

## AMENDED AND RESTATED

### DECLARATION OF RESTRICTIONS, LIMITATIONS, CONDITIONS AND AGREEMENTS FOR BIRD KEY SUBDIVISION

*[Substantial rewrite of the Declaration. See existing Declaration and amendments thereto for present text.]*

#### ARTICLE 1. NAME, PRINCIPAL OFFICE AND DEFINITIONS

**1.1 Corporate Name.** The name of this corporation is **BIRD KEY HOMEOWNERS ASSOCIATION, INC.** (herein, the "Association" or "BKHA"), a Florida Not for Profit Corporation, formerly known as Bird Key Improvement Association, Inc.

**1.2 Principal Office.** The street address of the Association's principal office is 100 Bird Key Drive, Sarasota, Florida 34236, but may be at such other place as may be designated by the Board of Directors of the Association.

**1.3 Definitions.** The terms used in the Declaration of Restrictions, Articles of Incorporation and the Bylaws shall have the same meaning as set forth in Section 720.301, of the Homeowners Association Act (Chapter 720, Florida Statutes), as amended from time to time. If a term is not defined in Chapter 720, Florida Statutes, the Association's Board of Directors may define the term in its reasonable discretion. The Board of Directors may refer to the Florida Building Code (latest edition), the common or historical use of the term in the Bird Key Subdivision or refer to a common dictionary when defining a term.

#### ARTICLE 2. PROPERTY SUBJECT TO THE DECLARATION

**2.1 Subdivision Plat.** The real property which is subject to this Declaration is located in Sarasota County, Florida and is legally described in the subdivision plat of **BIRD KEY SUBDIVISION** (herein, the "Subdivision"), was originally platted as set forth in Plat Book 11, Pages 20-20F of the Public Records of Sarasota County, Florida, platted as to section corners as set forth in Plat Book 12, Pages 23-23a of the Public Records of Sarasota County, Florida, and re-platted as to portions of blocks 7, 14, and 16 as set forth in Plat Book 13, Pages 4-4b of the Public Records of Sarasota County, Florida (herein, the "Subdivision Plat"). A copy of the Subdivision Plat is attached hereto as **Exhibit "A"** and incorporated herein. Tracts "A" and "B", including the Yacht Club, boat slips site and gate entrance properties are not subject to the terms and conditions of the Declaration of Restrictions.

**2.2 Original Declaration of Restrictions.** The Declaration of Restrictions, Limitations, Conditions, and Agreements encumbering all the lots appearing on the Subdivision, dated October 15, 1959, was originally recorded at Official Records Book

196, Pages 679 through 690 of the Public Records of Sarasota County, Florida and includes all amendments from time to time (herein, the "Declaration").

**2.3 Assignment of Developer Rights.** On or about November 25, 1980, Arvida Corporation, the successor-in-interest to Arvida Realty Co., assigned to BIRD KEY HOMEOWNERS ASSOCIATION, INC., formerly known as Bird Key Improvement Association, Inc. all of its rights, powers, obligations and privileges under the Declaration, all according to the Agreement recorded in Official Record Book 1407, Page 1235 in the Public Records of Sarasota County, Florida.

**2.4 Revival of Original Declaration of Restrictions.** Pursuant to Part III of Chapter 720, Florida Statutes, the Declaration of Restrictions for Bird Key Subdivision were successfully revived and recorded (the "Revived Declaration"), together with the Revived Articles of Incorporation and Revived Bylaws, on June 12, 2008, at Instrument Number #2008080980 of the Public Records of Sarasota County, Florida. The easements, restrictions, covenants and conditions contained herein shall run with the land and be binding on all parties having any right, title or interest in the Subdivision or any part or lot thereof, their heirs, successors or assigns and shall insure to the benefit of each Owner thereof, with the exception of the Lots described in **Exhibit "B"**, which is attached hereto and incorporated herein.

**2.5 Mandatory Membership in Association.** Except as provided in Exhibit "B", each fee simple owner of a Bird Key lot shall be a member of the **BIRD KEY HOMEOWNERS ASSOCIATION, INC.** It is a condition of the estate conveyed that the grantee of any deed shall not transfer, convey or in any other manner transfer title to a Bird Key lot to any person not at the time of such transfer or conveyance a member of the **BIRD KEY HOMEOWNERS ASSOCIATION, INC.** It is specifically understood and agreed that the purpose of this restriction is to insure to all grantees and all other members of the Association that their properties in said subdivision shall at all times be occupied by a colony of congenial persons.

**2.6 Membership Information Form.** Regular members shall, no later than the closing date of the purchase of their Bird Key Subdivision lot, complete and return to the Association the Membership Information form provided by the Association along with a copy of the contract pursuant to which the Bird Key lot was purchased, the transfer fee and the affidavit provided by the Association.

### **ARTICLE 3. ARCHITECTURAL APPROVAL**

**3.1 Building Plans.** For the purposes of further ensuring development of the lands in the Bird Key Subdivision as a residential area of high quality and standard, the Association reserves the right to control the buildings and structures placed on each lot and all exterior improvements and alterations thereto.

**3.2 Prior Association Approval.** The owner or occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building, wall, fence, swimming pool, dock, aerial, antenna or other structure shall be placed upon said lot unless and until the plans and specifications therefor and the plot plan have been approved in writing by the Association's Architectural Committee. Each such building, wall, swimming pool, dock, aerial, antenna or other structure shall be placed on the lot only in accordance with the plans and specifications and plot plan so approved.

**3.3 Architectural Design.** All new residential buildings, structures and major renovations must be designed, and plans therefore certified, by an architect registered in the State of Florida. The Association designates its Architectural Committee to approve or reject said plans. The Architectural Committee shall have all power and authority for the administration and carrying out of this reservation and restriction.

**3.4 Handbook for Owners and Contractors.** The Handbook for Owners and Contractors (herein, the "Handbook") shall clarify and implement the restrictions already contained in the Declaration. The Handbook shall NOT be a source of new building restrictions and any such restrictions placed in the Handbook shall be a nullity. However, the Handbook may also contain procedures that regulate member applications for approval and other BKHA internal procedures for review and approval, construction, construction parking, port-a-potties, the placement of construction materials and equipment, site debris and cleanliness.

A. The Handbook for Owners and Contractors and all amendments, revisions and changes thereto must be approved by the Association's Board of Directors at a duly-noticed Board meeting. The Architectural Committee or the Board may propose changes to the Handbook for Owners and Contractors for Board review and consideration. The proposed amendments to the Handbook and a written notice and agenda of the Board meeting must be transmitted to all regular members at least fourteen (14) days prior to the Board meeting. All Board approved Handbook amendments are effective sixty (60) days after the mailing of such amendments to the general membership. A copy of this Article 3.4 must be included in the mailing.

B. If within the sixty (60) day period written objections signed by at least fifteen percent (15%) of the regular members are submitted in writing to the Board, by delivery to the BKHA office, then the Board approved Handbook amendments shall be tabled and presented to the membership for a vote at the next membership meeting or at a special membership meeting called for that purpose. Board approved amendments to the Handbook that are submitted to the membership for approval must be approved by at least a majority of the membership present (in person or by proxy) and voting at a membership meeting.

**3.5 Architectural Committee Approval.** Refusal of approval of plans and specifications by the Association's Architectural Committee may be based upon grounds where the plans and specifications do not meet the requirements of the

Declaration, Bylaws, the Handbook for Owners and Contractors and the current standards of the community. No alteration, addition or improvement in the exterior appearance of the building or structures shall be made without prior Architectural Committee written approval. Should the Architectural Committee fail to approve or disapprove the plans and specifications submitted to it by the lot owner within thirty (30) days after the Committee's receipt of the owner's written application, then such approval shall not be required; provided, however, that no building or other structure shall be erected, altered, improved or be allowed to remain on any lot which violates the Declaration or the Handbook for Owners and Contractors.

**3.6 Prior Approval.** None of the following actions shall be commenced without a prior written permit from the Association's Architectural Committee:

A. Construction, alteration, improvement, renovation or demolition of any structure, including, but not limited to, the dwelling house, pools, pool cages, seawalls, walls, roofs, planters, docks, fences, gazebos, pergolas, driveways or other material change in appearance.

B. Alteration of the elevation of any lot.

C. Major alteration of the landscaping of any lot. "Landscaping" shall include grass, rocks and shrubs, and trees four inches (4") or more in diameter measured four feet (4') above the ground.

D. Erection of any aerial, antenna, except any satellite dishes that do not exceed eighteen inches (18) in diameter.

E. The Association will not issue a permit allowing the actions described in subparagraph A., B., or C., immediately above, without first receiving:

1. Two copies of properly authenticated plans and specifications for such that comply with the requirements of the Declaration and the Bylaws, and with criteria properly promulgated by the Board.

2. A plot plan.

3. A fee payment equal to \$1 per \$1,000 of total project cost, with a minimum of \$10.

4. City Permit, if required.

F. Each such construction, demolition, renovation and alteration must conform to plans permitted.

**3.7 Compliance with Handbook.** All construction, alterations and improvements to a lot shall comply with the mandatory provisions of Articles 3, 4 and 5 of this Declaration. In addition, the Board of Directors may adopt and modify from time to

time a Handbook for Owners and Contractors. The Handbook shall be deemed to include all of the applicable provisions of Articles 3, 4, and 5 of this Declaration. Pursuant to Article 3.4, the Handbook shall clarify and implement the restrictions already contained in the Declaration. The Handbook shall NOT be a source of new building restrictions and any such restrictions placed in the Handbook shall be a nullity.

**3.8 Landscaping Plan.** Landscaping plans shall include the locations and height, if over four feet (4') above the ground, of all trees, shrubs and decorative rocks on the lot.

**3.9 Association Retained Architect or Engineer.** The Board shall have the right to retain a registered architect or engineer to review the plans and specifications submitted by any member, and the cost of such consultant shall be borne by such member.

**3.10 Notification of Completion of Work.** Lot owners shall notify in writing to the Architectural Committee when work covered by the Association's permit is completed or when plans are altered during construction for possible inspection by the Board.

**3.11 Commencement and Completion.** A lot owner must commence substantial construction or renovation of the owner's property within ninety (90) days of receiving the Association's permit therefor. A lot owner must complete the construction or renovation project within eighteen (18) months of commencement of the project. The Board may grant extensions of these time periods upon a showing of good cause and/or extenuating circumstances.

**3.12 Disclaimer of Liability.** Neither the Association nor the Architectural Committee or any of its members or advisors shall have any responsibility for the design or quality of materials, construction or structural soundness of any improvements, nor compliance thereby with any governmental codes or requirements. No liability relating to the construction of improvements or alterations shall result from the Association, the Architectural Committee, or any consultant engaged by the Association reviewing, approving, or commenting upon any proposed improvements or alterations. The Association, the Architectural Committee or its advisors shall not evaluate applications or proposals to determine whether same meet architectural or engineering standards, or comply with government codes and regulations, nor do they evaluate the quality of workmanship and materials.

**3.13 Grandfathering.** The Association shall permit existing physical situations that were legal and in full compliance with Bird Key's governing documents at the time they were installed to continue, including without limitation, asphalt and metal roofs, asphalt driveways, chain link fences and stone yard, etc. For example, if these amendments require all building roofs to be tile, existing asphalt roofs that were permitted when originally constructed will not have to be changed in any way and may be replaced, when needed, with another asphalt roof. However, if the house is torn down, the owner would have to comply with the new roofing restrictions. This analysis

also applies to other physical situations, such as driveways, fences, stone yards, etc. New rules and regulations not pertaining to physical situations (for example, leasing restrictions) would apply as soon as the new documents are approved by the membership and recorded in the public records.

#### **ARTICLE 4. BUILDING AND CONSTRUCTION RESTRICTIONS**

Each lot shall be subject to the following mandatory standards, requirements, prohibitions and criteria for the design, addition, construction and alteration of improvements to such lot:

**4.1 Single Family Residences Exclusively.** Except as otherwise provided herein, no building or structure shall be allowed or erected on any lot in said Subdivision except one (1) single family residence.

**4.2 Single Building.** Except as otherwise provided herein, all garages, porte cocheres, storage areas, tool cabins, garden houses, pool cages, etc., must be substantially attached to and an integral part of the dwelling house and be constructed so as to constitute one building only. Said dwelling house shall occupy a floor area of actually and fully enclosed building, exclusive of attached garage or porte cochere, of not less than 1,650 square feet for waterfront homes and not less than 1,500 square feet for non-waterfront homes.

**4.3 Height and Story Limitation.** No building shall consist of more than two (2) stories. No building shall exceed thirty-seven feet (37') in height to the highest ridge line, measured from the elevation of the street center line. The 37' height limitation shall not include decorative roof top features (such as chimneys, cupolas, etc.). Such decorative roof top features shall not exceed six feet (6') in height as measured from the center line of the highest ridge line.

**4.4 Setback Limits.** No building shall occupy more than two lots. Except as otherwise provided herein, no building shall be constructed that is not attached to and an integral part of the residential building. No building or mechanical equipment shall be constructed so that any part thereof shall be closer (measurements to be taken perpendicular to lot lines or to the tangents of curved lot lines) than:

- A. 30 feet from the property line of the street it faces.
- B. 10 feet from any side lot line, except a lot line covered by a residence occupying two lots.
- C. 15 feet from the rear line of any non-riparian lot.
- D. In the case of corner lots, 30 feet from the lot line parallel to the street it faces and 20 feet from the lot line parallel to the side street.

E. 30 feet from any waterway boundary line.

F. No building shall be erected on a corner lot so that the setback from the street on which the building faces is less than thirty (30) feet or so that the setback from the side street is less than twenty (20) feet.

**4.5 Exceptions to Setback Restriction.** Terraces, walls, fences, low platforms or steps, swimming pools and similar low, unroofed and unscreened construction may be erected outside the setback lines, provided that such construction shall not interfere with the exposure or view or reasonable privacy of adjoining or facing properties, and shall be determined by the Association to be in compliance with the prevailing city zoning regulations. No construction of this type may be erected without written approval of the Association. No structure, wall, fence or hedge over four (4) feet in height shall be constructed, erected, placed, planted, set out, maintained or permitted upon any lot within twenty-five (25) feet of any boundary line thereof which extends along any street or other public way or faces on the waterway or over six (6) feet in height within ten (10) feet of any other boundary line of any lot, except that this restriction shall not apply to any portion of said dwelling house, the location of which shall be governed by the provisions of Article 4.4, above.

**4.6 Roofs.** Except for grandfathered residences, new homes shall not have asphalt shingle roofs or wood shingle roofs. Existing asphalt roofs that were permitted when originally constructed may be replaced with asphalt roofs; however, if the dwelling house is torn down, the owner will not be permitted to rebuild the home with an asphalt roof.

**4.7 Pool Cages.** Pool cages on interior (garden) lots may be constructed to within fifteen feet (15') of the rear property line.

**4.8 Gazebo.** After obtaining the prior written approval of the Architectural Committee and in compliance with the lot's setback requirements, a freestanding gazebo may be installed on a lot. The height of a gazebo shall not exceed fifteen feet (15') above the existing ground level, excluding ornamental items. A gazebo shall not exceed 150 square feet in total area. The sides of the gazebo shall not be enclosed other than with screens. A gazebo shall not be used for storage.

**4.9 Pergola.** After obtaining the prior written approval of the Architectural Committee and in compliance with the lot's setback requirements, a freestanding pergola may be installed on a lot. The height of a pergola shall not exceed fifteen feet (15') above the existing ground level, excluding ornamental items. A pergola shall not exceed 150 square feet in total area. The sides of the pergola shall not be enclosed other than with screens. A pergola shall not be used for storage.

**4.10 Driveways.** Except as to grandfathered existing asphalt driveways, no new asphalt driveways shall be permitted or constructed in Bird Key Subdivision

**4.11** *{intentionally left blank}*

**4.12 Mailboxes.** All mailboxes and support posts must meet USPS standards and must be kept intact, upright and maintained in good condition and repair (that is, free of rust, mold, mildew and debris).

**4.13 Parkway.** The parkway located between the pavement and the lot line of each lot shall not be used for the parking of private or commercial vehicles or boats or trailers. The terms "commercial vehicles" shall include all automobiles, trucks and vehicular equipment, vans, which shall bear signs or shall have printed on the sides of same reference to any commercial undertaking or enterprise. The habitual violation of the parking regulations set forth in this paragraph shall be deemed a violation of the use and nuisance restrictions of this Declaration. Parkway is the City owned right-of-way typically located in the first 12.5 feet in the front of the Bird Key lot, measured from the curb.

**4.14 Clotheslines.** A lot owner shall not place upon his premises clotheslines which may be visible either from the street or from the rear of said premises, and, in particular, where said properties back on waterways. Such clotheslines must be enclosed in a hedge or other protective enclosure, the nature and form of said clotheslines and protective enclosures to be approved by the Association's Architectural Committee as a part of the plans for the improvements to be located on the lot.

**4.15 Structure, Wall, Fence or Hedge.** A hedge or line of continuous shrubs, bushes or other vegetation shall not exceed twelve (12) feet above finished ground level. No structure, wall fence, hedge or line of contiguous shrubs, bushes or other vegetation shall exceed four (4) feet above finished ground level within twenty-five (25) feet of the street or waterway boundary. No wall or fence shall exceed six (6) feet in height, above ground level on any other part of a lot. Pilasters, ornamental decorations and lights shall not exceed eighteen inches (18") in height above the fence or wall. No structure, wall, fence, hedge or line of contiguous shrubs, bushes, or other vegetation shall impede the enjoyment of the water view of any BKHA member. The enjoyment of the view is paramount and will govern.

**4.16 Sound Barriers for Mechanical Equipment.** All mechanical equipment (that is, pool filters, pool pumps, air conditioners, generators, heat pumps, etc.) placed outside the main structure must be screened by the lot owner from adjoining properties with a wall as required by City of Sarasota regulations. Screening is required only for new exterior mechanical equipment (i.e., replacement of existing mechanical equipment does not require a screening wall if it does not exist at the time of replacement). No mechanical equipment may be placed or installed in the lot's setback areas.

**4.17 Tennis Courts.** No tennis court shall be installed or constructed on any lot in Bird Key Subdivision.



**4.18 Floodlights.** Floodlights are permitted; however, they shall not be allowed to disturb or unreasonably illuminate neighboring properties.

**4.19 Fences.** Except for grandfathered fences, chain link, wire and similar fences are prohibited on any portion of a Bird Key lot.

**4.20 Aerials, Antennae and Satellite Dishes and Lightning Rods.** The erection or installation of any satellite dish, aerial, mast or antenna on a lot is prohibited; however, satellite dishes that do not exceed one meter (39.37") in diameter are permitted if installed where they are not visible from the street or canal so long as such placement allows reception of an acceptable quality signal, and does not unreasonably delay or increase the cost of installation, maintenance or use. Lightning rods are also permitted.

**4.21 Vacant Lots.** Any lot that has remained inactive or vacant for sixty (60) or more calendar days must be sodded, grassed or hydro-seeded by and at the expense of the lot owner. The lot owner shall properly maintain the vacant lot on a regular basis.

**4.22 Underground Wiring.** No lines or wires for communication or the transmission of current shall be constructed, placed or permitted to be placed upon any lot unless the same shall be contained in conduits, and as to any part or parts of said wires or lines which shall be without the dwelling house, the same shall be constructed or placed and maintained underground.

**4.23 Re-Subdividing.** No lot or contiguous group of lots shall ever be re-subdivided or re-platted in any manner which would bring about a greater number of lots than that shown on the plat of the above-described Subdivision for the same area. A residential site may consist of one (1) or more lots; all of one lot, one lot and a part of a contiguous lot or lots; or any other combination of contiguous parts of lots which shall form one plot of land suitable for use as a site for a residence, provided that it extends from the fronting street to an existing real property line or canal, but no site which changes the lot as originally planned, shall have a front or rear dimension of less than is contained in the smallest adjoining lot shown on the original plat of the subdivision.

## **ARTICLE 5. USE RESTRICTIONS**

**5.1 Trade, Business and Commercial Use Prohibited.** No manufacturing, trade, business, commercial, industry, profession or other occupation whatsoever shall be conducted or carried on upon any lot or any part thereof, or in any building or other structure erected thereon. However, limited professional or business activities, such as telephonic or internet business activities, are permitted as long as they do not interfere with the residential nature of the community or noticeably increase traffic.

**5.2 Single Family Use.** All buildings shall be for the use and occupancy of one (1) family and attendant domestic servants only. No lot or any part thereof or any

portion of the property shown on the plat of BIRD KEY SUBDIVISION shall be leased, used or occupied by anyone other than a member of the Association and their immediate family. The provisions of this restriction shall not apply to bona fide domestic servants domiciled upon the premises where they are employed. Regular members may allow their property to be occupied only by: (1) Members of their immediate families, (2) Lessees who have signed written leases with a term of not less than sixty (60) days, and/or (3) Live-in domestic employees.

**5.3 Maintenance of Lots, Roofs, Exterior Surfaces, Garage Doors, Pools, Parkways, Landscaping and Lawns.** The lot owner shall timely maintain owner's lot and all improvements located thereon, including without limitation, the home, the home's roof(s), exterior surfaces, pool, and keep them free of discolorations, insects, dirt, rust, algae, fungus, mold, mildew and other unsightly growth. The lot owner shall maintain the parkways located between their lot lines and streets upon which said lots face. The owners thereof shall likewise maintain their hedges, plants, lawn and shrubs in a neat and trim condition at all times. Lawns must be maintained in a healthy condition all twelve (12) months of the year by proper fertilizing, irrigation and regular cutting.

**5.4 Leasing and Lease Fee.** A regular member is permitted to lease his or her dwelling home via a written lease. Regular members shall provide to the Association, prior to occupancy by lessees, a copy of the subject lease document. A dwelling home shall not be leased for less than sixty (60) continuous days. A dwelling home shall not be leased more than two (2) times during a calendar year. The regular member shall complete and submit to the Association its information sheet and pay a lease fee of Six Hundred Dollars (\$600) to the Association prior to each lease of the member's dwelling home.

**5.5 Sale of Personal Property.** No personal property shall be brought into Bird Key Subdivision for the purpose of being sold, nor shall any personal property be displayed outdoors, in any estate or garage sale, except as provided in Article 5.6 below.

**5.6 Estate or Garage Sales.** No estate or garage sale shall be held before 10:00 a.m. or after 4:00 p.m. in Bird Key Subdivision, nor shall such be conducted for more than two (2) consecutive days within a calendar year and no more often than twice per calendar year. An application fee of Ten Dollars (\$10) and a written application is required for all garage/estate sales to ensure proper traffic control and/or assistance. The application must be received by the BKHA office at least seven (7) days prior to the sale date.

**5.7 Professional Construction and Landscaping.** Professional construction and professional landscape work is permitted to occur ONLY Monday through Friday from 8:00 AM to 6:00 PM and on Saturdays from 9:00 AM to 5:00 PM. No professional construction or professional landscape work is permitted on Sundays or holidays. The

Board shall create and maintain a list of such holidays. The Board may grant an exception to this Article 5.7 for extreme circumstances or emergency repairs.

**5.8 Garbage Disposal, Trash and Garbage Pickup.** The lot owner will provide sanitary storage for all garbage, recyclables and yard debris and such storage will be kept in the lot's garage or otherwise out of sight of other residents. No trash shall be allowed to accumulate on a lot except in City-approved refuse containers until authorized governmental pickup. Garbage cans, waste containers, yard debris and special refuse shall not be placed at the curb for pick up sooner than 5:00 pm the day before the scheduled pickup. All containers and any remaining items must be returned to storage no later than 8:00 am the day after scheduled pickup.

**5.9 Garages and Driveways.** All garage doors shall be closed except as are required to be opened for purposes of ingress and egress and for aiding in maintenance of the premises. The use of any garage, carport, driveway or parking area which may be in front of, adjacent to or a part of any Subdivision lot as a habitual parking place for commercial vehicles is prohibited. The use of any driveway or parking area which may be in front of, adjacent to or a part of any lot as a habitual parking place for boats or trailers is prohibited.

**5.10 Signs.** No advertising sign of any character shall be displayed or placed upon any of the premises or lots in the Subdivision, including without limitation, "**For Rent**" or "**For Sale**" signs. "**Open House**" signs, without other printing thereon, displayed from 1.00 p.m. to 4:00 p.m. on Sundays, in front of the residence that is open, and signs containing a direction arrow, located at one adjacent corner, are permitted. "**No Trespassing**" signs that comply with the requirements of Florida law are permitted only on vacant lots and lots designated as construction sites. Additionally, a lot owner may display a sign of reasonable size provided by a contractor for **security services** within ten feet (10') of any entrance to the home. All governmental or Association required **construction permits** may be displayed in a permit box located on the lot during the time any construction, demolition, replacement, or alteration is undertaken. **Political signs** of reasonable size and numbers, espousing candidates or issues on local ballots during the period of campaigning are permitted; however, all such signs must be removed within seven (7) days of the final election with respect to such candidate or issue.

**5.11 Nuisance.** Nothing shall be done on any lot which may be or become an annoyance or nuisance to the neighborhood or its residents. The following are specifically deemed to be nuisances and are absolutely prohibited:

- A. Farm animals (that is, horses, cattle, swine, goats, poultry or fowl) kept on any lot.
- B. Vegetable gardens on any lot.
- C. Accumulated trash, unless contained in City provided or like containers.

D. Unsightly building exteriors, surrounding facilities, lawns and trees; grass over five inches (5") inches high shall be deemed unsightly.

E. Unsightly, unrepaired and uncompleted roofs.

F. Habitual, frequent or persistent parking of commercial and recreational vehicles, boats and other watercraft and trailers, in any driveway or yard, except for motor homes, which may be so parked for a period of no more than two (2) weeks in any six (6) month period beginning on the first date of parking. "Commercial Vehicles" shall include all vehicles overtly bearing any reference to a commercial enterprise.

G. Boats in disrepair or in a condition inconsistent with the aesthetics of the subdivision, in any waters adjacent to or in Bird Key Subdivision.

H. Boats moored or docked in waters adjacent to or in Bird Key Subdivision so as to interfere with navigation or marine traffic.

I. Parking on any lot in Bird Key Subdivision for more than seventy-two (72) hours a motor vehicle that is unlicensed, inoperable, or derelict in appearance, as determined by the Board.

J. Conducting any maintenance or repair (except routine minor maintenance) on any motor vehicle, boat or trailer, except when done in a garage.

K. Allowing construction debris to accumulate on any lot in Bird Key Subdivision for a period in excess of twenty-four (24) hours unless it is concealed from the adjacent roadway and waterway in containers approved by the Board.

L. Allowing dead trees or shrubs to remain on any lot for more than thirty (30) days.

M. Placing or maintaining artificial grass, plants or other artificial vegetation in the yard of any lot.

N. Allowing trees, landscaping or other vegetation to overhang streets at a height of less than twelve feet (12').

O. Allowing any landscaping or vegetation to create a condition on a lot that the Board deems a traffic, health or safety hazard.

## **ARTICLE 6. DOCKS, BOATS, BOAT LIFTS AND SEAWALLS**

**6.1 Boat Lifts.** No boat lift shall be designed to lift boats to a height at which the superstructure of the boat will be deemed, in the sole opinion of the Architectural

Committee, unreasonably to interfere with the view of other waterway residents.

**6.2 Boats.** No boat moored or docked adjacent to a Bird Key Subdivision lot shall be used as a dwelling for more than seven (7) days within a six (6) month period of time beginning with the use of the boat as a residence.

**6.3 Restricted Use of Boats, Seawalls and Boat Slips.** No seawall, dock or boat slip, piers or mooring post shall ever be placed or constructed upon any lot unless the same shall be constructed according to plans, specifications, elevations, types and designs approved by the Association in writing. Should the Association fail to approve or disapprove of said plans within thirty (30) days after written request therefor has been received by the Association, then such approval shall not be required. No vessel or boat shall be anchored offshore in any of the waterways adjacent to the Bird Key subdivision so that the same shall in anywise interfere with navigation. No boat house shall be constructed on or adjacent to any of the waterfront lots in the Bird Key Subdivision, nor shall any boat canal be dug or excavated in any of the waterfront lots without the same being approved by the Association and appropriate governmental agencies.

**6.4 Docks, Mooring Posts, Davits and Boat Lifts – Side Boundaries.** Docks, mooring posts, davits and boat lifts may not extend closer than fifteen feet (15') to the side boundaries of any canal lot.

**6.5 Docks, Mooring Posts, Davits and Boat Lifts – Canal Boundary.** Docks, mooring posts, davits and boat lifts may not extend into a canal more than twenty percent (20%) of the width of the canal (for example, on a 100' canal, that would be 20').

**6.6 Maintenance, Repair and Replacement.** The lot owner must timely and properly maintain, repair and replace the lot's seawall, dock, mooring posts, davits and boat lifts.

## **ARTICLE 7.**

### **REMEDIES FOR VIOLATIONS, RIGHT OF ENTRY, WAIVER, AND VARIANCES**

**7.1 Remedies for Violations.** In the event of a violation or breach of any of the governing documents or restrictions, the Association and any lot owner shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The prevailing party in such a lawsuit shall recover its reasonable pretrial, trial and appellate attorney's fees and costs from the losing party. Regular members shall be jointly and severally liable for costs, attorney's fees, fines and penalties arising from violations committed by their co-owners, lessees or other legal occupants.

**7.2 Right of Entry Onto Lot.** The Association shall have the right, whenever there shall have been built on any lot in the Subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and

summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass.

**7.3 Waiver.** The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.

**7.4 Weeds, Grass and Unsightly Landscaping.** If an owner shall fail or refuse to keep the owner's lot free of weeds, underbrush, refuse piles, unmowed grass, or other unsightly landscaping, growth or objects, then the Association, its agents or contractors, may, but is not required to, enter upon said lot and resolve the violation. The Association shall first provide the owner written notice of the specific violation, a reasonable opportunity to resolve it and notice of the Association's intention to charge the owner for resolving the violation if the owner fails or refuses to timely do so. The Association shall only be required to provide an owner one written notice of its intention to resolve yard or landscaping violations as they may recur every week. The Association may hire a contractor to resolve the violation and pass through to the owner the expense of providing such a service plus a service charge of thirty percent (30%) of the contractor's invoice in order to discourage owners from using the Association as their lawn service provider.

**7.5 Variance.** Upon written application and after a showing of good cause, the Board of Directors may enter into one or more written agreements with a lot owner granting a variance to the terms and conditions of the Declaration. All such variances shall be manifested by agreements in writing, signed by the lot owners and an authorized representative of the Association's Board of Directors, and recorded in the Official Records of Sarasota County, Florida. A fee determined by the Board shall be charged to each person requesting a variance. Additionally, the lot owner shall be responsible for reimbursing the Association all reasonable attorney's fees and costs incurred by the Association as a condition precedent to receiving a variance. Variances shall not constitute waivers of any such condition, restriction, limitation or agreement as to the remaining lots in the Subdivision, and the same shall remain fully enforceable by the Association and other lot owners as to all other Subdivision lots.

**7.6 Severability.** Invalidation of any part of this Declaration by a court of competent jurisdiction shall not affect any other provisions, which shall remain in full force and effect.

**7.7 Construction.** This Declaration, the Articles and Bylaws, shall be liberally construed to give effect to their purpose of creating a plan for a quality single family residential community. Article and section headings have been inserted for convenience only and shall not be considered in interpretation or construction of the document. This Declaration, the Articles and Bylaws, shall be construed under the laws of Florida, and shall not be construed more strongly against any party. Whenever

the context of this Declaration, the Articles or Bylaws require, the singular shall include the plural and the plural the singular, and any one gender may refer to any other gender.

## **ARTICLE 8. VOTING INTERESTS**

Each regular member shall have one (1) indivisible vote for each full Bird Key lot which such member owns. The regular member or the designated representative of the entity regular member shall be authorized to cast the vote on behalf of the Bird Key lot. Votes shall be cast in the manner provided in the Bylaws. A regular member holding title to a fractional lot of Bird Key Subdivision, as platted, shall not be entitled to a fractional vote therefor.

## **ARTICLE 9. ASSESSMENTS**

**9.1 Personal Obligation and Lien for Assessments.** Each lot owner covenants and agrees to pay to the Association all assessments levied with respect to each lot in which such owner has an ownership interest. Each assessment is the personal obligation of the lot owner of a lot at the time when the assessment is due and shall remain the personal obligation of such owner notwithstanding that such owner may no longer own the lot. Additionally, an owner is jointly and severally liable with the previous lot owner for all unpaid assessments that come due up to the time of transfer of title to the lot. This liability is without prejudice to any rights and obligations the successive owners may have for the ultimate allocation of liability between them in accordance with any agreements they may have.

**9.2 Lien on the Lot.** All assessments shall also be a charge and continuing lien on the lot with respect to which such assessment is levied. The Association may record in the Public Records a "Claim of Lien" setting forth amounts claimed due to the Association as to any one or more lots. The execution and recording of such a claim of lien is not required in order for the continuing lien for assessments to be valid.

**9.3 Purposes of Assessments.** Assessments levied by the Association shall be used only for the purposes set forth by law, in this Declaration, the Articles and Bylaws.

**9.4 Annual Budget.** For each fiscal year, the Board shall prepare and adopt an annual budget reflecting the estimated revenues and expenses for the fiscal year and the estimated surplus or deficit as of the end of the year immediately preceding the fiscal year.

**9.5 Regular Assessments.** Upon adoption of the annual budget, the Board shall levy an annual regular assessment against each lot subject to assessment in the amount reflected in the budget. The Board shall also determine the time and manner of payment of the regular assessment. Written notice of the regular assessment shall be

sent to every regular member. Each member shall thereafter pay the regular assessment to the Association at such times and in such installments as may be established by the Board and set forth in such notice. If the regular assessment is payable in installments, it shall not be necessary to send a notice to each owner for each installment, a single notice being sufficient.

## **ARTICLE 10. DECLARATION AMENDMENTS**

**10.1 Proposal.** Amendments to the Declaration of Restrictions may be proposed by the Board of Directors or by written petition signed by at least twenty-five (25) regular members. The Association shall include the text of the proposed amendments in or with the notice of the membership meeting. All amendments must be transmitted to the members at least thirty (30) days prior to the membership meeting.

**10.2 Adoption.** Except as otherwise stated herein, these restrictions, limitations, conditions and agreements may be amended at any time with the approval of no less than two-thirds of the affected parcel owners.

**10.3 Automatic Amendment.** The Declaration of Restrictions shall be deemed amended, if necessary, so as to make the same consistent with the requirements of Chapter 720, Florida Statutes, as amended from time to time.

## **ARTICLE 11. EASEMENTS**

**11.1 Easements Reserved.** The Association herein reserves, for itself, its successors or assigns, a five foot (5') easement along the rear of each lot for public utility purposes, and a similar reservation on or in the three foot (3") strip along the sidelines of each lot.

**11.2 Assignment of Easements.** The Association reserves the right to assign any and all easements presently existing or hereinafter granted for the installation of utilities or other uses by it deemed to be necessary for the service of said lands, and any walls, fences, paving, planting or other improvements placed thereon by the owner of the property on which the easement lies shall be removed, if required, by the Association or its assigns at the expense of the owner of any lot. Where there is located on one or more lots, or portions thereof, a single residence under a single ownership, then the three (3) foot easement shall not be located along the sidelines of each lot but along the sidelines of the combination of lots or portions thereof.

## **ARTICLE 12. DURATION OF RESTRICTIONS**

The foregoing agreements, covenants, restrictions and conditions shall constitute an easement and servitude upon and in the lands conveyed in **BIRD KEY**



**SUBDIVISION**, running with the land, and shall remain in full force and effect for seventy-five (75) years from the recordation date of the revived Declaration of Restrictions, Limitations, Conditions and Agreements, at which time they shall automatically extend for successive periods of ten (10) years each unless by a vote of the majority of the then owners of the residential lots of this subdivision, it is agreed to terminate them in whole or in part.