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January 18, 2019

Member Neighborhood Associations
Estero Bay Improvement Association, Inc.
c/o Vesta Property Services

VIA E-MAIL

Dear Members:

Attached, you will find copies of the proposed amended and restated Declaration of Covenants, Articles of Incorporation and Bylaws for Bay Beach that were approved yesterday by the Board of Directors. The Board has instructed me and the Association's CAM, Lee Ann Rosengarten to distribute them (along with the document Review Committees' letter and notice of their upcoming meeting) to you for your consideration and approval. Along with the eventual Rules and Regulations, these constitute the Amended and Restated Governing Documents for Bay Beach.

As you know, I have been working with the Document Review Committee over the last (almost) three years to draft a new set of governing documents: a full amendment of them by "restating" them in a completely new document.

The committee's exploration of the issues was thorough, to say the least. As often as I do this for my community association clients, among the takeaways from this process is that I learn what is important to these residents: how they view the future of this community and where they think they need help. The Committee, in turn, learns what the effective limits of real property covenants and restrictions are and how shaping the relationship between a community association and its Owners is difficult and very little can get done without a commitment to achieving consensus.

Part of the task of that the Committee and I took on was to assemble and re-state ALL of the various covenants and restrictions that currently exist on the Bay Beach properties among the 16 or so current neighborhoods. When you look at what we loosely refer to as the existing Declaration, we are talking about a document drafted in the last months of 1975 and executed and recorded in February of 1976. It was only a "placeholder" document – it was never meant to be the final statement of covenants and restrictions on Bay Beach. As each neighborhood was planned and sold to a sub-developer, that initial placeholder document was amended and additional and more stringent restrictions were put in place on each neighborhood that were enforceable by Stardial and its successor, EBIA as they were developed. These additional restrictions were either (a) required by the various governmental entities issuing the development, environmental and surface water management permits for Bay Beach (Lee County, DEP/ACOE, South Florida Water Management District and Southwest Florida Regional Planning Council), or (b) considered essential to the Developer (and its successor, EBIA) to maintain a uniform quality of development.

You may never have seen the documents containing these additional restrictions, but if you look at your own Owner's policy of title insurance covering your unit, you'll see them listed as "exceptions"

to title meaning that your unit (and everyone else's in your neighborhood) are bound by them. In most cases, there are 2 or more layers of restrictions on each parcel. In some cases, there may be as many as 4 or 5. These are the real covenants that govern land use in Bay Beach and that is what the job of the Committee was: to re-state all of the covenants into a cohesive whole. These are not "boilerplate" documents and these issues have been refined and re-worked extensively over the years the Committee has dealt with this and the result is that the current rewrite of the documents is far less aggressive and over-reaching than the existing layers of restrictions in our collective documents today. Please keep in mind that it is easy to read into these documents an intent to "over reach" however those provisions only come in to play when a Neighborhood fails to enforce their documents - due to one owner owning a majority of units, a defunct Association, or lack of management. The Master Association must have these provisions in place to protect both EBIA and the other neighboring Associations.

What we collectively hoped to accomplish in these documents are to:

1. Get rid of stale "developer" language, including Developer rights in the original governing documents.
2. Unify almost 30 years' worth of developer amendments and supplements into one cohesive document set and bring the documents into the more modern framework of a 2019-era Unit Owner-controlled master association.
3. Let the documents better reflect how it is the Owners want to operate the community given the changing investment and regulatory environment.
4. Document (in writing) the rights/obligations necessary to operate the surface water management system across all of the neighborhoods.

Among the changes:

5. Re-name the community "Bay Beach" and EBIA "Bay Beach Association, Inc.". The name "Bay Beach Association, Inc." is currently available for use, according to the Secretary of State's site.
6. One of the purposes of this effort is to shield the Association from any finding or obligation that it is a "condominium association" for the purposes of coverage under the Florida Condominium Act (Fla. Sta. Ch. 718) or a "homeowners' association" under the Homeowners' Association Act (Fla. Stat. Ch. 720) and is instead (as it was created in 1976) simply a Florida corporation, not-for-profit, governed by Fla. Stat. Ch. 617 and its governing documents. That being said, there are important protections for Unit Owners contained in both Ch. 718 and 720 and many of those protections have been incorporated into these new documents by adopting specific notice and other substantive procedures outlined in those Acts.
7. The governing documents have therefore been drafted to include the cooperatives located and operating within Bay Beach as possible Members of the Association. It was the feeling of the committee that having all of the stakeholders on the peninsula be Members (albeit some non-voting) will encourage a dialogue in the future.
8. The Exhibits to the governing documents have been enlarged by the addition of the pier lease and the beach access easement in order to place some of the "offsite" rights documentation within

EBIA Members
January 18, 2019
Page 3

easier reach. The same is true of the SFWMD Water Management Permit. The actual permit is thousands of pages, but since the responsibilities under it are a major component of the Association's existence, we thought it best to include specific reference to it.

How to move forward:

A. Take some time and review the documents and as you do, please remember a couple of things: (a) the language creating and apportioning rights in real property is founded upon law that is over four centuries old so there is usually a pretty good reason for saying something or structuring something the way we do; and (b) often, the law doesn't demand a particular result and there may not be a perfect solution, only a "liveable" result after balancing all of the competing interests.

B. Members' meeting: Approval of the Members' by a 75% affirmative vote. This meeting will be scheduled later in the spring once you have all had a chance to familiarize yourselves with the new documents.

Sincerely,

/s/James Michael Costello
James Michael Costello

JMC/pmd

cc: Board of Directors
Encl.