

2013 Governing Documents were  
Amended & Restated

Last Amended Date: 3.07.2023

**Bylaws**

BIRD KEY HOMEOWNERS ASSOCIATION, INC.

BIRD KEY HOMEOWNERS ASSOCIATION, INC.

RESTATED BYLAWS

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4/13/2023 12:40 PM

KAREN E. RUSHING

CLERK OF THE CIRCUIT COURT

SARASOTA COUNTY, FLORIDA

SIMPLIFILE

Receipt # 3014952

Prepared by and Return to:  
Richard A. Ulrich, Esq.  
Ulrich, Scarlett, Watts & Dean, P.A.  
713 S. Orange Ave., Ste. 201  
Sarasota, Florida 34236

**CERTIFICATE OF AMENDMENT TO**  
**BYLAWS**  
**OF BIRD KEY HOMEOWNERS ASSOCIATION, INC.**

THE UNDERSIGNED, as President of Bird Key Homeowners Association, Inc., a Florida not for profit corporation (hereinafter the "Association") hereby certifies that the Bylaws as originally recorded as an attachment to the Revived Declaration of Restrictions, Limitations, conditions and agreements for Bird Key Subdivision, as recorded in Instrument # 2008080980, on June 12, 2008, as amended from time to time and as originally recorded in Official Records Book 196, Pages 679-690, of the Public Records of Sarasota County, Florida, was duly amended by the required vote of the members of the Association present in person or by proxy, at a properly called meeting of the Association held on March 7, 2023, as follows:

**Bylaws Section 7.10 shall be amended as follows with added language being underlined and deleted language being stricken:**

**7.10 Review Committee.** The Review Committee shall consist of at least three (3) Members. Directors, officers, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director or employee shall not serve on the Review Committee. If the Board levies a fine or suspension and the person sought to be fined or suspended requests a hearing before the Review Committee pursuant to Article 9.3 of the Bylaws, the role of the Review Committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Review Committee, by majority vote, does not approve a fine or suspension, it may not be imposed by the Board.

**Bylaws Section 9.3 shall be amended as follows with added language being underlined and deleted language being stricken:**

**9.3 Notice and Opportunity for a Hearing.** After the cure period of Article 9.2 of the Bylaws has been provided and expired, the Association shall provide the Member and the person sought to be fined (if applicable) at least 14 days written notice and an opportunity for a hearing before the Review Committee which must be requested in writing by the Member within fourteen (14) days from the date of the written notice or provided when otherwise required by law. The written notice shall also contain a short plain statement of the matter or matters asserted by the Board to constitute a violation, including but not limited to the specific violation(s) alleged, the date, time and location of each alleged violation for which a fine may be imposed and a brief description of the conduct involved, as best as can be reasonably determined. The member and the person sought to be fined (if applicable) shall be informed of the date and time of the Review Committee hearing. Members and/or their representatives are entitled and encouraged

~~to attend the Review Committee hearing and bring forth any explanation. The hearing by the Review Committee shall commence within not less than fourteen (14) days of the Manager's receipt of the written request by the Member and/or the person sought to be fined or when otherwise required by law with respect to the fine.~~

IN WITNESS WHEREOF, the Association has caused this Certificate to be executed by its President and attested to by its Secretary this 10 day of April, 2023.

BIRD KEY HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation

WITNESSES (As to President)

Kim B. Kozick  
Print Name: Kim B. Kozick

Rucker Raddatz  
Print Name: Rucker Raddatz

By: Philip Rence  
President: PHILIP RENCE

Attested:  
By: Craig Vorsele  
Secretary: CRAIG VORSELEN

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 10 day of April, 2023, by PHILIP RENCE as President of Bird Key Homeowners Association, Inc., a Florida not for profit corporation, on behalf of said corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

Melissa Johnson  
Print Name: Melissa Johnson  
Notary Public  
My Commission Expires: April 8, 2026



Prepared by and Return to:  
Richard A. Ulrich, Esq.  
Ulrich, Scarlett, Watts & Denn, P.A.  
713 S. Orange Ave., Ste. 201  
Sarasota, Florida 34236



**CORRECTED**  
**CERTIFICATE OF AMENDMENT TO BYLAWS**  
**OF BIRD KEY HOMEOWNERS ASSOCIATION, INC.**  
**TO CORRECT SCRIVENER'S ERROR**

THE UNDERSIGNED, as President of Bird Key Homeowners Association, Inc., a Florida not for profit corporation (hereinafter the "Association") hereby certifies that the Bylaws as originally recorded as an attachment to the Revived Declaration of Restrictions, Limitations, conditions and agreements for Bird Key Subdivision, as recorded in Instrument # 2008080980, on June 12, 2008, as amended from time to time and as originally recorded in Official Records Book 196, Pages 679-690, of the Public Records of Sarasota County, Florida, was amended by a Certificate of Amendment to Bylaws recorded in Instrument Number 2021207704 on November 17, 2021. Said Certificate of Amendment contained a scrivener's error in Section 5.3(e) and said section is being corrected with the addition of one word, underlined, herein. All other language remains the same, as follows:

**The following Articles in the Bylaws for Bird Key Homeowners Association, Inc. shall be amended as follows:**

**4.2(e)** The absence of a Director from more than three (3) meetings of the Board within any fiscal year of the Association shall be considered the submission of the resignation of such Director, effective upon acceptance of such resignation by a majority of the Board. A Director who knowingly violates or ignores the mandates and restrictions of the Declaration, Articles of Incorporation, Bylaws, and Board rules, or who fails or refuses to carry out his assignments, shall be discharged as a Director, subject to two-thirds (2/3rds) approval of the Board of Directors.

**4.11 Vacancies.** Except as to vacancies caused by removal of a majority of the Directors by members (which vacancies shall be filled in the manner provided in Chapter 720, Florida Statutes, the Homeowners Association Act), vacancies in the Board of Directors occurring between annual membership meetings shall be filled by a majority of the remaining Directors (even if less than a quorum) to serve for the remainder of the former Director's unexpired term of office, unless otherwise provided by law. A Director or officer who is more than ninety (90) days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled by the Board.

**5.1** The Board of Directors shall consist of nine (9) Directors as provided in the Articles of Incorporation of the Association. The Board will seek to create a Board of Directors



composed of groups, each group consisting of an equal number of Directors, as near as may be, and staggering the terms of each group. For example, the Board may provide for staggering the terms of Directors by dividing the total number of Directors into three groups, with each group containing one-third (1/3) of the total, as near as may be. In that event, the terms of Directors in the first group expire at the first annual members' meeting after their election, the terms of the second group expire at the second annual members' meeting after their election, and the terms of the third group, expire at the third annual members' meeting after their election. Additions or reductions in the number of Directors shall be accommodated by adding to or taking from a group or groups so as to keep the number of Directors in each group equal, as near as may be.

**5.2** Nomination Procedure is deleted in its entirety.

**5.3** Election of Directors. The election of Directors shall be conducted in the following manner:

- a. Election of Directors shall be held at the annual members' meeting.
- b. A "Notice of Intent" form shall be delivered, either personally, by mail, or electronically transmitted, to each member at least ninety (90) days before the date of the annual members' meeting at which the Election of Directors shall be held. Any member interested in being a candidate for the Board of Directors shall fill out the form as per instructions and return it to the Community Association Manager not less than 45 days prior to the scheduled election.
- c. Any eligible person, as defined in Article 4.2, desiring to be a candidate and submitting the "Notice of Intent" form to the Community Association Manager not less than 45 days prior to the scheduled election shall automatically be listed on the ballot. Candidates are encouraged to include an information sheet no larger than 8 1/2 inches by 11 inches, which will be included with the ballot mailing to members.
- d. The ballot prepared for the election of Directors shall list all Director candidates in alphabetical order. Ballots shall be mailed and/or transmitted electronically to all members with notice of the annual members' meeting. Ballots may be submitted to the Community Association Manager as an absentee ballot prior to the meeting or cast at the meeting in person. In order for a ballot to be valid, members must sign their name and write their address.
- e. The election shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each member voting being entitled to cast a vote for as many nominees as there are vacancies to be filled. Voting for more nominees than there are vacancies will invalidate the ballot. Voting by proxy is not permitted. There shall be no cumulative voting. Nominations from the floor shall not be permitted.
- f. In the event that candidates for an open position receive the same number of votes, the elected Director will be determined by lot, such as the flipping of a coin by a neutral party.
- g. No election or balloting shall be necessary if the number of candidates is less than or equal to the number of vacancies. In this case, the candidates shall automatically be elected and their names announced at the annual members' meeting. Should there be

insufficient candidates to fill all vacancies, the Board of Directors by majority vote will fill any remaining vacancies.

**6.2 President.** The President shall preside at all meetings of the membership and at all meetings of the Board. The President shall be an ex officio member of all committees of the Association and may appoint any committee he or she deems desirable. The President shall supervise the Community Association Manager.

**7.1 Committee Action and Procedures.** No Committee action or approval of plans shall be undertaken or made without the approval of the majority of the Board of Directors, with the exception of the Architectural Committee (AC) in approving plans that are in compliance with the Declaration of Restrictions. All committees shall be exempt from the procedural requirements of Article 4 and may adopt their own procedures and rules. Committees shall be governed by and comply with the governing documents of the Association.

**7.5 Executive Committee.** The Board may by resolution appoint the President, a Vice President, and one other officer of the Association as an executive committee to conduct the business and affairs of the Association between meetings of the Board. At the next scheduled Board meeting, the Executive Committee will report to the Board any action(s) taken without prior approval of the Board and propose a resolution(s) that these action(s) be approved by the Board. Should the Board not approve by resolution(s) any action(s) taken by the Executive Committee, such action(s) shall be remedied and/or reversed. The Executive Committee shall not be empowered to levy fines or assessments against members of the Association or to fill vacancies occurring on the Board.

**7.7 Community Improvement Committee.** The Chair of the Community Improvement Committee shall be appointed by the Board. Other committee members shall include the current Coalition of City Neighborhood Associations designate for BKHA (if any), and additional members of the Association as desired. The Committee is committed to the maintenance and improvement of the Bird Key Homeowners Association common areas. The Committee will reach out to Sarasota City, Sarasota County, the Florida Department of Transportation and other organizations for their financial support, personnel and assistance as necessary to accomplish its goals. The long-term objective is to maintain and enhance the reputation of Bird Key as a desirable location in the Sarasota community.

**8.19 Purposes of Assessments.** The purposes for which assessments may be made shall include, but not necessarily be limited to, the following:

- A. Enforcement of Bird Key Subdivision Declaration of Restrictions, rules and regulations governing the use of property of the Association and of its Members.
- B. Employment of guards and a Community Association Manager and a management company.
- C. Acquisition of realty in Bird Key Subdivision.

D. Elimination of nuisances on Bird Key Subdivision properties.

E. To cover administrative and operational costs, insurance, and those expenditures incurred, related to or associated with the maintenance, repair, improvements and/or replacement of real and personal property owned, operated or controlled by the Association, including the administrative office, vehicles, entry fountain, perimeter landscaping wall, and BKHA common grounds.

F. Restoration or the provision of services or materials that will enable the use of any real property that is part of any publicly dedicated areas within any portions of the Bird Key Subdivision in the event of a natural disaster or a state of emergency declared pursuant to Section 252.36 Florida Statutes (2019) that applies to or has impacted the Bird Key Subdivision.

IN WITNESS WHEREOF, the Association has caused this Certificate to be executed by its President and attested to by its Secretary this 20 day of October, 2022.

BIRD KEY HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation

WITNESSES (As to President)

[Signature]  
Print Name: Kurtis Raddatz

[Signature]  
Print Name: LETTY B. KOZIBL

By: [Signature]  
President: DAVID POELKE

Attested:  
By: [Signature]  
Secretary: PHILIP RENICE

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 20, day of October, 2022, by DAVID POELKE as President of Bird Key Homeowners Association, Inc., a Florida not for profit corporation, on behalf of said corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
Print Name: Melissa Johnson  
Notary Public  
My Commission Expires: April 8, 2026



Prepared by and Return to:  
Richard A. Ulrich, Esq.  
Ulrich, Scarlett, Watts & Dean, P.A.  
713 S. Orange Ave., Ste. 201  
Sarasota, Florida 34236



**CERTIFICATE OF AMENDMENT TO**  
**BYLAWS**  
**OF BIRD KEY HOMEOWNERS ASSOCIATION, INC.**

THE UNDERSIGNED, as President of Bird Key Homeowners Association, Inc., a Florida not for profit corporation (hereinafter the "Association") hereby certifies that the Bylaws as originally recorded as an attachment to the Revived Declaration of Restrictions, Limitations, conditions and agreements for Bird Key Subdivision, as recorded in Instrument # 2008080980, on June 12, 2008, as amended from time to time and as originally recorded in Official Records Book 196, Pages 679-690, of the Public Records of Sarasota County, Florida, was duly amended by the required vote of the members of the Association present in person or by proxy, at a properly called meeting of the Association held on March 23, 2022, as follows:

**The following Section 10.2 in the Bylaws shall be amended as follows, with added language being underlined:**

**10.2 Adoption. The Bylaws may be amended upon the approval of a majority of the Association membership present (in person or by proxy) at a duly noticed membership meeting provided that the total number of votes cast meets or exceeds a quorum. Additionally, and except as otherwise provided in Article 4.3 of the Bylaws as to Director term limits, the Bylaws may be amended upon the approval of a majority of the Association's Board of Directors at a Board meeting duly noticed for such purpose. Proposed Board amendments must be mailed or electronically transmitted to members thirty (30) days prior to the noticed Board meeting. A copy of this Article must be included in the mailing. Board approved amendments will be recorded with Sarasota County sixty (60) days after Board approval, unless within this sixty (60) day period, written objections signed by fifteen percent (15%) of the regular members are submitted in writing to the Board, by delivery to the BKHA office. In this case, the Board approved 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 Bylaws 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. All duly approved amendments to the Bylaws are effective when recorded with Sarasota County.**

IN WITNESS WHEREOF, the Association has caused this Certificate to be executed by its President and attested to by its Secretary this 31 day of March, 2022.

BIRD KEY HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation

WITNESSES (As to President)

[Signature]  
Print Name: KETIE B KOZIEL

[Signature]  
Print Name: ALLEN C. CARSON

By: [Signature]  
President: DAVID POELKE

Attested:  
By: [Signature]  
Secretary: PHILIP RENCE

STATE OF FLORIDA )  
COUNTY OF SARASOTA )

The foregoing instrument was acknowledged before me **by means of  physical presence** or  online notarization, this 31, day of March, 2022, by DAVID POELKE as President of Bird Key Homeowners Association, Inc., a Florida not for profit corporation, on behalf of said corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
Print Name: Melissa Johnson  
Notary Public  
My Commission Expires: April 8, 2026



3/9/2020 12:52 PM

KAREN E. RUSHING

CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA

SIMPLIFILE

Receipt # 2492065

Prepared by and to be returned to:

Becker & Poliakoff, P.A.  
Douglas G. Christy, Esq.  
1819 Main Street, Suite 905  
Sarasota, FL 34236

**CERTIFICATE OF AMENDMENT TO THE  
BYLAWS OF BIRD KEY HOMEOWNERS ASSOCIATION, INC. AND  
NOTICE PURSUANT TO SECTION 720.3032(1), FLA. STAT.**

This CERTIFICATE OF AMENDMENT TO THE BYLAWS OF BIRD KEY HOMEOWNERS ASSOCIATION, INC. AND NOTICE PURSUANT TO SECTION 720.3032(1), FLA. STAT. (the "Amendment") is made this 6<sup>th</sup> day of March, 2020 by BIRD KEY HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit (the "Association").

**RECITALS**

**WHEREAS**, the Restated as of 1/01/2016 Bylaws of Bird Key Homeowners Association, Inc., recorded at Instrument #2013065278, of the Public Records of Sarasota County, Florida, as amended from time to time (the "Bylaws") provides, at Article 10, Section 10.2 therein, that the Bylaws may be amended upon the approval of a majority of the Association membership present (in person or by proxy) at a duly-noticed membership meeting provided that the total number of votes cast meets or exceeds a quorum or, and except as otherwise provided in Article 4.3 of the Bylaws as to Director term limits, may be amended upon the approval of a majority of the Association's Board of Directors at a Board meeting duly noticed for such purpose; and

**WHEREAS**, a majority of the Association's Board of Directors at a Board meeting duly noticed for such purpose and held on the 4<sup>th</sup> day of December, 2019 approved of amending the Bylaws as provided hereinbelow; and

**WHEREAS**, the Bylaws also provides, at Article 10, Section 10.2 therein, that when an amendment to the Bylaws is made upon the approval of a majority of the Association's Board of Directors at a Board meeting duly noticed for such purpose, such amendments are effective sixty (60) days after the mailing of such amendments to the general membership; and

1

**WHEREAS**, the Association mailed the text of the amendments to the Bylaws as provided below to the membership of the Association as required by Article 10, Section 10.2 of the Bylaws on November 15, 2019; and

**WHEREAS**, Association wishes to place this Amendment in the Public Records of Sarasota County, Florida; and

**WHEREAS**, the Association also wishes, pursuant to Section 720.3032(1), Fla. Stat. (2019), to preserve certain covenants from potential termination after 30 years by operation of Chapter 712, Florida Statutes, which covenants constitute the current governing documents of the Association; and

**WHEREAS**, for purposes of Section 720.3032(1), Fla. Stat. (2019), the following information is included in this Amendment and is intended to comply with the requirements of Section 720.3032(1), Fla. Stat. (2019):

- (a) BIRD KEY HOMEOWNERS ASSOCIATION, INC., which is the legal name of the Association;
- (b) The mailing and physical address of the Association is 100 Bird Key Drive, Sarasota, FL 34236;
- (c) The name of the affected subdivision plats is BIRD KEY SUBDIVISION, as further described at Plat Book 11, Pages 20-20F, platted as to section corners as set forth in Plat Book 12, Pages 23-23a, 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;
- (d) The name, address and telephone number for the current community association manager of the Association are: Melissa Johnson; 100 Bird Key Drive, Sarasota, FL 34236; and 941-366-0848;
- (e) The Association desires to preserve the covenants or restrictions affecting the community or Association from extinguishment under the Marketable Record Title Act, Chapter 712, Florida Statutes;
- (f) The listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment are: (i) Certificate of Amendment Declaration of Restrictions, Limitations, Conditions and Agreements Bird Key Subdivision, Articles of Incorporation, Bylaws Bird Key Improvement Association, Inc. recorded at Instrument #2013065278, of the Public Records of Sarasota County, Florida; (ii) Certificate of Amendment Articles of Incorporation Bird Key Homeowners Association, Inc. recorded at Instrument

#2015036148, of the Public Records of Sarasota County, Florida; and (iii) Certificate of Amendment Bylaws Bird Key Homeowners Association, Inc. recorded at Instrument #2015153219, of the Public Records of Sarasota County, Florida.

- (g) The legal description of the community affected by the covenants or restrictions is:

BIRD KEY SUBDIVISION, as further described at Plat Book 11, Pages 20-20F, platted as to section corners as set forth in Plat Book 12, Pages 23-23a, 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,

and

Lot 8, Block 19, Bird Key, as per plat thereof recorded in Plat Book 11, pages 20, 20A through 20F, Public Records of Sarasota County, Florida, which is only subject to that certain Stipulated Settlement Agreement, Joint Motion and Judgment Approving Settlement Agreement, dated September 7, 2005 in Case No.: 2005 CA 006179 NC, styled Schoonheim v. Bird Key Improvement Association, recorded in Official Records of Sarasota County, Florida at Instrument # 2005200998,

less and except the following described real property:

Lot 2, Block 15. BIRD KEY SUBDIVISION, as per Plat thereof recorded in Plat Book 11, Page 20, 20A through 20F, of the Public Records of Sarasota County, Florida,

Lot 25, Block 1, Bird Key Subdivision, as per Plat Book 11, Pages 20, 20A through 20F, inclusive, Public Records Sarasota County, Florida, and

Lot 26. Block 1, Bird Key Subdivision, as per Plat thereof recorded in Plat Book 11, Pages 20, 20A through 20F, inclusive, Public Records Sarasota County, Florida.

; and

- (h) The signature of a duly authorized officer of the Association, acknowledged in the same manner as deeds are acknowledged for record, is included on the final page of this Amendment and is incorporated herein by this reference.



I. **General Provisions.** The foregoing Recitals are true and correct and are incorporated into and form a part of this Amendment. All initially capitalized terms not defined herein shall have the definitions for such terms as provided in the Bylaws. Additions to the existing provisions of the Bylaws are indicated by double-underlining and deletions to the existing provisions of the Bylaws are indicated by strikeout.

II. **Article 7, Section 7.1.** Article 7, Section 7.1 of the Bylaws entitled "Committee Action and Procedures" is amended to read as follows:

**7.1 Committee Action and Procedures.** No eCommittee action or approval of plans shall be undertaken or made without the approval (by signature in the case of plans) of the majority of the ~~at least two (2)~~ members of the Committee involved, with the exception of the Architectural Committee (AC) in approving plans that are in compliance with the Declarations of Restrictions. The procedural provisions of Article 4 of the Bylaws shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of Association funds and to meetings of any committee vested with the power to approve or disapprove architectural decisions with respect to a specific lot owned by a regular member. All other committees shall be exempt from the procedural requirements of Article 4 and may adopt their own procedures and rules. Committees shall be governed by and comply with the governing documents of the Association.

III. **Article 7, Section 7.3.** Article 7, Section 7.3 of the Bylaws entitled "Standing Committees" is amended to read as follows:

**7.3 Standing Committees.** The standing committees of the Association shall be as follows:

The Executive Committee

The Finance Committee

~~The Landscape Committee~~

The Community Improvement Committee

The Architectural Committee

The Compliance Committee

The ~~Mediation~~Review Committee

The Document Update Committee

IV. Article 7, Section 7.7. Article 7, Section 7.3 of the Bylaws entitled "Landscape Committee" is amended to read as follows:

7.7 Community Improvement Committee. The Chair of the Community Improvement Committee shall be appointed by the Board. Other committee members shall include the current Coalition of City Neighborhood Associations designate for BKHA (if any), and additional members of the association as desired. The Committee is committed to the maintenance, improvement, and beautification of the Bird Key Community, including the subdivision itself, the area that fronts Bird Key, the MURT Trail and Bird Key Park. The Committee may reach out to Sarasota City, Sarasota County, the Florida Department of Transportation and other organizations for their financial support, personnel and other assistance as necessary to accomplish its goals. The long-term objective is to maintain and enhance the reputation of Bird Key as a desirable location in the Sarasota community.~~Landscape Committee. The Landscape Committee shall consist of at least one (1) Board member or non Board members as appointed by the Board or, at the option of the Board, by the President. The Landscape Committee members shall serve until their successors are appointed. There is a maximum of five (5) members. The Landscape Committee shall examine and determine if the proposed landscaping plans or landscape alterations or improvements satisfy the requirements of the Declaration. The Landscape Committee shall also provide general guidance to members on their landscape plans. The Landscape Committee may disapprove of plans and specifications only if the plans and specifications do not satisfy the current requirements of the Declaration. The Landscape Committee will be guided by the high standards of beauty, design and value of other Bird Key Subdivision lots.~~

V. Article 7, Section 7.8. Article 7, Section 7.8 of the Bylaws entitled "Architectural Committee" is amended to read as follows:

7.8 Architectural Committee. The Architectural Committee shall consist of at least one (1) director and other Association members who shall be appointed by the Board or, at the option of the Board, by the President. The members shall serve until their successors are appointed and shall maintain a close liaison with the Board. The Architectural Committee shall examine all construction permit applications for compliance with the established requirements of the Declaration of Restrictions and Handbook for Owners and Contractors, and approve or disapprove. This shall include the plans and specifications for the construction, and exterior alteration or improvements of all structures, including but not limited to pools, pool cages, walls, sea walls, roofs, and planters. The approval or refusal of a construction permit application will be determined by whether the plans and specifications meet the requirements of the Declaration of Restrictions. While a permit is active the Architectural Committee has jurisdiction

to request compliance. Any permit application seeking a variance will be reviewed by the Architectural Committee and anyIt will submit recommendations for approval or disapproval will be providedor against any and all variances to the Board for their decisionapproval.

~~The Architectural Committee will be guided by the high standards of beauty, design, and value of other residential structures in the Bird Key Subdivision. Refusal of approval of plans and specifications by the Architectural Committee may be based upon grounds where the plans and specifications do not meet the requirements of the Declaration, the Handbook for Owners and Contractors and the current standards of the Bird Key Community.~~

Approval by the Architectural Committee shall not mean approval of the engineering or architectural soundness nor of the value of any structure approved, and the Association assumes no liability therefore. The Architectural Committee shall, for the purpose of insuring compliance with the Bylaws, Declaration, and Articles of Incorporation, inspect any property on the occasions of:

- (1) a written complaint signed by one or more regular members;
- (2) construction or exterior alteration, including painting, of structures, buildings and/ or landscaping;
- (3) the sale of a property;
- (4) the development of patently unsightly conditions, primarily of, but not limited to, roofs and yards;
- (5) the development of circumstances or conditions deemed by the Committee to make inspection necessary.

**VI. Article 7, Section 7.9.** Article 7, Section 7.9 of the Bylaws entitled "Compliance Committee" is amended to read as follows:

**7.9 Compliance Committee.** The Compliance Committee shall consist of three (3) regular members appointed by the Board, which may allow the President to make the appointments. The primary duties of the Compliance Committee shall be to inspect Bird Key lots on which violations of the Bylaws, Declaration of Restrictions or Articles of Incorporation have been reported or are readily apparent, and to enforce compliance by providing notice to any offending member and an opportunity to cure violations. Properties for sale shall be inspected for compliance prior to closing.

**VII. Article 7, Section 7.10.** Article 7, Section 7.10 of the Bylaws entitled "Mediation Committee" is amended to read as follows:

**7.10 MediationReview Committee.** The MediationReview Committee shall consist of at least three (3) Members. Directors, officers, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director or employee shall not serve on the MediationReview Committee. ~~The purpose of the Mediation Committee is to resolve disputes between an Association Member the~~

~~Board. The Mediation Committee may recommend fines, suspensions, and/or other penalties, if needed and as appropriate to resolve the dispute. It may also side with the Member. The Mediation Committee makes its recommendation(s) to the Board with the reasons for its decision. If the Board levies a fine or suspension and the person sought to be fined or suspended requests a hearing before the Mediation Review Committee pursuant to Article 9.3 of the Bylaws, the role of the Mediation Review Committee is then limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Mediation Review Committee, by majority vote, does not approve a fine or suspension, it may not be imposed by the Board of Directors.~~

**VIII. Article 8, Section 8.1.** Article 8, Section 8.1 of the Bylaws entitled "Annual Budget" is amended to read as follows:

**8.1 Annual Budget.** The annual budget shall be proposed and adopted by the Association's Board of Directors. A proposed annual budget of annual operating expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance, and administration of the Bird Key Subdivision. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. Surplus funds bank accounts that are not associated with or allocated to reserves should not exceed two months operating expenses. Estimated surplus funds in excess of two months operating expenses at year end will be budgeted as revenue the following year. Should the estimated surplus funds at year end be less than two months operating expenses, the estimated shortfall will be budgeted under Expenses and Reserves the following year. If at any time an annual budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the annual budget shall be transmitted to each regular member as provided for the adoption of the original annual budget.

**IX. Article 8, Section 8.19.** Article 8, Section 8.19, Paragraphs D and F of the Bylaws entitled "Purposes of Assessments" is amended to read as follows:

**8.19 Purposes of Assessments.** Some of the purposes for which such assessments may be made are:

...

~~D. Maintenance of Bird Key Subdivision properties and the Elimination of nuisances on Bird Key Subdivision properties thereon.~~

...

F. ~~Such other purposes consistent with the Declaration, Articles of Incorporation and Bylaws as the Board may deem appropriate.~~ Restoration or the provision of services or materials that will enable the use of any real property that is part of any publicly dedicated areas within any portions of the Bird Key Subdivision in the event of a natural disaster or a state of emergency declared pursuant to Section 252.36 Florida Statutes (2019) that applies to or has impacted the Bird Key Subdivision.

X. Article 9, Section 9.3. Article 9, Section 9.3 of the Bylaws entitled "Notice and Opportunity for a Hearing" is amended to read as follows:

**9.3 Notice and Opportunity for a Hearing.** After the cure period of Article 9.2 of the Bylaws has been provided and expired, the Association shall provide the Member and the person sought to be fined (if applicable) ~~an additional fourteen (14) days'~~ written notice and opportunity for a hearing before the MediationReview Committee which must be requested in writing by the Member within fourteen (14) days from the date of the written notice or provided when otherwise required by law. The written notice shall also contain a short plain statement of the matter or matters asserted by the Board to constitute a violation, including but not limited to the specific violation(s) alleged, the date, time and location of each alleged violation for which a fine may be imposed and a brief description of the conduct involved, as best as can be reasonably determined. The hearing by the MediationReview Committee shall commence within not less than fourteen (14) days of the Manager's receipt of the written request by the Member and/or the person sought to be fined or when otherwise required by law with respect to the fine.

XI. Article 9, Section 9.5. Article 9, Section 9.5 of the Bylaws entitled "Written Notice of Fine" is amended to read as follows:

**9.5 Written Notice of Fine.** If the Board imposes a fine, and it is subsequently confirmed by the MediationReview Committee, the Association will then provide a written demand for payment of such fine by mail or hand-delivery to the Member and, if applicable, to the person fined and any other written communications required by law with respect to the fine.

XII. No Other Amendments. Except as modified herein, all other provisions of the Bylaws shall remain the same and be fully enforceable according to their terms.





**RESTATED AS OF 01/01/2016**

**BYLAWS  
OF  
BIRD KEY HOMEOWNERS ASSOCIATION, INC.**

*[Substantial rewording of Bylaws.  
See present Bylaws for existing 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"), 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 words 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.

**1.4 Corporate Seal.** The corporate seal of the Association shall be adopted and may be changed by the Board of Directors and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment (1959), and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law. The Secretary or authorized agent shall have custody of the corporate seal that shall be affixed to all instruments of the corporation requiring a seal for proper execution.

**1.5 Fiscal Year.** The fiscal year of the Association shall begin on January 1 and end on December 31 of each year. The Board of Directors may change the fiscal year of the Association in the manner provided by law.

**ARTICLE 2.  
MEMBERS**

**2.1 Association Membership.**

**A. Regular or Voting Members.** As more fully provided in the Declaration of Restrictions, all holders of a freehold estate in one or more lots of Bird Key Subdivision



solely or with other persons or entities as joint tenants, tenants-in-common, or tenants by the entirety, are mandatory members of the Association. If such title is vested in more than one person or entity, only one of such persons or entity shall be the Regular or Voting Member of the Association. The term "Regular Member" and "Voting Member" may be used interchangeably. An entity may be, but is not limited to, a corporation, trust, partnership or LLC. An entity shall designate a natural person as the representative of the entity for all purposes hereof (including but not limited to voting) and register promptly with the Association the designated person's name, address, and all additional information required by the Association. The term "representative" may include such representative's successor as designated by the entity. All designations of representatives shall be subject to approval by the Association's Board of Directors to ensure the reasonable longevity of all such designations.

**B. Special Members.** Since there is only one (1) class of membership in the Association, there shall be no special members.

**2.2 Rights of Regular or Voting Members.** As more fully provided herein, the designated Regular or Voting Member shall have the exclusive right to one vote for each Bird Key lot owned by them at Association membership meetings and such vote(s) will be binding on all of the co-owners of the respective Bird Key lots.

**2.3 Indivisible Vote and Determination of Regular or Voting Member.** Each Lot shall have one (1) indivisible vote which will be cast by the designated Regular or Voting Member. The Regular or Voting Member for each Lot shall be determined as follows:

**A. One Owner.** If a Lot is owned by a single natural person, then that natural person shall automatically be the Regular or Voting Member of the Association.

**B. Married Couples.** If a Lot is owned by a married couple, the Lot Owners shall designate either spouse as the Regular or Voting Member.

**C. Corporation or LLC.** If a Lot is owned by a corporation or Limited Liability Company ("LLC"), the corporation or LLC shall designate any officer of the corporation or member of the LLC as the Regular or Voting Member.

**D. Partnership.** If a Lot is owned by a partnership, the partnership shall designate a partner as the Regular or Voting Member.

**E. Trust.** If a Lot is owned by a trustee of a trust, the trustee may designate any trust grantor, trustee or trust beneficiary as the Regular or Voting Member.

**F. Change of Regular or Voting Member.** Members of the Association may change the designated Regular or Voting Member of their respective Lot by the use of the voting certificate form.

**2.4 Duty of All Members.** Each member shall comply with the provisions of the governing documents of the Association, as amended from time to time, and the rules and regulations promulgated by the Association's Board of Directors. Non-compliance by any member shall subject that member and his or its co-owners to joint and several liability for any consequent penalties. All members shall sign and return to the Association a properly attested affidavit acknowledging receipt of a copy of the governing documents and rules of the Association and agreeing to comply with the terms thereof.

**2.5 Membership Process and Certification.** All 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 (on which the initial Regular or Voting Member shall be designated) 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. After providing the required documents and paying the transfer fee established by the Association's Board of Directors, all members may receive a Certificate signed by the President or Vice President, and the Secretary, designating the names of the Association members and stamped with the corporate seal of the Association. In lieu of such certificates, the Association's Board of Directors may elect to maintain a current roster of all members (with the Regular Member or Voting Member so designated thereon for each Lot) and their mailing addresses and Lot identifications. Evidence of membership or the current membership roster may be required at all membership meetings.

**2.6 Members Bound by Governing Documents.** All members are bound by and agree to comply with the terms and conditions of the Declaration of Restrictions, the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association, all as amended from time to time.

**2.7 Termination of Membership.** Membership in the Association shall terminate upon the death or dissolution of a member, or upon the transfer of his or its title to Bird Key Subdivision lot. Termination of membership shall not relieve the terminated member of liability for assessments for which he was liable while a member.

### **ARTICLE 3. MEMBERSHIP MEETINGS (ANNUAL AND SPECIAL), NOTICES AND VOTING RIGHTS**

**3.1 Annual Membership Meeting.** The annual membership meeting of the Association shall be held on the first Tuesday of March of each year or on such other day in March of each year as the Board of Directors may designate by resolution from time to time. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual membership meeting.

**3.2 Special Membership Meetings.** The President may call special membership meetings. In addition, it shall be the duty of the President to call a special membership meeting of the Association if so directed by resolution of a majority of the Board of Directors or upon a petition signed by regular members representing at least ten percent (10%) of the total voting interests of the Association. The notice of any special membership meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**3.3 Notice of Membership Meetings.** The Association shall give all regular members notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the members not less than fourteen (14) days prior to the meeting. A copy of the notice shall also be posted at a conspicuous place on the subdivision property at least fourteen (14) days prior to the membership meeting. The delivery or mailing shall be to the address of the regular members as it appears on the Association's roster of regular members. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. Subject to reasonable rules as promulgated by the Board, any regular member may tape record or videotape an open membership, Board or committee meeting.

**3.4 Order of Business.** The order of business at an annual meeting shall be as follows:

- A. Call to order by the President or his or her designee;
- B. Establishment of a quorum by Secretary;
- C. Approval of minutes of previous meeting;
- D. BKHA Budget;
- E. Committee and officer reports;
- F. Old business;
- G. New business;
- H. Election of directors; and
- I. Adjournment;

**3.5 Voting.** Each regular member shall have one (1) indivisible vote for each lot which such member owns. Unless otherwise required by the Homeowners Association Act, or the governing documents, decisions that require a vote of the members must be made by the concurrence of at least a majority of the regular members present, in person or by proxy, at a membership meeting at which a quorum has been obtained. A regular member holding title to a fractional lot of Bird Key Subdivision, as platted, shall not be entitled to a fractional vote therefor.

**3.6 Voting Rights.** 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.

**3.7 Proxies.** Regular members may not vote by general proxy, but may vote by limited proxy. Only regular members, the spouse of a regular member or the voting representative of regular member that is a corporation, LLC, partnership or trust may be delegated to hold proxies; provided that the Board may designate one or more agents of the Association as an eligible proxy holder. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may also be used for votes taken to amend the Declaration, Articles of Incorporation or Bylaws or for any matter that requires or permits a vote of the members. Any proxy shall be effective only for the specific membership meeting for which originally given and any lawfully adjournment thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the regular member voting by proxy. Every proxy shall contain the date, time and place of the meeting for which the proxy is given, and if a limited proxy, shall set forth the items for which the proxy holder may vote and the manner in which the vote is to be cast. In order to be effective, a proxy must be delivered to the Secretary or the Association's registered agent and signed by the regular member or the person authorized to vote on behalf of the Bird Key lot. A photographic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Regular members may retroactively cure any alleged defect in a proxy by signing a statement notifying the member's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**3.8 Majority.** As used in these Bylaws, the term "majority" shall mean those votes, regular members, or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

**3.9 Quorum.** Except as otherwise provided in these Bylaws or in the Declaration, the presence (in person or by proxy) of at least fifteen percent (15%) of the eligible voting interests of all regular members of the Association shall constitute a quorum at all membership meetings of the Association. If any proposed membership meeting cannot be organized because a quorum has not been attained, the regular members who are present, either in person or by proxy, may adjourn the membership meeting from time to time until a quorum is present, provided notice of the newly scheduled membership meeting is given in the manner required for the giving of notice of a membership meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

**3.10 Conduct of Membership Meetings.** At each membership meeting, the President, the President's designee or the person appointed by a majority of the Board of Directors (in that order) shall act as Chairman of the meeting. The Secretary or in the Secretary's absence or inability to act, any person appointed by the Chairman of the meeting, shall act as secretary of the membership meeting and shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all the transactions occurring at the meeting.

**3.11 Right to Speak.** Regular members have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. A regular member has the right to speak for at least three (3) minutes on any item, provided that the member submits a written request to speak prior to the meeting. The Association may adopt written reasonable rules governing the frequency, duration, and other manner of regular statements, which rules must be consistent with this provision.

**3.12 Minutes of Meeting.** The minutes of all meetings of members shall be kept in a book available for inspection and copying by a regular member or their authorized representatives at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

**3.13 Adjournment of Meetings.** If any membership meeting of the Association cannot be held because a quorum is not present, a majority of the regular members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a date not less than five (5) nor more than ninety (90) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If the date, time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the date, time and place for reconvening the meeting shall be given to regular members in the manner prescribed for membership meetings.

**3.14 Membership Proposals.** The Association's Board of Directors shall present for a membership vote any proposal submitted to it in writing at least sixty (60) days before any membership meeting is to be held, signed by at least seventy-six (76) regular members. If such proposal demands a special membership meeting, the Board shall thereupon arrange for a special membership meeting to be held within sixty-five (65) days after receipt of the proposal. The Association's Board of Directors shall be bound by the membership votes at an annual or special meeting, provided such proposals do not conflict with Florida statutes, the Articles of Incorporation, Bylaws, or Declaration of Restrictions.

## **ARTICLE 4. BOARD OF DIRECTORS**

**4.1 Governing Body and Number; Voting.** The Association's Board of Directors shall conduct the business and affairs of the Association and shall have control and jurisdiction of all of the property and facilities thereof. Each director shall have one (1) vote. The Board of Directors shall consist of seven (7) to eleven (11) Directors as provided in the Articles of Incorporation of the Association

**4.2 Director Qualifications.** Directors must be a member, the member's spouse or the designated voting representative of an entity member pursuant to Article 2.2 of the Bylaws. Except for the spouse of the designated voting representative of a lot owned by a trustee, a spouse of a designated voting representative of an entity member is not eligible to serve as a director. A Director must be a natural person who is at least eighteen (18) years of age or older. No Director shall continue to serve on the Board after he or she ceases to qualify to serve on the Board of Directors. The validity of any action by the Board is not affected if it is later determined that a member of the Board is ineligible for Board membership. Spouses shall not serve on the Association's Board of Directors at the same time, unless there are no other qualified candidates who are willing to serve on the Board.

A. In the event a Director becomes ninety (90) days delinquent in the payment of regular or special assessments, such Director will no longer qualify to serve on the Board and will be deemed to have abandoned his/her position as a Director. Co-owners of a Bird Key lot cannot simultaneously serve on the Board unless they own more than one Bird Key lot or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

B. A convicted felon whose civil rights have not been restored for at least five (5) years as of the date of election is not eligible to serve as a Director.

C. The absence of a Director from more than three (3) meetings of the Board within any fiscal year of the Association shall be considered the submission of the resignation of such Director, effective upon acceptance of such resignation by a majority of the Board. A Director who knowingly violates or ignores the mandates and restrictions of the Declaration, Articles of Incorporation, Bylaws, and Board rules, or who fails or refuses to carry out his assignments, shall be discharged as a Director, subject to two-thirds (2/3rds) approval of the Board of Directors.

**4.3 Director Term Limits.** No person shall be eligible for re-election or appointment to the Board of Directors after serving three (3) consecutive years on the Board of Directors. After serving a one (1) year absence from the Board, a person is eligible to again seek election or appointment to the Board. Since this restriction imposes term limits on the directors, Article 4.3 of the Bylaws may only be amended upon the approval of a majority of the Association membership present (in person or by proxy) at a duly-noticed membership meeting provided that the total number of votes cast meets or exceeds a quorum.

**4.4 Powers and Duties of the Board of Directors.** All of the powers and duties of the Association existing under the laws of Florida generally, the Florida Not For Profit Corporation Act, the Homeowners Association Act, Declaration of Restrictions, Articles of Incorporation and these Bylaws, all as amended from time to time, shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by regular members when such is specifically required. The

Board may delegate its authority to its agents, contracts or employees, except where prohibited by law.

**4.5 Regular Meetings.** Regular meetings of the Board of Directors may be held at such date, time and place as shall be determined from time to time by a majority of the Board of Directors. The Board of Directors may meet once a month at a date, time and place determined by the Board.

**4.6 Organizational Meetings.** The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such date, time and place as shall be fixed by the Board.

**4.7 Notice of Board Meetings.** Meetings of the Board of Directors shall be held when called by the President of the Association, or in his or her absence, the Vice President or by any three (3) Directors. The notice shall specify the date, time and place of the meeting. Notice thereof shall be conspicuously posted on the Association office door at least forty-eight (48) hours before the Board meeting. The notice shall also be given to each Director at least forty-eight (48) hours in advance of the Board meeting by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; (d) by telegram, charges prepaid; or (e) by email, telecopier or facsimile transmission. All such notices shall be given at the Director's telephone number, email address or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the Board meeting, except in an emergency. Notices given by personal or electronic delivery, email or telephone shall be transmitted at least forty-eight (48) hours before the time set for the Board meeting, except in an emergency.

**4.8 Order of Business.** The order of business at Board of Directors' meetings shall be, to the extent applicable:

- A. Calling of roll;
- B. Proof of due notice of meeting;
- C. Reading and disposal of any unapproved minutes;
- D. Reports of officers and committees;
- E. Election of officers;
- F. Unfinished business;
- G. New business;
- H. Adjournment.

**4.9 Voting.** A Director who is present (in person, by telephone or other electronic means allowed by law) at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the

Director votes against the action or abstains from voting. A Director who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. A vote or abstention shall be recorded in the minutes. Directors may not vote by proxy. Directors may vote by secret ballot only for the election of officers.

**4.10 Joinder and Waiver.** A Director may submit in writing the Director's agreement or disagreement with any action taken at a Board meeting that the Director did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and shall not be considered in determining a quorum. Any Director may waive notice to that Director of a Board meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice to that Director.

**4.11 Vacancies.** Except as to vacancies caused by removal of a majority of the Directors by members (which vacancies shall be filled in the manner provided in Chapter 720, Florida Statutes, the Homeowners Association Act), vacancies in the Board of Directors occurring between annual membership meetings shall be filled by a majority of the remaining Directors (even if less than a quorum) to serve for the remainder of the former Director's unexpired term of office, unless otherwise provided by law. A Director or officer who is more than ninety (90) days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled by the Board.

**4.12 Agenda and Quorum.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two (2) Directors. The presence (in person, telephonic device with a speaker at the meeting site or other electronic means allowed by law) of at least a majority (that is, more than half) of the directors shall constitute a quorum at all Board of Directors' meetings. The acts approved by a majority of the votes present at a Board meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Homeowners Association Act, the Declaration of Restrictions, the Articles of Incorporation or these Bylaws.

**4.13 Adjournment.** If any proposed Board meeting cannot be organized because a quorum has not been attained, the Directors who are present may adjourn the Board meeting from time to time until a quorum is present, provided notice of the newly scheduled Board meeting is given in the manner required for the giving of notice of a Board meeting.

**4.14 Conduct of Board Meetings.** At each Board meeting, the President, the President's designee or the person appointed by a majority of the Board of Directors (in that order) shall act as Chairman of the meeting. The Secretary or in the Secretary's absence or inability to act, any person appointed by the Chairman of the meeting, shall



act as Secretary of the membership meeting and shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all the transactions occurring at the meeting.

**4.15 Right to Attend and Speak.** Except as otherwise allowed by law, regular members have the right to attend Board meetings and to speak at any Board meeting with reference to all items opened for discussion or included on the agenda. A regular member has the right to speak for at least three (3) minutes on any item, provided that the member submits a written request to speak prior to the meeting. The Association may adopt written reasonable rules governing the frequency, duration, and other manner of regular member statements, which rules must be consistent with this provision. Notwithstanding any other law, meetings between the Board or a committee and the Association's attorney to discuss proposed or pending litigation or meetings of the Board held for the purpose of discussing personnel matters are not required to be open to the members other than Directors.

**4.16 Minutes of Meeting.** The minutes of all Board of Directors' shall be kept in a book available for inspection and copying by a regular member or their authorized representatives at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

**4.17 Removal of Directors and Vacancies.** Any Director elected by the regular members may be removed, with or without cause, by a majority of the total regular members of the Association. Directors may be recalled by an agreement in writing or by written ballot without a membership meeting. All Director recalls shall follow the procedures set forth in Section 720.303(10), Florida Statutes. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose.

**4.18 Board Vacancies.** Except as otherwise provided herein, interim vacancies occurring on the Board of Directors shall be filled within sixty (60) days by the remainder of the Board for such period and shall expire not later than the next annual membership meeting.

**4.19 Delegation of Board Functions.** The Board of Directors may delegate any or all of the functions of the Secretary or Treasurer to a management agent or employee, provided that the Secretary or Treasurer shall in such instance generally supervise the agent or employee in the performance of such functions.

**4.20 Resignation.** A Director or officer may resign at any time by delivering written notice to the Board of Directors, the Association President or Secretary. A resignation is effective when the notice is delivered unless the notice specifies a later date. If the resignation is made effective at a later date, the members of the Board of Directors (including the Director whose resignation is not yet effective) may vote to fill

the pending vacancy before the effective date if the Board provides that the successor does not take office until the effective date.

**4.21 Compensation.** Directors shall not receive any compensation for acting as such, but shall be entitled to reimbursement of expenses reasonably incurred on behalf of the Association.

## **ARTICLE 5. DIRECTOR NOMINATION AND ELECTION**

**5.1 Number of Directors; Terms; Process.** The Board of Directors shall consist of nine (9) Directors as provided in the Articles of Incorporation of the Association. The Board will seek to create a Board of Directors composed of groups, each group consisting of an equal number of Directors, as near as may be, and staggering the terms of each group. For example, the Board may provide for staggering the terms of Directors by dividing the total number of Directors into three groups, with each group containing one-third (1/3) of the total, as near as may be. In that event, the terms of Directors in the first group expire at the first annual members' meeting after their election, the terms of the second group expire at the second annual members' meeting after their election, and the terms of the third group, expire at the third annual members' meeting after their election. Additions or reductions in the number of Directors shall be accommodated by adding to or taking from a group or groups so as to keep the number of Directors in each group equal, as near as may be.

**5.2** Nomination Procedures is deleted in its entirety.

**5.3 Election Procedures.** The election of Directors shall be conducted in the following manner:

A. Election of Directors shall be held at the annual members' meeting.

B. A "Notice of Intent" form shall be delivered, either personally, by mail, or electronically transmitted, to each member at least ninety (90) days before the date of the annual members' meeting at which the Election of Directors shall be held. Any member interested in being a candidate for the Board of Directors shall fill out this form as per instructions and return it to the Community Association Manager not less than 45 days prior to the scheduled election.

C. Any eligible person, as defined in Article 4.2, desiring to be a candidate and submitting the "Notice of Intent" form to the Community Association Manager not less than 45 days prior to the scheduled election shall automatically be listed on the ballot. Candidates are encouraged to include an information sheet no larger than 8 1/2 inches by 11 inches, which will be included with the ballot mailing to members.

- D. The ballot prepared for the election of Directors shall list all Director candidates in alphabetical order. Ballots shall be mailed and/or transmitted electronically to all members with notice of the annual members' meeting. Ballots may be submitted to the Community Association Manager as an absentee ballot prior to the meeting or cast at the meeting in person. In order for a ballot to be valid, members must sign their name and write their address.
- E. The election shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each member voting being entitled to cast a vote for as many nominees as there are vacancies to be filled. Voting for more nominees than there are vacancies will invalidate the ballot. Voting by proxy is not permitted. There shall be no cumulative voting. Nominations from the floor shall not be permitted.
- F. In the event that candidates for an open position receive the same number of votes, the elected Director will be determined by lot, such as the flipping of a coin by a neutral party.
- G. No election or balloting shall be necessary if the number of candidates is less than or equal to the number of vacancies. In this case, the candidates shall automatically be elected and their names announced at the annual members' meeting. Should there be insufficient candidates to fill all vacancies, the Board of Directors by majority vote will fill any remaining vacancies.

**5.4 Election Dispute.** Any election dispute between a regular member and the Association must be submitted to mandatory binding arbitration with the Division. Such proceedings must be conducted in the manner provided by Section 718.1255, Florida Statutes and the procedural rules adopted by the Division.

## **ARTICLE 6. OFFICERS**

**6.1. Election and Qualifications.** The officers of the Association shall be a President, one or more Vice Presidents, a Treasurer and a Secretary. The President and Vice Presidents shall be directors. The offices of Secretary and Treasurer may be held by the same person. The officers shall be elected by the Board at its first meeting after the annual membership meeting for a term of one (1) year or until the election of their successors, and announcement thereof made in the first periodic mailing to members.

**6.2 President.** The President shall preside at all meetings of the membership and at all meetings of the Board. The President shall be an ex officio member of all committees of the Association and may appoint any committee he or she deems desirable. The President shall supervise the Community Association Manager.

**6.3 Vice President.** The Vice President shall have the rights, authority and obligations of the President during the absence, illness or disability of the President. The Vice President shall also perform such tasks as assigned by the Board.

**6.4 Secretary.** The Secretary shall cause to be kept accurate minutes of all meetings of the Board and of the members. The Secretary shall give notice of all meetings of the Board and all meetings of the members in accordance with Chapter 720, Florida Statutes, these Bylaws or resolutions of the Board. The Secretary shall provide a Membership Information form to each new member and maintain the completed form in the member's file. The Secretary may issue Certificates and keep a record of names, addresses, email addresses and telephone numbers of all members and their lessees, and such other information as the Board deems appropriate. The Secretary shall perform all other duties required by the Board and maintain a separate record of all variances granted. The Secretary shall assist the Office Manager and delegate to him or her such duties as the Board permits.

**6.5 Treasurer.** The Treasurer shall keep complete and accurate books of account of all receipts and disbursements of the Association. The Treasurer shall collect, receipt for, deposit and disburse the money of the Association as directed by the Board. The Treasurer shall present a comprehensive and complete financial statement of the Association at the annual membership meeting. The Treasurer shall furnish the Board with financial information that it requests from time to time and perform other duties as the Board may direct. The Treasurer shall invest Association funds in stocks, bonds, certificates of deposit or other commercial paper only upon resolution of the Board. The Treasurer shall make all disbursements drawn on the Association's account(s) by checks signed by two officers or other representatives designated by the Board. The Treasurer shall help supervise the Office Manager with respect to duties he or she assigns to the latter.

**6.6 Assistant Treasurer.** In the absence or disability of the Treasurer, the duties of the Treasurer shall be performed by an officer or employee designated by the Board. The Treasurer shall only be responsible for the performance of the duties of this office performed under the Treasurer's direction or supervision.

## **ARTICLE 7. COMMITTEES**

**7.1 Committee Action and Procedures.** No Committee action or approval of plans shall be undertaken or made without the approval of the majority of the Board of Directors, with the exception of the Architectural Committee (AC) in approving plans that are in compliance with the Declaration of Restrictions. All committees shall be exempt from the procedural requirements of Article 4 and may adopt their own procedures and rules. Committees shall be governed by and comply with the governing documents of the Association.

**7.2 Committee Chairman.** The chairman of each committee shall be appointed and may be replaced by the Board, which may delegate such duty to the President.

**7.3 Standing Committees.** The standing committees of the Association shall be as follows:

The Executive Committee  
The Finance Committee  
The Community Improvement Committee  
The Architectural Committee  
The Compliance Committee  
The Review Committee  
The Document Update Committee

**7.4 Additional Committees.** The Board may from time to time create additional committees and define their duties, or may delegate such power to the President, and may abolish such committees if it deems such action appropriate.

**7.5 Executive Committee.** The Board may by resolution appoint the President, a Vice President and one other officer of the Association as an executive committee to conduct the business and affairs of the Association between meetings of the Board. At the next scheduled Board meeting, the Executive Committee will report to the Board any action(s) taken without prior approval of the Board and propose a resolution(s) that these actions(s) be approved by the Board. Should the Board not approve by resolution(s) any action(s) taken by the Executive Committee, such action(s) shall be remedied and/or reversed. The Executive Committee shall not be empowered to levy fines or assessments against members of the Association or to fill vacancies occurring on the Board.

**7.6 Finance Committee.** The Finance Committee shall consist of three (3) members of the Board who shall be appointed by the Board, or, at the option of the Board, by the President. The members shall serve until their successors have been appointed. The Committee shall have such duties as are determined and assigned by the Board.

**7.7 Community Improvement Committee.** The Chair of the Community Improvement Committee shall be appointed by the Board. Other committee members shall include the current Coalition of City Neighborhood Associations designate for BKHA (if any), and additional members of the association as desired. The Committee is committed to the maintenance and improvement of the Bird Key Homeowners Association common areas. The Committee will reach out to Sarasota City, Sarasota County, the Florida Department of Transportation and other organizations for their financial support, personnel assistance as necessary to accomplish its goals. The long-

term objective is to maintain and enhance the reputation of Bird Key as a desirable location in the Sarasota community.

**7.8 Architectural Committee.** The Architectural Committee shall consist of at least one (1) director and other Association members who shall be appointed by the Board or, at the option of the Board, by the President. The members shall serve until their successors are appointed and shall maintain a close liaison with the Board. The Architectural Committee shall examine all construction permit applications for compliance with the established requirements of the Declaration of Restrictions and Handbook for Owners and Contractors. This shall include the plans and specifications for the construction, exterior alteration or improvements of all structures, including but not limited to pools, pool cages, walls, sea walls, roofs, and planters. The approval or refusal of a construction permit application will be determined by whether the plans and specifications meet the requirements of the Declaration of Restrictions. While a permit is active the Architectural Committee has jurisdiction to request compliance. Any permit application seeking a variance will be reviewed by the Architectural Committee and any recommendations for approval or disapproval will be provided to the Board for their decision.

Approval by the Architectural Committee shall not mean approval of the engineering or architectural soundness nor of the value of any structure approved, and the Association assumes no liability therefore. The Architectural Committee shall, for the purpose of insuring compliance with the Bylaws, Declaration, and Articles of Incorporation, inspect any property on the occasions of:

- (1) a written complaint signed by one or more regular members;
- (2) construction or exterior alteration, including painting, of structures, buildings and/ or landscaping;
- (3) the sale of a property;
- (4) the development of patently unsightly conditions, primarily of, but not limited to, roofs and yards;
- (5) the development of circumstances or conditions deemed by the Committee to make inspection necessary.

**7.9 Compliance Committee.** The Compliance Committee shall consist of three (3) regular members appointed by the Board, which may allow the President to make the appointments. The primary duties of the Compliance Committee shall be to inspect Bird Key lots on which violations of the Bylaws, Declaration of Restrictions or Articles of Incorporation have been reported or are readily apparent, and to enforce compliance by providing notice to any offending member and an opportunity to cure violations. Properties for sale shall be inspected for compliance prior to closing.

**7.10 Review Committee.** The Review Committee shall consist of at least three (3) Members. Directors, officers, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director or employee shall not serve on the

Review Committee. If the Board levies a fine or suspension, the role of the Review Committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Review Committee, by majority vote, does not approve a fine or suspension, it may not be imposed by the Board.

**7.11 Document Update Committee.** The Document Update Committee shall consist of up to four (4) members, two of which shall be Directors. The President shall be a member and head the Committee. The President shall appoint the other members of the Committee. The Committee shall be charged with reviewing the governing documents, soliciting ideas from the members and then making recommendations to the Board of Directors to amend the governing documents at least once every year. The Committee shall also participate in a legal audit or review of the governing documents at least once per year.

## **ARTICLE 8. FISCAL MANAGEMENT**

**8.1 Annual Budget.** The annual budget shall be proposed and adopted by the Association's Board of Directors. A proposed annual budget of annual operating expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance, and administration of the Bird Key Subdivision. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. Surplus funds bank accounts that are not associated with or allocated to reserves should not exceed two months operating expenses. Estimated surplus funds in excess of two months operating expenses at year end will be budgeted as revenue the following year. Should the estimated surplus funds at year end be less than two months operating expenses, the estimated shortfall will be budgeted under Expenses and Reserves the following year. If at any time an annual budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the annual budget shall be transmitted to each regular member as provided for the adoption of the original annual budget.

**8.2 Mailing.** The Association shall mail, email or transmit a copy of the proposed annual budget to the regular members not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be adopted together with a notice and agenda of the Board meeting.

**8.3 Assessments.** The annual shares of the regular members of the common expenses shall be made payable in installments due monthly, quarterly or annually (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent ten (10) days thereafter. Such assessments

shall be based upon entire and fractional lots owned by each regular member, fractional lot owners being jointly and severally liable with each other for all such assessments on any particular lot. Any yearly increase in dues may not exceed one hundred percent (100%) of the then existing dues without membership approval.

**8.4 Special Assessments.** The Board of Directors may not levy special assessments without the prior approval of the membership at an annual or special meeting held for, among other reasons, such purpose. The notice of such a membership meeting shall contain sufficient information about the purposes for which the proceeds of the special assessment will be used so that general members may vote knowledgeably on the proposal. A special assessment is one required for the purpose of undertaking a single project for which the Board has no specific authorization. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the Board, either be returned to the general members or applied as a credit towards future assessments. Nothing set forth herein shall limit the right of the Board to levy a fine or impose other penalties against a member for violations of restrictions, maintaining nuisances and failing to pay fines and penalties.

**8.5 Assessment Roll.** The assessments for common expenses and charges shall be set forth upon a roll of the regular members which shall be available for inspection at all reasonable times by regular members. Such roll shall indicate for each Bird Key lot the name and address of the regular member, and the assessments and charges paid and unpaid. A certificate may be made by a duly authorized representative of the Association or by the Board of Directors as to the status of the lot's account. Assessment statements shall be mailed or transmitted to the most recent address provided to the Association for each regular member.

**8.6 Liability for Assessments and Charges.** A regular member shall be liable for all assessments and charges coming due while the owner of a lot, and such regular member and regular member's grantees or successors after a voluntary conveyance or other acquisition of title shall be jointly and severally liable for all unpaid assessments and charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any common areas or Association property or by abandonment of the lot for which the assessments are due. Where a mortgagee holding a first mortgage of record obtains title to a lot by foreclosure, such mortgagee and its successors and assigns shall only be liable for such lot's assessments, charges, or share of the common expenses which became due prior to acquisition of title as provided in the Florida Homeowners Association Act, as amended from time to time.

**8.7 Liens for Assessments.** The unpaid portion of an assessment, together with all interest, late fees, costs and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the Bird Key lot.



**8.8 Lien for Charges.** Unpaid charges due to the Association together with interest, late fees, costs and reasonable attorney's fees shall be secured by a common law and contractual lien upon the Bird Key lot and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

**8.9 Collection: Interest; Administrative Late Fee; Application of Payments.** Assessments or charges paid on or before ten (10) days after the date due shall not bear interest, but all sums not paid on or before ten (10) days shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest, the Association may charge an administrative late fee in an amount not to exceed the greater of Twenty-Five Dollars (\$25.00) or five percent (5%) of each installment of the assessment for which payment is late, or the maximum late fee permissible by law. Partial payments received are first applied to interest, then to any late fee, then to any costs and collection expenses, then to any reasonable attorney's fees incurred, and then to the assessment itself.

**8.10 Collection: Suit.** The Association, at its option, may enforce collection of delinquent assessments or charges by suit at law, by foreclosure of the lien securing the assessments or charges, or by any other remedy available under the laws of the State of Florida, or any combination thereof. In any event, the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs incident to the collection and the proceedings, including reasonable attorney's fees, incurred before trial, at trial, and on appeal. The Association must deliver or mail by certified mail to the regular member a written notice of its intention to record and foreclose the lien as provided by law.

**8.11 Association Depository.** The depository of the Association in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry FDIC insurance or equivalent private insurance such as insurance placed through the Society Investor Protection Corporation (SIPC), as shall be designated by the Board of Directors. Alternatively, the Association may deposit funds with brokerage houses or institutions which are members of the National Association of Securities Dealers, Inc. and insured by SIPC or equivalent industry insurance. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes.

**8.12 Commingling of Funds.** All funds shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes, as amended from time to time, no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other homeowners association or community association as defined in Section 468.431, Florida Statutes, as amended from time to time, or with those of any other entity. Reserve funds and

operating funds of the Association may be commingled for investment purposes, as provided by law.

**8.13 Financial Reports.** Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete a financial report for the preceding fiscal year, as required by Section 720.303(7), Florida Statutes, as amended from time to time. The Association shall provide each regular member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the regular member.

**8.14 Suspension of Use Rights.** In the event that a member is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend, until such monetary obligation is paid, the rights of the member and such member's occupant, licensee, tenant, guest or invitee to use the common areas, common facilities or any other Association property. A suspension may not be levied until after providing fourteen (14) days written notice and an opportunity for a hearing to the member and the violating party, as may be applicable.

**8.15 Suspension of Voting Rights.** In the event that a regular member is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend, until such monetary obligation is paid, the voting rights of the regular member as provided in Section 720.305(4), Florida Statutes. Such a suspension ends upon full payment of all obligations currently due or overdue the Association.

**8.16 Capitalize Fixed Assets.** The Association shall not capitalize any fixed assets it acquires except real property. Costs of fixed assets other than real property shall be recorded as an expense in the month they are incurred.

**8.17 Transfer Fee.** At the time of acquisition of title to any lot or of two contiguous lots in Bird Key Subdivision, the transferee, whether already a member or not, shall pay to the Association a transfer fee in an amount to be determined by the Board from time to time.

**8.18 Lease Fee.** A member of the Association shall pay to the Association an amount equal to the then current transfer fee each time the member enters into an agreement to lease his or its Bird Key Subdivision lot.

**8.19 Purposes of Assessments.** The purposes for which assessments may be made shall include, but not necessary be limited to, the following:

A. Enforcement of Bird Key Subdivision Declaration of Restrictions, rules and regulations governing the use of property of the Association and of its Members.

B. Employment of guards and a Community Association Manager and a management company.

C. Acquisition of realty in Bird Key Subdivision.

D. Elimination of nuisances on Bird Key Subdivision properties.

E. To cover administrative and operational costs, insurance, and those expenditures incurred, related to or associated with the maintenance, repair, improvements and/or replacement of real and personal property owned, operated or controlled by the Association, including the administrative office, vehicles, entry fountain, perimeter landscaping wall, and BKHA common grounds.

F. Restoration or the provision of services or materials that will enable the use of any real property that is part of any publicly dedicated areas within any portions of the Bird Key Subdivision in the event of a natural disaster or a state of emergency declared pursuant to Section 252.36 Florida Statutes (2019) that applies to or has impacted the Bird Key Subdivision.

**8.20 Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. All contracts as further described in this section or any contract that is not to be fully performed within one (1) year after the making thereof for the purchase, lease, or renting of materials or equipment to be used by the Association in accomplishing its purposes under the Homeowners Association Act or the governing documents, and all contracts for the provision of services, shall be in writing.

**8.21 Competitive Bids.** If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the Association that exceeds ten percent (10%) of the total annual budget of the Association, including reserves, the Association must obtain competitive bids for the materials, equipment, or services. Nothing contained in this section shall be construed to require the Association to accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association, and contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services are not subject to the provisions of this section.

**8.22 Fidelity Bonding.** The Board shall require that all officers, Directors, agents or employees entrusted with funds of the Association obtain good and sufficient fidelity bonds for the faithful performance of their duties before engaging in the performance of their duties.

## **ARTICLE 9. REMEDIES, PENALTIES & ENFORCEMENT**

**9.1 Fines.** The Association's Board of Directors may levy reasonable fines against any Member or a Member's tenant, occupant, guest, or invitee for the failure of the Member or its tenant, occupant, guest, or invitee to comply with any provision of the Homeowners' Association Act, the Declaration of Restrictions, the Bylaws, the Handbook for Owners, Architects, Builders and Contractors or the reasonable Rules of the Association. A Member shall be jointly and severally liable for the payment of any fine levied against the Member's tenant, occupant, guest or invitee.

**9.2 Cure Period.** The Association's Manager or other authorized agent shall provide any person who violates the Homeowners' Association Act, the Declaration of Restrictions, Bylaws, the Handbook for Owners, Architects, Builders and Contractors or the reasonable Rules of the Association, written notice of the specific violation and a cure period of thirty-one (31) days before the person may be fined by the Association.

**9.3 Notice and Opportunity for a Hearing.** After the cure period of Article 9.2 of the Bylaws has been provided and expired, the Association shall provide the member and the person sought to be fined (if applicable) at least 14 days written notice and an opportunity for a hearing before the Review Committee. The written notice shall also contain a short plain statement of the matter or matters asserted by the Board to constitute a violation, including but not limited to the specific violation(s) alleged, the date, time and location of each alleged violation for which a fine may be imposed and a brief description of the conduct involved, as best as can be reasonably determined. The member and the person sought to be fined (if applicable) shall be informed of the date and time of the Review Committee hearing. Members and/or their representatives are entitled and encouraged to attend the Review Committee hearing and bring forth any explanation.

**9.4 Fine Amounts and Lien.** The Board of Directors may impose a fine not to exceed the amount of \$250.00 per violation. The Board of Directors may levy a fine not to exceed the amount of \$250 for each day of a continuing violation, with a single notice and opportunity for a hearing. No fine for a continuing violation shall exceed in the aggregate the total amount of \$10,000.00. A fine of \$1,000 or more may become a lien against the Member's Lot.

**9.5 Written Notice of Fine.** If the Board imposes a fine, and it is subsequently confirmed by the Review Committee, the Association will then provide a written demand for payment of such fine by mail or hand-delivery to the Member and, if applicable, to the person fined and any other written communications required by law with respect to the fine.

**9.6 Collection of Fine.** Fines shall be payable within thirty (30) days of written demand. If a fine is not paid within thirty (30) days of written demand, it shall accrue

interest at the highest rate allowed by law (currently eighteen percent (18%) per annum) and a late fee of Twenty-Five (\$25) Dollars. In the event a person refuses or otherwise fails to timely pay a fine, the Association may mediate if and as required by law and proceed with legal and/or equitable actions in a court of competent jurisdiction to collect the sum due to the Association. The prevailing party in such litigation shall be awarded its reasonable costs and reasonable attorney's fees incurred incident to such collection action.

## **ARTICLE 10. BYLAWS AMENDMENTS**

**10.1 Proposal.** Amendments to the Bylaws may be proposed by the Board of Directors or by written petition signed by at least seventy-six (76) 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 annual or special membership meeting at which they will be voted on.

**10.2 Adoption.** The Bylaws may be amended upon the approval of a majority of the Association membership present (in person or by proxy) at a duly noticed membership meeting provided that the total number of votes cast meets or exceeds a quorum. Additionally, and except as otherwise provided in Article 4.3 of the Bylaws as to Director term limits, the Bylaws may be amended upon the approval of a majority of the Association's Board of Directors at a Board meeting duly noticed for such purpose. Proposed Board amendments must be mailed or electronically transmitted to members thirty (30) days prior to the noticed Board meeting. A copy of this Article must be included in the mailing. Board approved amendments will be recorded with Sarasota County sixty (60) days after Board approval, unless within this sixty (60) day period, written objections signed by fifteen percent (15%) of the regular members are submitted in writing to the Board, by delivery to the BKHA office. In this case, the Board approved 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 Bylaws 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. All duly approved amendments to the Bylaws are effective when recorded with Sarasota County.

**10.3 Automatic Amendment.** These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Restrictions or the Articles of Incorporation. Whenever Chapter 720, Florida Statutes, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to these Bylaws as the Board

deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 720 of the Florida Statutes, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS**

**11.1 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall be used as a guide in the conduct of members' meetings, Board meetings, and committee meetings when not in conflict with Florida law, the Articles of Incorporation, the Declaration, or these Bylaws. Robert's Rules of Order shall be used as a guide to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these Bylaws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meetings, unless he or the Board of Directors designates a third person as Parliamentarian, shall be binding on all matters of procedures, unless contrary to law.

**11.2 Document Conflicts.** If there are conflicts between the provisions of Florida law, the Declaration of Restrictions, the Articles of Incorporation and these Bylaws, the provisions of Florida law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

**11.3 Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid. The date of mailing shall be the date of the notice and the date of mailing of a response, if the postal service is utilized by a regular member, shall be the date of that member's response to the notice. The Association may also give notice by electronic transmission in the manner authorized by the Homeowners Association Act for meetings of the Board of Directors, committee meetings requiring notice, and membership meetings; however, a regular member must consent in writing to receive such notice by electronic transmission.