



## BIRD KEY IMPROVEMENT ASSOCIATION, INC.

100 BIRD KEY DRIVE / SARASOTA, FLORIDA 34236

Phone 366-0848

December 27, 2012

To all Bird Key Improvement Association Members;

This is important to the future of the BKIA.

The Board will be presenting the newly revised Declaration and Bylaws for a confirming vote at the annual meeting. This is the last chance for you to have input into the editing phase of this work. Please take the time to go over these documents and contact me if you have questions. The Articles of Incorporation, the third part of these documents, will have minimal changes are included as well.

The primary change to the governing documents involves including the restrictions from the By-laws into the Declaration portion of the documents. This is necessitated by changes in Florida State law, the way court decisions have recently been interpreted and difficulty interpreting our own documents. By doing this we will have less chance for confusion and a reduced likelihood of a court challenge. It will also state in a more clear manner what is restricted and what is not restricted. In order to do this we have had the Associations legal counsel review and update the documents to current language. There are very few actual changes as most of the needed changes have been made over the past few years in the form of Bylaw changes.

All members were mailed a copy of the current documents following the Revitalization of Deed Restriction in 2008. If you have misplaced your copy and/or would like another copy for review and comparison with the newly proposed documents they are available at the office and on-line at our website at [www.bkia.org](http://www.bkia.org).

There are sections of the Bylaws that have been included in the Declaration portion of the documents and there have been some word changes. The word changes will be in larger font size, italics and underlined. In cases where the entire paragraph has been reworded but the meaning remains the same it will be in the same size font and italics but NOT underlined. Comments pertaining to the item will be in (highlighted parentheses). In a few spots, words that are changed or deleted will have a line through them. In most situations that is not possible to do. The changes are explained and the reason is given for the change in (highlighted parentheses). You should be able to follow them easily using the lettering and numbering system. Also included with this is a Schedule of Changes for those that want more specific information. Additionally, for those that would like a redlined version, it is available but it seems more confusing to read than the one included here. Call Lori if you would like a copy of the redlined documents.

If you have any questions or comments please call me or send an email. It is important to have all of your concerns addressed. The updating of these documents is extremely important to the long term viability of the BKIA. They should reduce our administrative costs by reducing our use of attorneys, cause less confusion and misunderstanding for the members of the association, reduce delays for correcting compliance issues and put the expense for noncompliance on the offending member.

Please know that if anyone has a group of people that would like to discuss these changes I will be happy to make arrangements immediately. We need all changes to me by January 10 to make the appropriate notification time schedule for the annual meeting.

Thank you for reviewing this important set of documents.

Sincerely,

Jack Laurie  
President, BKIA  
Phone: 366 7113  
E-mail: [jcladm@yahoo.com](mailto:jcladm@yahoo.com)

### **SCHEDULE OF CHANGES**

A. The following are an overview of the changes that have been made to the proposed Declaration (the “Restated Declaration”) from the 2008 Revived Declaration:

1. The title of the Restated Declaration has been changed from “Revived...” to “Amended and Restated...”
2. The Index has been updated.
3. The Preamble, with the ‘whereas’ clauses, has some word changes from the Revived Declaration, in which the Preamble focused on the Revitalization process. This Restated Declaration mentions the Revitalization process but focuses on the current revision process.
4. Article I, Definitions  
This section is new and provides clarification of the terms used throughout the Declaration.
5. Article II, Property Subject to Declaration  
This was added to clarify the real property subject to the Restated Declaration. There are 4 Lots that are exempt from BKIA’s Governing Documents, which are detailed in Exhibit “B” to the Restated Declaration.
6. Article III, Association  
The purposes and powers of the Association are set forth. They are largely derived from the Articles of Incorporation and have specific authority for, among other things, collecting

assessments, exercising enforcement remedies, filing and foreclosing on liens, and promulgating such other or further bylaws and rules and regulations as needed. While the language has been updated it has the same meaning as the current documents. Number 5 states clearly that presale inspections are for the purpose of bringing properties into compliance at the time of transfer. It is implied in our current documents but stated more clearly here.

7. Article IV, Membership

This includes wording and organizational changes but no changes in the types of membership. This section is derived from Article 1 of the Revived Declaration.

8. Article V, Association's Option to Purchase

Derived largely from Article 1 of the Revived Declaration.

9. Article VI, Restrictions

Subparagraphs A, B and C are a combination of the Revived Declaration, Articles 1, 3, 4, and 5 and updated by the previous Bylaws, Article VI(A). Subparagraph B(6) is a blending of the last sentence of Article 5 of the Revived Declaration and Article VI(A)(5) of the Bylaws.

Subparagraphs D and E are a combination of the Revived Declaration, Articles 7, 10, 12 and 14 and previous Bylaws Articles VI(C) and (D). Article VI(B)(8) is essentially the first sentence of the Revived Declaration, Article 5.

10. Article VII, Architectural and Improvement Control

This is a significant rewrite combining the Revived Declaration, Article 2; the previous Bylaws, Articles V(D) and (F) and VII; sec. 720.3035 (Florida Statutes); and then adding provisions for clarity. This section is to specifically comply with Florida statute sec. 720.3035, which sets forth rights of the association and members rights with respect to architectural use of the parcel of land and improvements thereon, and provides for damages, costs and attorney's fees for an association's unreasonable, knowing and willful infringement or impairment of an owner's rights and privileges.

Accordingly, the Handbook for Owners and Contractors (the "Handbook") has been referenced as published guidelines and standards. This has been utilized as such by BKIA for over 5 years. The Landscape policy and the mailbox policy will be added to this handbook and will also contain the necessary permitting requirements and information for owners and contractors.

10. Article VIII, Easements

Primarily derived from Article 6 of the Revised Declaration.

11. Article IX, Canals and Waterways

Primarily derived from Article 8 of the Revised Declaration.

12. Article X, Re-Subdividing

Primarily derived from Article 9 of the Revived Declaration.

13. Article XI, Maintenance and Operation Assessments, Fees

This is a new section explaining assessments and fees, primarily derived from Florida Statutes.

14. Article XII, Variances

Essentially derived from Article 13 of the Revived Declaration.

15. Article XIII, Enforcement Remedies

These sections were largely derived from the Revived Declaration, Article 15, the previous Bylaws, Article VIII; and sec. 720.305 (Florida Statutes). Specifically addressed was remediation by the Association with expenses chargeable to the member, recurring violations, penalties for failure to pay any monetary obligation owed the Association, the Board's discretion whether or not to enforce, and the Board's discretion to enforce prospectively.

16. Article XIV, Amendments

This is derived from Article 19 of the Revived Declaration and sec. 720.306 (Florida Statutes).

17. Article XV, Miscellaneous

Subparagraph A is essentially Article 20 of the Revived Declaration. The remaining subparagraphs are for clarification.

B. The proposed Bylaw revisions (the "Restated Bylaws") contains the following changes:

1. The title of the Bylaws has been changed to "Amended and Restated..."
2. The Index has been updated.
3. The preamble (the "whereas" section) appears on every amendment made to our Bylaws but the last two paragraphs are specific to this amending and restating process.
4. A definitions section has been added, similar to the Definitions section in the Restated Declaration and for the same reasons.
5. The Bylaws remain much like they are currently. The changes have been indicated by the printing style and the underlining for completely new wording. The changes that have been made have an explanation below in parentheses. I think you will be able to follow them easily.

C. The primary changes to the Articles of Incorporation are as follows:

1. The title of the document has been changed to "Amended and..."
2. The certification language under the title has been deleted.
3. The term "Certificate of Incorporation" has been changed to "Articles of Incorporation" throughout.
4. Article V contains updated signatories to the document.

5. In Article VII the sentence ‘No person shall be appointed or elected to the Board immediately following the termination of a full term to which he or she was elected by the members.’ has been deleted.