

AMENDED AND RESTATED

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
SOUTH BEACH SUBDIVISION**

[Substantial Rewording of the Declaration of Covenants, Conditions, and Restrictions. See Current Declaration of Covenants, Conditions, and Restrictions and amendments thereto for present text.]

This Declaration of Covenants and Restrictions shall govern SOUTH BEACH SUBDIVISION (herein, "the Subdivision").

**ARTICLE 1
DEFINITIONS**

For all purposes, the terms used in this Declaration of Covenants, Conditions, and Restrictions (herein, "Declaration"), the Articles of Incorporation of the Association and Association Bylaws (herein, "the Governing Documents"), shall have the meanings stated in the Florida Homeowners Association Act (Section 720, Florida Statutes) and as set forth below, unless the context otherwise requires. Also, throughout the Governing Documents whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of either gender shall be deemed to include both genders. In the event any term in the Governing Documents is deemed ambiguous, then the Board of Directors shall define the term, which definition shall be binding. A term shall not be construed in favor of or against the Association or any owner.

The following words and terms when used in this Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(1) **"Act" or "Homeowners' Association Act"** means Chapter 720, Florida Statutes, as amended from time to time.

(2) **"Architectural Review Committee" or "ARC"** shall refer to the committee established by the Board of Directors of the Association described in Article 8 of this Declaration.

(3) **"Articles of Incorporation" or "Articles"** means the Articles of Incorporation for South Beach Property Owners Association, a Florida not-for-profit corporation in the form attached hereto as **Exhibit "B"** and incorporated herein by reference, as amended from time to time.

(4) **"Assessment"** means a charge against a Lot and its owner as defined in Article 5 of this Declaration and Section 720.301(1), Florida Statutes.

Accepted October 10, 2020 by membership

(5) "**Association**" shall mean and refer to South Beach Property Owners Association, Inc., a Florida not-for-profit corporation established for the purposes set forth herein.

(6) "**Board**" shall mean the Board of Directors of the Association, appointed or elected in accordance with the Bylaws of the Association.

(7) "**Bylaws**" shall mean and refer to the Bylaws of South Beach Property Owners Association Inc., in the form attached hereto as **Exhibit "C"** and incorporated herein by reference.

(8) "**Common Area**" shall mean all pedestrian access easements as shown on the Plat and any attachments or appurtenances and the grant of easement across property on the Bay side of subdivision, more particularly described in Official Records Book 224 at Page 526 and/or Plat Book 3 page 50 of the Public Records of Gulf County, Florida, although said easement property is not owned by the Association.

(9) "**Common Expenses**" means all expenses properly incurred by the Association in the performance of its powers and duties.

(10) "**Declaration**" shall mean and refer to this Amended and Restated Declaration of Covenants and Restrictions for South Beach Subdivision, as it may be amended or supplemented from time to time.

(11) "**Home**" means a residence constructed on a Lot.

(12) "**Lot**" or "**Lots**" shall mean and refer to any numerically numbered plot of land shown upon the subdivision plat of South Beach Subdivision.

(13) "**MARINER'S LANE**" shall mean that sixty-six (66') foot wide right-of-way providing access to lots within the subdivision, as shown per plat. It shall also include a five (5') foot utility easement within the perimeter of said right-of-way which shall be for the use and benefit of the lots within the subdivision and which shall be dedicated for the construction, installation, maintenance, and operation of public or private utilities as defined under Florida Statutes 177.031(b) (1998).

(14) "**Member**" shall mean and refer to all those persons or entities who hold record title to a Lot.

(15) "**Notice**" shall mean delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association.

Accepted October 10, 2020 by membership

(16) **“Owner” or “Homeowner”** shall mean and refer to record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(17) **“Plat”** shall mean and refer to the Plat of South Beach Subdivision recorded in the Public Records of Gulf County, Florida, at Plat Book 3, Page 50.

(18) **“Rules”** means the rules governing the use and occupancy of the Common Property and Lots adopted by the Association Board of Directors as provided herein, in the Articles of Incorporation and Association Bylaws.

ARTICLE 2 GENERAL CONDITIONS

2.1 The Association. The operation of the Subdivision in accordance with this Declaration and other authority shall be by South Beach Property Owners Association, Inc. (herein, “the Association”). The Association shall own title to common property in the Subdivision not dedicated and accepted by the public.

2.2 Purposes of Association. The purposes of the Association include, without limitation, those contained within this Declaration, the Articles of Incorporation, Bylaws and Chapter 720, Florida Statutes.

2.3 Membership and Voting. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a member of the Association. Each member not suspended pursuant to state law shall be entitled to one (1) vote for each Lot owned. The Bylaws shall provide the method of voting.

2.4 Duration. This Declaration shall remain in full force and effect for a period of thirty (30) years from the date this Amended and Restated Declaration is recorded. Upon the expiration of that time said covenants shall be automatically extended for successive periods of ten (10) years; provided, however, there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, Members representing three-fourths (3/4) of the votes of the Association vote in favor of terminating this Declaration at the end of its then current term.

2.5 Government Regulation. To the extent any law, ordinance or regulation of the State of Florida and Gulf County shall exceed the requirements hereof, that law, ordinance or regulation shall prevail.

2.6 Severability. These Covenants, Conditions and Restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent.

ARTICLE 3 PROPERTY

3.1 Existing Property. The existing real property which is subject to this Declaration is South Beach Subdivision and is described in **Exhibit "A"** - Plat of South Beach Subdivision".

3.2 Delegation of Use. Any Owner may delegate his or her right of enjoyment in the Common Property to members of his or her family, tenants or social guests, subject to the provisions of this Declaration and the Articles of Incorporation, Bylaws and Rules of the Association.

3.3 No Waiver of Use. No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and charges thereof by waiver of the use and enjoyment of the Common Property or non-use thereof, or the abandonment of the Lot.

ARTICLE 4 EASEMENTS

4.1 Owners' Easements of Enjoyment to the Subdivision Property. Every Owner and his respective licensees, guests, invitees, agents, servants and employees shall have a non-exclusive easement of enjoyment in and to the Common Areas and any recreational facilities, subject to the following:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Property as provided by law.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

4.2 Easements on the Plat. Easements are reserved as depicted on the Plat as may be required for utility service and drainage to serve South Beach Property Owners Association adequately and the Association, may grant permits, licenses and easements over, under or upon the easement areas depicted on the Plat for utility service or drainage or other purposes reasonable necessary or useful for the proper maintenance or operation of South Beach Property Owners Association.

4.3 Easements as Appurtenances. All easements described above or on the plat shall be private easements created solely for the benefit of the Association and Owners, their successors and assigns and all said easements and other rights created herein for an Owner shall be appurtenant to the Lot of that Owner and all conveyances of title to the Lot shall include a conveyance of the easements and rights as are herein provided, even though no specific reference to such easements and rights appear in any such instruments.

ARTICLE 5 ASSESSMENTS

5.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot (by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or conveyance) including without limitation any purchaser at a judicial sale, shall hereinafter be deemed to covenant and agree to all the terms and provisions of this Declaration and to promptly pay to the Association all initiation fees, impact fees, architectural fees, regular annual assessments, special Assessments, and all fines, fees or other charges levied by the Association, as provided herein (for the purposes of this article collectively referred to as "assessments"). No owner may waive or otherwise avoid liability for the assessments provided herein by any means including but not limited to non-use of the Common area or by abandonment. Upon conveyance of a Lot, the new and former Owners of the Lot shall personally be jointly and severally liable for all unpaid fines resulting in a lien, initiation fees, impact fees, architectural fees, assessments, together with interest, late charges, costs and attorney's fees. Any party taking title to a lot where such lien has been recorded by the Association, takes title subject to such lien and the foreclosure of same if all amounts are not paid to the Association. The execution and recording of such notice shall not, however, be required in order for the continuing lien for assessments and related interest, late charges, costs and attorney's fees to be valid, as such lien relates back to the original recording of this Declaration.

5.2 Purpose of Assessments. Except as otherwise provided herein with regard to the regular annual assessments, special assessments, fines, fees and other charges levied by the Board shall be used for the purposes of promoting the recreation, health, safety and welfare of the Members and residents of the subdivision and in particular for the improvement and maintenance of the Common Area, the Homes and Lots as elsewhere set forth in greater detail herein, and any easement in favor of the Association, including, but not limited to, the cost of taxes, insurance, security services, Common Area maintenance, repair, restoration, repair or construction, drainage or compliance with any governmental requirements which may be imposed on the Subdivision, labor, equipment, materials, management, operations, maintenance and supervision thereof, protecting and preserving property values, as well as for such other purposes as are permissible activities of, and which may be undertaken by, a corporation not for profit organized and existing under the laws of the State of Florida and a homeowners association under Chapter 720, Florida Statutes, and any expenses that the Board shall reasonably incur on behalf of the Association.

5.3 Annual Assessments. The amount and time of payment of regular annual assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational and other costs and the future needs of the Association. Assessments may include amounts established for reasonable reserves.

5.4 Special Assessments for Capital Improvements. In addition to regular annual assessments, special assessments may be levied by the Board up to \$1,000 in a year and for no more than two consecutive years against all Lots for the purpose of defraying, in whole or in part, any capital improvement or any unbudgeted expense. Should a special assessment be required that exceeds \$1,000 such assessments shall have the assent of fifty percent (50%) of the votes of the members who are voting in person or by proxy received prior to or at a meeting duly called for this purpose.

5.5 Architectural Review Fee: Upon the application to ARC of any Owner for review of plans pursuant to Article 8 and the ARC and Association Policy and Procedures, Owner shall pay to the Association any itemized expenses incurred by The Association to carry out the Architectural Review (Including but not all inclusive of copying, mailing, surveys to settle any dispute.)

5.6 Impact Fee. After application for approval of a dwelling to be built on any lot and prior to ARC approval, any lot owner shall pay to the Association an impact fee which has been set and published by the board. The Impact Fee shall go into Association reserves for its maintenance obligations. If not paid at within fifteen (15) days of the submission of an application to construct a home on a Lot, this fee shall be collected from the Lot Owner in the same manner as an assessment as provided in Article 5.1.

5.7 Uniform Assessments. Regular annual assessments and special assessments shall be uniform, with each Lot bearing an equal share, except that regular annual assessments and special assessments may differ based upon the state of development or the level of services provided. Regular annual assessments shall be collected as provided in the Bylaws. Special assessments shall be due on the date(s) established by the Board.

5.8 Budget. The Board of Directors shall prepare an annual budget and make copies thereof available to all members at least thirty (30) days prior to the first day of the upcoming fiscal year. Failure to fix the amount of the regular annual assessment within the time period set forth above will not preclude the Board from fixing the regular annual assessment at a later date. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year, and the regular annual assessment for the immediately preceding year shall continue for the current year.

5.9 Notice. Upon the adoption of a new budget, amended budget, and/or special assessment, each Owner shall be provided notice of same, by mail, email, or personal delivery.

5.10 Non-payment of Assessment and Remedies of Association. If any assessment is not paid on the date due, then such assessment shall become delinquent and shall, together with such interest, late charge, costs and attorney's fees of collection, be a continuing lien on the Lot against which such assessment is made, binding upon the Owner thereof, his or her heirs, personal representatives, tenants, successors and assigns. If any such assessment is not paid within ten (10) days of the due date, then a late charge equal to the greater of five percent (5%) or twenty-five dollars (\$25) of the amount due shall be levied and the assessment shall bear interest from the date of delinquency at the maximum annual rate permitted by law. Any partial payment shall be applied first to interest, late charges, costs and attorney's fees and then to the assessments first due. In any action at law or for foreclosure of a lien, the Association shall be entitled to recovery of attorneys' fees and costs. An action to recover a money judgment for the unpaid assessments made be filed without waiving a claim of lien.

5.11 Subordination of the Lien To Mortgages. The lien of the assessments provided hereunder shall be subordinated to the lien of any purchase money mortgage or construction mortgage that is evidenced by a duly recorded Notice of commencement. Sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof in accordance with chapter 720, Florida Statutes, shall result in a lien as set forth in the statute.

ARTICLE 6 DUTIES AND POWERS OF ASSOCIATION

6.1 General Duties and Powers of the Association. In furtherance of its purposes and in addition to the duties and powers enumerated herein and in the Articles and Bylaws, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws of the Association, may be exercised by the Board of Directors:

(a) All of the powers conferred upon not-for-profit corporations by common law and Florida Statutes in effect from time to time; and

(b) All of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws and the Declaration, including, without limitation, the following:

(1) The power to fix, levy and collect adequate Assessments against Lots, as provided in and subject to the Declaration;

(2) The power to expend monies assessed and collected for the purpose of paying the expenses of the Association, including without limitation costs and expenses as provided in the Declaration;

Accepted October 10, 2020 by membership

- (3) The power to manage, control, operate, maintain, repair and improve the Common Areas, if any;
- (4) The power to purchase supplies and materials and lease equipment required for the maintenance, repair, replacement, operation and management of the subdivision as provided in the Declaration;
- (5) The power to insure and keep insured Association Property and the Common Areas, if any;
- (6) The power to employ the personnel required for the operation and management of the Association and the subdivision;
- (7) The power to pay utility bills for utilities serving the Common Areas, if any;
- (8) The power to pay all taxes, licenses, assessments or other governmental assessments which are liens against the Association Property or Common Areas, if any;
- (9) The power to establish and maintain a reserve fund for capital improvements, repairs and replacements;
- (10) Subject to applicable laws, ordinances and governmental regulation the power to control and regulate the use of the Lots and Common Areas, if any;
- (11) The power to acquire (by gift, purchase or otherwise), own hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, mortgage, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (12) The power to make reasonable Rules and Regulations and to amend the same from time to time;
- (13) The power to enforce by any legal means the provisions of these Articles, the Bylaws, the Declaration and the Rules and Regulations promulgated by the Association from time to time;
- (14) The power to borrow money, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided that the approval of a majority of the Lot Owners voting, in person or by proxy, shall be required when the amount borrowed, pledged, secured by deed in trust, or hypothecated exceeds ten thousand dollars (\$10,000.00).

Accepted October 10, 2020 by membership

(15) The power to enter into a contract with any person, firm, corporation, or management agent of any nature or kind to provide for the maintenance, operation, and administration of the Association and the subdivision.

(16) The power to appoint committees as the Board of Directors may deem appropriate;

(17) The power to collect delinquent Assessments and fines by suit or otherwise, to abate nuisances and to fine, suspend use or voting rights, enjoin or seek damages from Owners for violation of the provisions of the Declaration, these Articles of Incorporation, the Bylaws or the Rules and Regulations;

(18) Subject to the terms of the Declaration, the power to bring suit and to litigate on behalf of the Association;

(19) The power to provide any and all supplemental municipal services as may be necessary or proper;

(20) The power to possess, employ and exercise all powers necessary to implement, enforce and carry into effect the powers above described.

(21) Emergency Powers as provided in the Articles of Incorporation and Bylaws.

6.2 Implied Powers. The Association shall have all power and authority reasonably necessary for it to carry out each and every of its obligations set forth in this Declaration, the Articles or Bylaws, including any right or power reasonably to be implied from the existence of any other right, power, duty or obligation given to it or reasonably necessary to effectuate its obligations hereunder.

ARTICLE 7 INSURANCE

7.1 Insurance by Association. The Association shall obtain and continue in effect as a Common Expense the following types of insurance:

(a) Comprehensive policy of public liability insurance covering the Common Property with limits to be approved by the Board, covering claims for personal injury and/or property damage.

(b) A policy of fire and casualty insurance with extended coverage for the full replacement value of all improvements to the Common Property, if determined desirable and feasible by the Board. The Association shall likewise insure tangible personal property owned by it.

(c) Directors and Officers liability insurance.

(d) Such other insurance in such other amounts and coverages as the Board shall from time to time determine to be appropriate and desirable.

7.2 Owner's Insurance. Each Owner shall be responsible for obtaining and maintaining their own insurance coverage for lot, homes, household interiors, household contents, personal property, and individual Homeowners personal liability. The Association shall not obtain any such insurance on behalf of an Owner.

7.3 Destruction of Insured Property. Immediately after damage or destruction by fire or other casualty to all or any part of the subdivision covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

ARTICLE 8 ARCHITECTURAL CONTROL

8.1 Architectural Review Committee. For the purpose of carrying out the Architectural Review process, the Board shall establish an Architectural Review Committee ("the ARC"), which shall have jurisdiction to review all construction and installation of improvements on any portion of the Subdivision. The ARC shall be a recommending body only. Final approval of all construction and installation of improvements subject to this Article 8 shall be reserved to the Board. The ARC shall consist of not less than three (3) members. The members of the ARC shall be appointed by the Board. A member of the ARC may at the same time serve as a member of the Board, and if the Board determines it may sit as the ARC. Members of the ARC shall serve terms established by the Board. The establishment of the number of members, method of selecting a chairman and other similar provisions for the composition of the ARC shall be as provided from time to time by the Board.

8.2 Architectural Standards. The ARC may, with the approval of the Board from time to time, adopt and promulgate architectural standards for the Subdivision. The standards may not be contrary to the provisions of this Declaration or the Bylaws and shall be consistent with the architectural, structural, esthetic and environmental concepts provided in this Declaration, but may be greater or more stringent than standards prescribed in applicable building, zoning, planning or other local governmental codes. All standards shall be adopted and applied on uniform basis, and may be reviewed or expanded from time to time to take cognizance of new materials, techniques and proposals. All architectural standards shall be deemed to include the mandatory architectural obligations, prohibitions and guidelines contained in this Declaration.

8.3 Architectural Review Required. Architectural review shall be required in each of the following circumstances:

(a) Whenever the Owner of a Lot proposes to construct any improvements to a home or structure thereto.

(b) Whenever any exterior alteration or other exterior improvement to an existing home or structure is proposed by an Owner.

(c) Whenever any Owner or the Association proposes to maintain or repair a home or structure in any manner that will result in the application or use of materials of a different type, shade, color or quality than those originally used on the home or structure thereon.

(d) Whenever the improvements to a home or structure have been substantially damaged or destroyed, in whole or in part, by casualty or otherwise, and reconstruction or rebuilding is intended.

(e) Whenever an Owner proposes any change to grading, change in elevation, or clearing of lot. With any change in grading and/or elevation, the owner must show how drainage will be retained on their lot.

(f) For the purposes of this Section, any structure, including but not limited to buildings, fences, roofs, patio covers, driveways, sidewalks, walls, pools, screen cages, enclosures, solar energy devices, antennas, irrigation systems, shall be deemed to be alterations or improvements subject to architectural review.

(g) For the purposes of this Section, the term construction shall include within its definition staking, clearing, excavation, grading, other site work or exterior alterations or modifications of existing improvements.

8.4 Procedure. There shall be submitted to the ARC a written application setting forth plans (site, grading, landscape, etc.), colors, materials and other specifications for any activity for which review is required. A written application shall be adopted by the Board, which details all information required from the Owner, including the identity of the individual or company intended to perform the work and the projected commencement and completion date. Except for an Owner serving as his or own contractor, any contractor or service provider performing construction work on a Lot in a subdivision which requires a license shall be properly licensed in the State of Florida and/or local governments, and must provide proof of insurance coverage.

(a) ARC shall not accept partially completed submittal packages, and, at the request of an Owner, shall provide receipt of full submittal in writing to Lot Owner.

(b) The ARC may request additional and supplementary information. The ARC shall, within thirty (30) days after receipt of a complete application, shall submit to the Board either a recommendation on the application to: 1) approve or disapprove, 2) approve in part and disapprove in part, or 3) approve with conditions. The Committee shall specify its reasons for disapproval or conditions and shall annotate its decision by reference to architectural standards, where applicable. If a recommendation is not received by the Board within thirty (30) days, the applicant may submit the application directly to the Board for review. As to an application received by the Board as provided herein, the Board shall: 1) approve or disapprove, 2) approve in part and disapprove in part, or 3) approve with conditions, the application. No work shall proceed except in compliance with this Declaration and architectural approval as provided in this Article 8.

(c) The proposed improvements will be approved if, in the sole opinion of the Board: (1) the improvements will be of an architectural style and of materials that are compatible with the other structures in the Property; (2) the improvements will not violate any restrictive covenant or encroach upon any easement or platted building set back lines; (3) the improvements will not result in the reduction in property value or use of adjacent property; (4) the individual or company intended to perform the work is acceptable to the Board; and (5) the improvements will be substantially completed, including all cleanup, within six (6) months of the date of commencement (eighteen (18) for the construction of a complete house). Any requests for time extensions must be made in writing to the ARC. Such requests shall indicate the current status of the project, the reasons for the time extension request and the new date for completion of the project. A project not completed within the stipulated time period, or a project upon which construction is not continuous, shall be considered a nuisance and a violation of these restrictions, and subject to appropriate action by the ARC or the Association.

(d) In the exercise of its sole discretion or upon the recommendation of the ARC, the Board may require the Owner to provide assurances that the improvements will be completed in accordance with the approved plans. Such assurances may include the posting of a performance bond and/or a completion bond in favor of the Association, independent professional inspection reports or sworn progress reports.

(e) If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 8 to the same extent as if erected without prior approval of the Board. The Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation reasonable attorney's fees and costs and any other expenses or fees incurred in the prosecution thereof.

(f) The Board of Directors of the Association has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration upon its own action or at the request of the ARC. The granting of any waiver for any portion of the Property may be given or withheld in the Board's sole discretion and a prior grant of a similar waiver shall not impose upon the Board the duty to grant new or additional requests for such waivers.

(g) The Association and ARC, and any officer, employee, director or member thereof, shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association or ARC, or any officer, employee, director or member thereof, to recover any such damages.

8.5 Architectural & Site Design Standards & Criteria. The following architectural and site standards and criteria are imposed upon and shall apply to the Subdivision.

(a) Permitted Structures: The only structures that shall be erected, altered, placed, or permitted to remain on any of the platted Lots, within the property, are the main residence, a guest cottage, a garage, and/or a one-level pool house. Only one of the structures (besides the main residence) may exceed a footprint of 500 square feet. Pole barns are not permitted.

(b) Grading. Construction shall be located in harmony with existing topography with as little disruption to the natural grade as possible. Materials and debris resulting from clearing and grubbing shall be removed from the site promptly. Grading operations shall not adversely affect adjacent properties and finished grading shall be such that the washing of water onto adjacent properties is kept to a minimum. Newly graded areas shall be protected against erosion. Unless an alternative drainage plan for a home site is approved by Gulf County, the Owner shall construct and maintain drainage improvements for each site in accordance with the County approved grading plan prepared by a civil engineer licensed in the State of Florida.

(c) Exterior. The exterior finish and color regime must be submitted to and approved by the ARC.

(d) Setbacks. Front, rear and side lot setback lines shall be as set forth in the Gulf County land development regulations.

(e) Footprint Size. The heated and cooled area of the house shall be no smaller than 1500 sq feet. The maximum size of the footprint will be regulated by Gulf County building codes.

(f) Height. The maximum height of a house is 50 feet.

- (g) Roof Materials. All roofs must be a metal product.
- (h) The footprint of the structure on (ground level) will be of concrete.
- (i) Awnings. Awnings are permissible provided design materials are approved by ARC.
- (j) Shutters. Storm operable shutters are permitted. The Board or ARC may adopt storm shutter specification and use standards.
- (k) Garages. Garages are permitted; however, the design and details shall be subject to ARC approval in the same manner as other construction details provided for herein. The exterior siding and roof of a Garage shall be of the same materials, design and colors as the home.
- (l) Fences. Fences not higher than six (6) feet tall may be permitted behind the house. No fences are permitted in front of the homes. The front of the home shall be that side facing Mariner Lane.
- (m) Guest Cottages and Pool House. Guest cottages and single level pool houses are permitted; however, the design and details shall be subject to ARC approval in the same manner as other construction details provided herein. All guest cottages must meet all County, State, and Federal regulations along with the requirements of this Declaration. The exterior siding and roof of a Guest Cottage shall be of the same materials, design and colors as the home.
- (n) Driveways. Driveways are permitted; however, the design and details shall be subject to architectural approval in the same manner as other construction details provided for herein. Driveways shall be constructed of a pervious material.
- (o) Parking. Parking areas must be designed to retain the natural character of the homesite and streetscape and shall be constructed of a pervious material.
- (p) Exterior Lighting. Any exterior lighting on a home owner's property shall either be indirect, shielded, or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants.
- (q) Landscaping. Manicured lawns are permitted. The use of indigenous plants is encouraged.
- (r) Boardwalk. The Association will maintain a boardwalk which serves all of the Lots.

8.6 Appeal. Any person aggrieved by a decision of the Board may appeal that decision in whole or in part. Such appeal shall be initiated by filing a notice of appeal in writing with the Board specifying the portions of the decision appealed. Such notice shall be filed not later than fourteen (14) days after the date upon which the decision of the Board is made upon the application. Upon receipt of such appeal, the Board shall schedule a hearing on such matter within forty-five (45) days, at which it may affirm, reverse or modify its decision. For the purposes of this Section, an aggrieved party may be the applicant for review or the Owners of any three (3) or more Lots.

8.7 Rules and Regulations and Fees. The ARC may adopt reasonable rules for the conduct of its authority. The Board may establish reasonable fees for architectural review and initiation or impact fees.

8.8 Records. The records of all architectural review proceedings shall be maintained by the Association.

8.9 Address for Notice. Requests for ARC approval or correspondence with the ARC shall be addressed to the Architectural Review Committee – South Beach Property Owners Association, Inc. and mailed or delivered to the principal office of the current management company or such other address as may be designated from time to time by the ARC. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in a form satisfactory to the ARC.

ARTICLE 9 USE RESTRICTIONS

In order to provide for congenial occupancy of Lots and Homes within the subdivision and to better protect the values of the Homes, the use of Lots, Homes and Common Areas shall be restricted by and in accordance with the following provisions as long as the subdivision exists:

9.1 Persons Bound. All provisions of this Declaration, the Bylaws of the Association and Board adopted Rules and Regulations which govern the conduct of persons shall apply to all Owners, tenants, occupants, guests, invitees, licensees, contractors, and visitors. Every Owner shall cause all tenants, occupants, guests, invitees, licensees, contractors, and visitors of his/her Lot to comply with this Declaration, the Association Bylaws, and any Board adopted Rule or Regulation and shall be responsible for all violations and losses to the Common Areas caused by such tenant, occupants, guests, invitees, licensees, contractors, and visitors, notwithstanding the fact that such tenants, occupants, guests, invitees, licensees, contractors, and visitors are fully liable and may be sanctioned for any violation of this Declaration, the Bylaws of the Association, or Board adopted Rule or Regulation.

9.2 Residential and Business Uses. The Lots and the Common Areas shall be used for single family residential purposes only. No trade or business may be conducted on any Lot or on the Common Areas, except that an Owner, tenant or other occupant may have a home office within the Home so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Home; (2) the business activity conforms to all zoning requirements for the subdivision; (3) the business activity does not involve persons coming onto the subdivision who do not reside in the subdivision or door-to-door solicitation of residents of the Subdivision; and (4) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the subdivision, as may be determined in the sole discretion of the Board.

9.3 Nuisances, Offensive or Illegal Activities. No portion of the subdivision shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition that will be obnoxious to the eye, nor shall any substance, thing, or material be kept upon any portion of the subdivision that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants or surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the subdivision, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the subdivision. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the subdivision or which will increase insurance rates on any Home or on the Common Areas.

9.4 Exterior and Lot Maintenance. Lot owners shall keep any building in good repair, comparable to the condition at the time of completion of initial construction, free of mold, mildew, cracks, rot, fading or any other visually unappealing condition. Normal wear and tear excepted. All Lot owners shall be under a duty to repair, replace or remove any building that is damaged or destroyed by any casualty within a reasonable time after the occurrence of any casualty. Removal of a building that is substantially destroyed shall take place within sixty (60) days of destruction unless written approval for an extension has been received from the Board. Repair or replacement shall begin within sixty (60) days, unless the owner has obtained written approval from the Board to extend the time. Any installed landscaping shall be maintained in a well-kept appearance and shall be free of debris. Should any natural debris be deemed to be a hazard to the properties of the Association or members' property, owners shall be under a duty to remove the hazard. Removal should take place within sixty (60) days of being notified by the Board.

9.5 Signs. No signage may be displayed or located on any Lot except a small sign identifying the property name. Such sign shall be less than 2 square feet and attached to the building. For Sale signs may be no larger than 24 inches by 33 inches and placed on the lot not on the right of way. Precautionary signs (beware of dog, security system, no trespassing) no larger than 6 inches by 12 inches may be placed on a lot. Contractors and realtors must remove their signs when construction or sale has been completed.

9.6 Mailboxes. Mailboxes are permitted for the delivery of mail.

9.7 Pools, Patios, and Spas. Subject to ARC approval and locational and design requirements, swimming pools, patios and spas are permitted. Pool drainage must be shown on the plan and drainage retained on the Owner's property.

9.8 Trash Containers: All trash, garbage and the like shall be stored in sanitary, covered containers. Such garbage can containers shall be stored in a way as to not be visible from the street and adjacent Lots and must be stored outside the street right-of-way. Trash receptacle enclosures are encouraged. Rental units must have back door pick up and any rental that allows more than 6 occupants must have a minimum of 3 trash receptacles. No trash, rubbish or garbage shall be disposed of on any land within the subdivision, on the adjoining lands, or in the waters adjacent thereto. No inoperable motor vehicles will be allowed to be kept on any lot or in the street adjacent thereto.

9.9 Hanging of Laundry: Permanent clothes drying lines are not permitted on any Lot.

9.10 Landscaping Sprinklers and Wells. Except for the purpose of landscaping sprinklers, no individual water supply shall be permitted on any Lot for the purpose of providing household water. All sewage from any building on any Lot shall be disposed of through the approved septic system.

9.11 Trash Disposal: All trash, garbage and the like shall be stored in sanitary, covered containers. Such garbage can containers shall be stored in a way as to not be visible from the street and adjacent Lots and must be stored outside the street right-of-way. Trash receptacle enclosures are encouraged. Rental units must have back door pick up and any rental that allows more than 6 occupants must have a minimum of 3 trash receptacles. No trash, rubbish or garbage shall be disposed of on any land within the subdivision, on the adjoining lands, or in the waters adjacent thereto. No inoperable motor vehicles will be allowed to be kept on any lot or in the street adjacent thereto.

9.12 Electrical and Mechanical Equipment. All exterior electrical and mechanical equipment shall be concealed from view by walls of the same material as the building or by ARC approved screening or by landscaping. (Refers, but not limited to, to air conditioner units, pool equipment)

9.13 Utilities. All utilities shall be underground and concealed from view.

9.14 Energy Saving Devices: The installation or addition of solar panels, windmills or other forms of energy-generating equipment is subject to the approval of the ARC, under the procedures established herein. Such equipment shall be installed or constructed in such manner that it will conform to the architectural design of the approved dwelling and shall be concealed from view as much as possible, and shall, as determined by the ARC, its agents, successors or assigns, in their sole discretion, conform to the overall development and aesthetic scheme of South Beach.

9.15 Animals. No animals shall be kept or breed on any Lot for a commercial purpose. The keeping of a dog or any other animal on a Lot is not a right of a Lot Owner but is a conditional license. All persons keeping animals shall be required to clean up after their animals and shall not allow their animals to cause health hazards, noise disturbances, or other nuisances to residents. This conditional license is subject to termination at any time by the Board of Directors of the Association upon finding that a dog or other animal is vicious, is annoying to other residents, or has in any way become a nuisance. The Owner of an animal assumes liability for all damage to persons or property caused by the pet or resulting from its presence at The Cottages at Indian Summer. All animals shall be leashed or confined by a fence when outside of the Home. Animals shall be kept and maintained in compliance with all laws, ordinances, and regulations.

9.16 Parking/Storage. No mobile homes or recreational vehicles (RV) may be parked at the residence or on a lot and may not be used as a vacation residence.

9.17 Construction Rules: During the construction phase of any new home any damage to the asphalt roadway must be repaired by the homeowner and builder. This includes any road cracking or holes created from heavy equipment. It also includes any digging up of the roadway, or any shoulder damage to the roadway. Failure to repair any damage done will result in assessment to the property owner equal to the amount needed to repair the road. The homeowner and the builder will be required to sign an agreement to this effect prior to construction.

9.18 Any exterior lighting on a homeowner's property shall either be indirect, shielded, or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants.

9.19 Parking is not allowed on the right of way or road except for special events.

9.20 Rules and Regulations. The Board of Directors may adopt reasonable rules consistent with this Declaration governing the use of the common areas and Lots including, but not limited to, street parking during events and holidays, golf cart use and parking, the use of fireworks within the subdivision, and a Leave No Tract Policy governing items left on the beach overnight.

ARTICLE 10 AMENDMENT

Amendments to this Declaration shall be proposed and adopted in the following manner:

10.1 Proposal. A proposal for any amendment to this Declaration may be made by the Board of Directors or upon the written request of not less than twenty (20%) percent of the voting interests of the Association. Notice of the subject matter of any proposed amendment shall be included in or with the notice of the meeting of the Members at which the amendment is to be proposed and considered.

10.2 Approval. This declaration may be amended at any time, from time to time, upon the execution and recordation of any instrument executed by owners exceeding fifty percent (50%) of such lots subjected to this declaration, provided, that so long as the Association is the owner of any lot or property affected by this declaration or amendment, hereto, no amendment will be effective without the Association's express written joinder and consent.

10.3 Limitation and Recording. No amendment shall make any changes in the qualifications for membership or in the voting rights or property rights of Members, without approval in writing by all Members so affected. A copy of each amendment shall be recorded in the Public Records along with a Certificate of Amendment.

ARTICLE 11 ENFORCEMENT

11.1 Independent Covenant. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions, shall, for any reason, be held to be invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

11.2 Enforcement. This Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or by any Owner, their respective legal representatives, heirs, successors, and assigns. The Association shall have the duty to enforce and require compliance of the provisions of this Declaration and any Rules authorized hereby against Owners, their tenants and guests on behalf of the Association membership. Enforcement may be by fines as provided by law and/or proceedings for injunctive relief, declaratory relief and/or damages. The prevailing party in any such action shall be entitled to recover reasonable attorneys' fees and costs. In addition, the Association may enter upon a Lot to correct a violation if an Owner fails or refuses to correct a violation of this Declaration. Entry upon a Lot pursuant to this Section by the Association or its agents or contractors shall not be a trespass. The Association may charge an Owner for any reasonable expense, including attorney's fees and costs, incurred pursuant to

this Section and that charge shall be payable and collectible in the same manner as an assessment by the Association as provided in the Declaration. The failure to enforce any provision of this Declaration or Rules shall in no event be deemed a waiver of the right to enforce as aforesaid thereafter as to the same breach or violation occurring prior or subsequent thereto. Failure to enforce same shall not give rise to any liability on the part of the Association with respect to parties aggrieved by such failure.

11.3 Election of Remedies. All rights, remedies and privileges granted to the Association hereunder shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by Association documents, or at law or in equity.

ARTICLE 12 MISCELLANEOUS

12.1 Interpretation. The Board shall have the right except as limited by any other provisions of this Declaration or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of Common Areas and the facilities located thereon.

12.2 Prohibited Actions. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

12.3 Singular, Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

12.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property.