

727870

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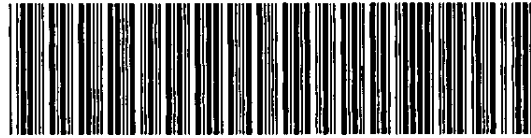
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*Amended &
Restated
Articles*

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STATE OF FLORIDA
TALLAHASSEE, FLORIDA

2013 FEB 21 PM 4:03

FILED

2/21/13



6230 University Parkway
Suite 204
Sarasota, Florida 34240
Phone: (941) 366-8826 Fax: (941) 907-0080

ADMINISTRATIVE OFFICE
3111 STIRLING ROAD
FORT LAUDERDALE, FL 33312
954.987.7550

February 18, 2013

Reply To:
Kevin L. Edwards, Esq.
KEdwards@becker-poliakoff.com

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Secretary of State
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Re: Articles of Amendment – Bird Bay Leisure, Inc.
Client/Matter No. B12632-120656

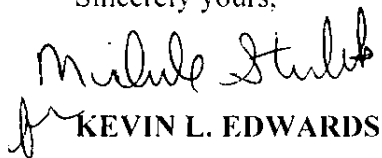
Dear Sir/Madam:

Enclosed please find the original and one copy of the Amended and Restated Articles of Amendment to the Articles of Incorporation of Bird Bay Leisure, Inc. A check for \$35.00 is also enclosed for the filing fee.

Please file and return a copy to my attention. A self-addressed stamped envelope is enclosed for your convenience.

Please feel free to call me should you have any questions regarding this matter.

Sincerely yours,


KEVIN L. EDWARDS

KLE/ms
Enclosure (as stated)

ACTIVE 4501565_1

- FT. LAUDERDALE
- FT. MYERS
- FT. WALTON BEACH
- MIAMI
- MIRAMAR
- MORRISTOWN
- NAPLES
- NEW YORK
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- ORLANDO
- PRAGUE
- RED BANK
- SARASOTA
- STUART
- TALLAHASSEE
- TAMPA BAY
- WASHINGTON, DC
- WEST PALM BEACH

Amended and Restated
Articles of Amendment
to
Articles of Incorporation
of

Bird Bay Leisure, Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

727870

(Document Number of Corporation (if known))

FILED
2013 FEB 21 PM 4:03

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of section 617.1006, Florida Statutes, this *Florida Not For Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

_____ *The new name must be distinguishable and contain the word "corporation" or "incorporated" or the abbreviation "Corp." or "Inc." "Company" or "Co." may not be used in the name.*

B. Enter new principal office address, if applicable: _____
(Principal office address MUST BE A STREET ADDRESS)

C. Enter new mailing address, if applicable: _____
(Mailing address MAY BE A POST OFFICE BOX)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent: _____

(Florida street address)

New Registered Office Address:

_____, Florida _____
(City) (Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V = Vice President; T = Treasurer; S = Secretary; D = Director; TR = Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

<input checked="" type="checkbox"/> Change	<u>PT</u>	<u>John Doe</u>
<input checked="" type="checkbox"/> Remove	<u>V</u>	<u>Mike Jones</u>
<input checked="" type="checkbox"/> Add	<u>SV</u>	<u>Sally Smith</u>

<u>Type of Action</u> (Check One)	<u>Title</u>	<u>Name</u>	<u>Address</u>
1) <input type="checkbox"/> Change <input type="checkbox"/> Add <input checked="" type="checkbox"/> Remove	<u>S</u>	<u>Thomas Sean</u>	<u>639 White Pine Tree Venice, Fl. 34285</u>
2) <input type="checkbox"/> Change <input type="checkbox"/> Add <input type="checkbox"/> Remove	_____	_____	_____
3) <input type="checkbox"/> Change <input type="checkbox"/> Add <input type="checkbox"/> Remove	_____	_____	_____
4) <input type="checkbox"/> Change <input type="checkbox"/> Add <input type="checkbox"/> Remove	_____	_____	_____
5) <input type="checkbox"/> Change <input type="checkbox"/> Add <input type="checkbox"/> Remove	_____	_____	_____
6) <input type="checkbox"/> Change <input type="checkbox"/> Add <input type="checkbox"/> Remove	_____	_____	_____

The date of each amendment(s) adoption: January 16, 2013

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) **(CHECK ONE)**

- The amendment(s) was/were adopted by the members and the number of votes cast for the amendment(s) was/were sufficient for approval.
- There are no members or members entitled to vote on the amendment(s). The amendment(s) was/were adopted by the board of directors.

Dated 2-12-13

Signature Lois Pendergast

(By the chairman or vice chairman of the board, president or other officer-if directors have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Lois Pendergast

(Typed or printed name of person signing)

President

(Title of person signing)

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
BIRD BAY LEISURE, INC.

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
BIRD BAY LEISURE INC., A CORPORATION NOT FOR PROFIT**

*******SUBSTANTIAL REWORDING OF ARTICLES OF INCORPORATION-
SEE CURRENT ARTICLES OF INCORPORATION FOR CURRENT TEXT*******

These are the Amended and Restated Articles of Incorporation for Bird Bay Leisure, Inc. originally filed with the Florida Department of State on or about August 10, 1973, and originally recorded at O.R. Book 1014, Pages 1441, *et seq.* of the Sarasota County Public Records.

**ARTICLE I
NAME AND PRINCIPAL OFFICE**

The name of the corporation is BIRD BAY LEISURE, INC. For convenience the corporation shall be referred to in these Articles as the "Association." The principal office of the Association is located at 612 Bird Bay Drive South, Venice, Florida 34285.

**ARTICLE II
DEFINITIONS**

2.1 "Act" or "Condominium Act" means the Condominium Act, Chapter 718, Florida Statutes (2012), as the same may be amended or renumbered from time to time.

2.2 "Articles" means these Amended and Restated Articles of Incorporation as they may be further amended from time to time.

2.3 "Assessment" means a share of the funds required for the payment of Association Common Expenses, which from time to time is assessed against the various Condominium Associations.

2.4 "Association" or "Corporation" means BIRD BAY LEISURE, INC., a Florida not-for-profit corporation, the entity responsible for the operation and management of the Association's common property.

2.5 "Association Common Property" means all property owned by the Association for the use and benefit of all the Unit Owners in all the various Condominium Associations.

2.6 "Board of Directors" or "Board" or "Directors" means the representative body which is responsible for the administration of the Association's affairs, and which is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration." Each Director must be a Unit Owner, the spouse of a Unit Owner, the settler, grantor, or beneficiary of a trust {as described in Section 733.707, Florida Statutes (2012)}, which owns a Unit or the spouse of such party.

2.7 "Bylaws" mean the Amended and Restated Bylaws of the Association as they may be amended from time to time.

2.8 "Charge" means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. These obligations may arise by oral or written contract, by law or in equity, or may be created by the

individual Condominium Documents.

2.9 “Common Expenses of the Association” means those expenses for which all Unit Owners are liable to the Association, including, but not limited to, expenses of administration and operation of the Association, maintenance and repair of Association Common Property, cost of premiums for casualty and general liability insurance (and other insurance), accounting and legal fees, such other expenses as may be declared Common Expenses of the Association either by these Articles of Incorporation, the Bylaws or by the Board of Directors, and other expenses which are reasonably related to the general benefit of the Unit Owners of all the condominiums even if such expenses do not attach to the property or the condominium building of the particular condominium association.

2.10 “Common Expenses of the Condominium” means those expenses attributable to an individual condominium association, as determined by the Board of Directors, which benefits only those Unit Owners within an individual condominium.

2.11 “Common Surplus” means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, above the amount of the Common Expenses.

2.12 “County” means the County of Sarasota, State of Florida.

2.13 “Primary Occupant” means a natural person designated for occupancy of a Unit when title to the Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

2.14 “Rules and Regulations” means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and administration of the Association.

2.15 “Unit” means a part of the Condominium Property subject to exclusive ownership.

2.16 “Unit Owner” or “Owner” means the record Owner of a Condominium Parcel.

2.17 “Voting Interests of the Association” means and refers to all of the condominium units within Bird Bay Leisure; specifically, Cardinal Apartments Condominium Association, Sandpiper Apartments Condominium Association, Laurel Villas Condominium Association and Sea Grape Villas Condominium Association.

ARTICLE III PURPOSE

The purpose of this Corporation is to operate, maintain and administer the Association common elements and recreational property, as that property is described on Exhibit “A” attached hereto and to perform all acts specified in these Articles, the Bylaws and in the Florida Condominium Act (hereafter the “Act”), Chapter 718, Florida Statutes (2012) as the same now exists or may be amended or renumbered from time to time. This corporation shall have the following additional purposes:

3.1 To provide for maintenance of areas and structures as may be placed under the jurisdiction of this corporation by means of any individual condominium Declaration of Condominium.

3.2 To regulate the use of areas and structures as may be placed under the jurisdiction of this corporation by means of any individual condominium Declaration of Condominium ("Declaration").

3.3 To promote the health, safety and welfare of the residents of Bird Bay Leisure, Inc.

3.4 To enforce the provisions of these Articles, Bylaws and Rules which the Association has the responsibility to enforce.

ARTICLE IV POWERS AND DUTIES

The Association shall have and exercise all rights and powers conferred upon corporations under the laws of the State of Florida consistent with these Articles, the Bylaws and the Act. The corporation shall also have all of the powers and authority reasonably necessary or appropriate to carry out its duties, including, but not limited to, the following:

4.1 To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as defined in these Articles, the Bylaws or any individual Condominium Declaration.

4.2 To fix, levy, collect and enforce payment by any lawful means, of all charges or assessments and assessment liens pursuant to the terms of these Articles, the Bylaws or any individual Condominium Declaration, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes for governmental charges levied or imposed against the property of the corporation.

4.3 To acquire (by gift, purchase or lease), own, hold, improve, insure, build upon, operate, maintain, replace and to repair, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association, and to contract for improvements and to repair, remodel and demolish the same, on any property that is owned or leased by the Association.

4.4 To borrow money, and with the consent of a majority of its members, mortgage, pledge, deed and trust, or hypothecate any or all of its real or personal property, including any lien rights it may have, as security for money borrowed or debts incurred.

4.5 To participate in mergers and consolidations with other non-profit corporations organized for the same or similar purposes or to annex additional property and common areas, provided that such mergers, consolidation or organization shall have the consent of a majority of its members.

4.6 To make and amend reasonable regulations respecting the use of any property or facilities over which the Association may have control, jurisdiction for administrative responsibilities, and to provide the penalties for the violation of any such regulation.

4.7 To contract for the maintenance of the common property and other areas and improvements as may be placed under the jurisdiction of this Association either by these Articles, the Bylaws or any individual condominium Declaration.

4.8 To employ such legal counsel, accountants and other agents or employees as may be deemed necessary for the protection and furtherance of the interest of the Association and of its members and to carry out the purpose of the Association.

4.9 To enforce by legal means the provisions of these Articles, the Bylaws, Rules and the Condominium Act.

ARTICLE V MEMBERSHIP

5.1 The record Owner(s) of any Condominium Unit within Bird Bay Leisure shall be a Member of the Association.

5.2 The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Condominium Unit associated with the membership of the Member, nor may a membership be separately assigned, hypothecated or transferred in any manner except as an appurtenance to such Unit.

ARTICLE VI VOTING RIGHTS

Each Condominium Unit is entitled to one vote for all matters upon which the membership is entitled to vote. The vote shall be exercised or cast in the manner provided in the Bylaws. Any person or entity owning more than one Condominium Unit is entitled to one vote for each Unit owned.

ARTICLE VII DIRECTORS

7.1 *The affairs of the Association shall be managed by a Board of Directors as described in the Bylaws.*

7.2 A majority of the Directors currently serving as such shall constitute a quorum at meetings of the Board. Except as herein otherwise specified, the decision of a majority of the Directors present at a meeting at which a quorum is present shall be required and shall be sufficient to authorize any action on behalf of the Board. Each Director shall be entitled to one (1) vote on every matter presented to the Board of Directors.

ARTICLE VIII OFFICERS

The affairs of the Association shall be administered by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers.

**ARTICLE IX
DISSOLUTION**

Except as otherwise provided in the Declaration, Florida corporate law, or by the Act, the Corporation may be dissolved pursuant to Articles of Dissolution approved by at least eighty percent (80%) of the total membership. Upon dissolution of this Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be distributed in equal shares to the then existing Members.

**ARTICLE X
TERM OF EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE XI
INDEMNIFICATION**

11.1 Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities; including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement of any proceeding to which he may be a part or in which he may become involved by reason of his being or having been a director or officer of the Association, whether or not he is a director or officer at the time such expenses are incurred, except when the director or officer is guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

11.2 Limitation upon Liability of Association. Notwithstanding the duty to maintain and repair parts of the Association's common property, the Association is not liable to Unit Owners or any other person for injury or damage, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by any latent or *unknown condition of the Association Property*. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof. Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Association Property and Common Elements, including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. As used in this section, the term "Association" means all of the Association's Directors, officers, committee members, employees, agents, contractors (including management companies or managers), subcontractors, successors, and assigns.

**ARTICLE XII
REGISTERED OFFICE AND AGENT**

The address of the corporations' registered office is: 612 Bird Bay Drive South, Venice, Florida 34285. The registered agent of the corporation shall be as determined by the Board of Directors from time to time.

**ARTICLE XIII
BYLAWS**

The Bylaws of this Corporation may be altered, amended, or repealed in the manner provided in the Bylaws.

**ARTICLE XIV
AMENDMENTS**

These Articles may be amended in the following manner:

14.1 Proposal of Amendments. An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty percent (20%) of the entire Voting Membership.

14.2 Proposed Amendment Format. Proposals to amend existing Articles of Incorporation shall contain the full text of the Article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF ARTICLE. SEE ARTICLE NUMBER FOR PRESENT TEXT."

14.3 Notice. Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

14.4 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of a majority of the entire membership of the Association, or by the written agreement of a majority of the entire membership. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

14.5 Effective Date. An amendment when adopted shall become effective after being recorded in the Sarasota County Public Records according to law and filed with the Secretary of State according to law.

14.6 Automatic Amendment. These Articles shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium. Whenever Chapter 718, Florida Statutes (2012) Chapter 617, Florida Statutes (2012) 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 Articles, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors without a vote of the Unit Owners, may adopt by majority vote, amendments to

these Articles of Incorporation as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2012), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

ARTICLE XV ASSESSMENTS AND CHARGES

15.1 The Board of Directors shall make Assessments against the individual Condominium Associations in the manner provided in these Articles and the Bylaws. The individual Condominium Associations' shares of such assessments are the same as those described in the Bylaws.

15.2 Defaults in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, *unless otherwise specified, shall be the maximum allowed by law.*

ARTICLE XVI INSURANCE

The Association, through its Board of Directors, must obtain and maintain insurance as follows:

16.1 Authority to Purchase Insurance. The Association is authorized to purchase insurance policies for the benefit of the Association, the Unit Owners and their mortgagees as their respective interests may appear.

16.2 Coverage.

16.2.1 Casualty. Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general casualty and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the Association, including Association Property and the Common Property for the full replacement value thereof, *including coverage for changes in building codes, if reasonably available and determined commercially practicable by the Board, and less a commercially reasonable deductible as determined by the Board.* The Board shall establish the deductible annually, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductible, as required by the Act. The Association must hold the original insurance policy and, upon request, furnish mortgagees a mortgage endorsement covering the mortgagees' respective interests.

16.2.2 Liability Insurance. The Association shall obtain and maintain public liability insurance covering all of the Association Common Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims *against the Association or upon insurance policies held by the Association.* The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage. Each Unit Owner will be responsible for procuring and maintaining liability insurance covering losses which may occur in and about the Owner's Unit, and such other

insurance as the Owner may deem appropriate.

16.2.3 Worker's Compensation. Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

16.2.4 Other Insurance. Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage, flood insurance, and insurance for the benefit of its employees.

16.3 Deductible and Other Insurance Features. The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment.

16.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

16.5 Insurance Shares or Proceeds. The Association will receive any and all insurance proceeds covering property losses from its insurance policies and all policies and endorsements thereon shall be deposited with the Association. Any proceeds remaining after defraying such costs shall be distributed to the individual Condominium Associations, or, at the option of the Board, may be deposited in the Association's reserve fund. The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Association Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

XVII MISCELLANEOUS PROVISIONS

17.1 The covenants and restrictions as herein contained, or forming a part of the Association Governing Documents, shall be deemed to run with the land.

17.2 If any provision of the Governing Documents hereto, as the same now exist or as *may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said Governing Documents shall remain in full force and effect.*

17.3 These Articles and the Governing Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

17.4 All notices shall be given as provided in the Bylaws.

17.5 The headings and captions used in these Articles and Bylaws are solely for convenience sake and shall not be considered a limitation of any nature in interpreting the Association's Governing Documents.