure shall be commenced, erected or maintained upon THE PROPERTIES, nor shall any exterior additions to or change or alteration therein be made 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 as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the ASSOCIATION. The Board may appoint an architectural committee composed of three (3) or more representatives to review plans and make recommendations.

In the event the applicant has obtained and furnished copies of all requisite permits for construction of improvements or repairs from all governmental bodies requiring same, including but not limited to building permits from the City of Nassau Bay, Texas, if applicable, or permits from the Corps of Engineers of the United States of America, if applicable, and in the event said Board fails to approve or disapprove such design and location within forty (40) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. No application for architectural approval shall be considered to have been submitted until complete plans and specifications have been furnished, together with copies of all required permits described above.

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Nothing in the above, however, shall be construed to prohibit the Board from taking appropriate action to have modifications or additions removed or modified to meet requirements.



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## ARTICLE IX

### Exterior Maintenance

Section 1. Exterior Maintenance: In addition to maintenance upon the COMMON PROPERTIES as provided in Article V, the Board of Directors shall provide, to the extent funds of the ASSOCIATION are available therefor, exterior maintenance by the ASSOCIATION upon all improvements built upon LOTS and upon all LIVING UNITS within THE PROPERTIES as follows: paint and repair of ordinary wear and tear (but not of damage caused by the negligent or intentional acts of the OWNER of any LOT or LIVING UNIT or such OWNER'S agents, contractors or visitors), gutters, downspouts, exterior building surfaces (including roofs), trees, shrubs, walks and other exterior improvements.

Section 2. Costs: The MAINTENANCE FEE levied under Article V may be used for repair and maintenance of exteriors as defined in Section 1 to the extent of ordinary wear. The reasonable cost of any exterior maintenance reasonably required for any LIVING UNIT in excess of ordinary wear shall be assessed by the Board of Directors against each such LIVING UNIT and shall be billed in the same manner as the MAINTENANCE FEES as otherwise provided herein. Such excess exterior MAINTENANCE FEE shall be a lien and obligation of each OWNER and shall become due and payable in all respects as provided in Article V hereof. When other assessments against each OWNER for any assessment year are made as provided under Article V hereof, the Board of Directors may add thereto the estimated cost of the exterior maintenance for each OWNER for that year, but shall, thereafter, make such adjustment with the OWNER as is necessary to reflect the actual cost thereof.

Section 3. Access at Reasonable Hours: For the purposes solely of performing the exterior maintenance required by this Article, the ASSOCIATION, through its duly authorized agents or employees shall have the right, after reasonable notice to the OWNER, to enter upon any LOT at reasonable hours on any day except Sunday.

Section 4. Bulkheads: During the CONSTRUCTION PERIOD, DEVELOPER shall have the right to remove and replace or otherwise alter, bulkheads contiguous to LOTS owned by DEVELOPER as in the sole discretion of DEVELOPER is necessary and/or convenient to complete construction of the improvements on such LOTS. Prior to sale of a LOT, DEVELOPER shall, at Developer's sole cost and expense, maintain the bulkheads adjacent to such LOT in good repair. The ASSOCIATION shall maintain and keep the

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bulkheads adjacent to the COMMON PROPERTIES and any LOTS following sale thereof by DEVELOPER, the cost of which shall be included as part of the MAINTENANCE FEE.

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ARTICLE X

Common Television Antenna/Cable System

The Board of Directors has approved a television cable company to provide a common cable television system for Bal Harbour. This system is available to all LIVING UNITS at the cable company's standard rates at the discretion of OWNERS. Irrespective of what provisions are made by the Board of Directors for such purposes, there shall be prohibited, in any event, the erection of any exterior radio, television, dish antenna or other device on any LOT or LIVING UNIT or COMMON PROPERTIES except a common system provided or expressly authorized by the Board of Directors.

ARTICLE XIConcessions for Public and Membership Use

Section 1. Concessions: When in the opinion of the Board of Directors of the ASSOCIATION it is in the best interest of the MEMBERSHIP, the Board of Directors of the ASSOCIATION may award contracts to manage portions of the COMMON PROPERTIES or lease portions of the COMMON PROPERTIES to third parties to operate recreational, food service, beverage service, educational or other enterprises as concessions on such properties according to such terms and considerations as the Board may deem to be in the best interest of the MEMBERSHIP.

Section 2. Use by MEMBERS and the Public: The term of such concessions may specify from time to time regulations governing the use, access, and patronage of such concessions both by members of the public and by MEMBERS of the ASSOCIATION and their guests, making such regulations, rents, fees, and prices to the public and to MEMBERS as may be determined in accordance with the provisions of the concession agreement. The Board may authorize equal prices and terms for access by MEMBERS of the ASSOCIATION and by the public or may authorize reasonable classifications for the determination of such prices. All considerations received by the ASSOCIATION from such concessions shall be applied to the benefit of the MEMBERS by funding of maintenance costs or by investment in improvements or additions to the COMMON PROPERTIES as the Board of Directors may deem to be in the best interest of the MEMBERS.

ARTICLE XIIGeneral Provisions

Section 1. Duration and Parties Who Can Enforce: The Covenants and Restrictions of this Declaration shall run with and bind THE PROPERTIES and shall inure to the benefit of and be enforceable by the ASSOCIATION, or the OWNER of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns until December 1, 2010, subject to Section 5 below, after which term said covenants shall expire unless extended by a majority vote of the MEMBERS for additional term or terms as may be desired at the expiration of each term.

Section 2. Notices: Any notice required to be sent to any MEMBER or OWNER under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as MEMBER or OWNER on the records of the ASSOCIATION at the time of such mailing.

Section 3. Enforcement: Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land in rem to enforce any lien created by these covenants; and failure by the ASSOCIATION or any OWNER to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability: Invalidation of any provision of, or any one of these Covenants and Restrictions by judgment or court order shall in no way affect any other provisions, all of which other provisions shall remain in full force and effect.

Section 5. Amendment: These Covenants and Restrictions may be amended in part or in full, provided that no amendment of these Covenants and Restrictions shall affect the rights of or impose any additional obligation upon any DEVELOPER without such DEVELOPER'S consent, in any manner whatsoever, by the affirmative vote of two thirds (2/3) of all MEMBERS of the ASSOCIATION. At a minimum the complete Article containing such amendment shall be republished to maintain the serviceability of these Covenants and Restrictions.

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ARTICLE XIII

Boat Slip Leases

For purposes hereof, the phrase "Boat Slip Leases" refers to leases of:

1. Marina Slips - slips in the marina and
2. Canal Slips - slips in the canals.

The Board of Directors of the ASSOCIATION shall have the right to establish reasonable nondiscriminatory rules and regulations relating to Boat Slip leases subject to the following limitations:

Section 1. All OWNERS whose LIVING UNIT is in an interior building (meaning any LIVING UNIT in buildings constructed on LOTS 1-17 (inclusive) of Block 1, LOTS 1-54 (inclusive) of Block 2, LOTS 37-60 (inclusive) of Block 3, LOTS 6-11 (inclusive) of Block 4 and LOTS 1-38 (inclusive) of Block 5, all of Bal Harbour, according to the plat or replat thereof recorded in the Official Public Records of Real Property of Harris County, Texas, shall have the nondiscriminatory preferential right of first refusal to lease a Marina Slip for his or her personal use prior to any such Marina Slip being offered to any nonowner. The OWNER of a LIVING UNIT may assign his or her right to a Marina Slip to a renter or lessee of said LIVING UNIT by giving notice in writing to the ASSOCIATION, said notice to specify the name of the assigns and the length of the assignment.

Section 2. All OWNERS whose LIVING UNIT is adjacent to a Canal Slip or who have been assigned a specific Canal Slip shall have the exclusive right to the slip so designated for his or her personal use. Such OWNER may, after notice to the ASSOCIATION, assign their slip so designated to a renter or lessee of said property. If, however, such Canal Slip is not used or assigned by OWNER, the ASSOCIATION may lease or assign such slip to others. An OWNER may regain use of said slip by giving the ASSOCIATION thirty (30) days written notice. Canal Slips (or canal space, if no slips be yet constructed therein) adjacent to LOTS owned by DEVELOPER shall remain under the control of the DEVELOPER and no such Canal Slips (or canal space) may be leased by the ASSOCIATION until the number of Canal Slips exceeds the number of LOTS or LIVING UNITS owned by DEVELOPER at which time DEVELOPER shall control no more Canal Slips than there remain LOTS or LIVING UNITS owned by DEVELOPER and the excess shall be controlled by

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and may be leased by the ASSOCIATION. During the CONSTRUCTION PERIOD, DEVELOPER shall have the right to enter into a Canal Slip Lease with the purchaser or lessee of each such LOT upon the standard form currently utilized by the ASSOCIATION, and thereafter assign all of DEVELOPER'S rights with respect thereto to the ASSOCIATION.

Section 3. In order to accomplish the objectives of this Article:

- 3.1. Boat Slip Leases utilized by the ASSOCIATION which grant to a nonowner the right to occupy a slip to the exclusion of an OWNER, shall contain a thirty (30) day cancellation provision.
- 3.2. The ASSOCIATION shall have the right to write and enter into slip lease agreements with OWNERS and nonowners and set reasonable fees for slip usage.

Section 4. The ASSOCIATION has the right to use any and all Canal Slips in the event of an emergency.

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These Restated Covenants and Conditions were adopted by Owners by the affirmative vote of more than Eighty Percent (80%) of all the votes cast by Members at a meeting of the BAL HARBOUR ASSOCIATION duly called for such purpose, held on May 5, 1986, (all Members not voting were counted as votes against the restatement/amendment) and are effective in lieu of and in place of all prior Covenants and Restrictions and Amendments thereto and restatements thereof upon and after May 5, 1986.

ATTEST:

BAL HARBOUR ASSOCIATION

By: Kathie Wiley  
KATHIE WILEY,  
SECRETARY

By: Clyde Hesse  
CLYDE HESSE,  
PRESIDENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged to before me by the said CLYDE HESSE, President of BAL HARBOUR ASSOCIATION, a Texas corporation, on behalf of said corporation, on the 8<sup>th</sup> day of July, 1986.



Peggy Galyeon  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS  
PEGGY GALYEON  
Notary Public - State of Texas  
My Commission Expires 11-3-89.

(Print or Stamp Name of Notary)

RETURN TO:

GREGG, JONES & MIESZKUC  
17044 El Camino Real  
Houston, Texas 77058

RECORDERS MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLIGIBILITY OF PHOTO COPY, DISCOLORED PAPER, ETC.



052-66-0796

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS }  
COUNTY OF HARRIS }

I hereby certify that this instrument was FILED in File Number \_\_\_\_\_  
sequence on the date and at the time stamped hereon by me; and was  
duly RECORDED, in the Official Public Records of Real Property of Harris  
County, Texas on

JUL 11 1986



*Opita Sabatino*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS