

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF

XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC.

(Language added is underlined - Language deleted is struck through)

ARTICLE I

NAME

The name of this corporation shall be XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC., hereinafter called the "Association".

ARTICLE II

PURPOSES

The general nature, objects and purposes of the Association are:

(a) To promote the health, safety and social welfare of the owners of property within that area described in Article IV hereof, which area will be hereinafter referred to as XANADU BY THE SEA.

(b) To control, maintain and repair (in the general or common areas) landscaping, ~~parks~~, sidewalks and ~~access—paths~~, streets, ~~lakes~~, ~~ponds~~, canals and drainage facilities, structures and other improvements in XANADU BY THE SEA for which the obligation to control, maintain and repair has been delegated and accepted.

(c) To control the specifications, architecture, design, appearance, elevation and location of (and landscaping around) all buildings of any type, including walls, fences, swimming pools, antennae, ~~sewers~~, drains, disposal systems, or other structures constructed, placed or permitted to remain in XANADU BY THE SEA as well as the alteration, improvement, addition or change thereto.

(d) To provide or arrange for the providing of such services, the responsibility for which has been accepted by the association.

(e) To provide, purchase, acquire, transfer, replace, improve, maintain and repair such buildings, structures, landscaping, land, paving and equipment, both real and personal, related to the health, safety, and social welfare of the members of the Association, as the Board of Directors in its discretion determines necessary, appropriate or convenient.

(f) To operate without profit for the sole and exclusive benefit of its members.

### ARTICLE III

#### GENERAL POWERS

The general powers that the Association shall have are as follows:

(a) To hold funds solely and exclusively for the benefit of the members for purposes set forth in these Articles of Incorporation and the Declaration of Covenants and Bylaws.

(b) To promulgate and enforce rules, regulations, by-laws, covenants, restrictions and agreements to effectuate the purposes for which the Association is organized.

(c) To delegate power or powers where such is deemed in the interest of the Association.

(d) To purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of, real or personal property; to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation or association; to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Articles of Incorporation and not forbidden by the laws of the State of Florida.

(e) To fix assessments to be levied against property to defray expenses and costs of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenditures, and to authorize its Board of Directors to enter into agreements with condominium associations or other property owners' groups for the collection of such assessments.

(f) To charge recipients for services rendered by the Association and the user for use of Association property where such is deemed appropriate by the Board of Directors of the Association.

(g) To pay taxes and other charges, if any, on or against property owned or accepted by the Association.

(h) To borrow money and, from time to time, to make, accept, endorse, execute and issue debentures, promissory notes or other obligations of the Association for monies borrowed or in payment for property acquired or for any of the other purposes of the Association and to secure the payment of such obligation by mortgage, pledge, or the instrument of trust, or by lien upon, assignment of or agreement in regard to all or any part of the property rights or privileges of the Association wherever situated.

(i) To transfer to a Property Management Entity Owners Association, such of its duties, powers and obligations as may be necessary or desirable.

(j) In general, to have all powers conferred upon a corporation not for profit by the laws of the State of Florida, except as prohibited herein.

ARTICLE IV

MEMBERS AND LEGAL DESCRIPTION

(a) The members shall consist of the record title property owners of a lot or lots in XANADU BY THE SEA being a plat of the real property more fully described in Section (b) of this Article, and all such property owners shall be members of the Association. There shall be one class ~~two classes~~ of members, as follows:

1. ~~CLASS A MEMBERS.~~ ~~Class A~~ Members shall be all record title property owners of lots or parcels in XANADU BY THE SEA ~~except the Class B Member~~. Owners of lots or parcels in XANADU BY THE SEA shall represent themselves in person or by proxy. Owners of lots or parcels in XANADU BY THE SEA shall automatically become members upon acquisition of fee simple title to such lots or parcels.

~~2. CLASS B MEMBERS. The Class B Member shall be VILLAGES OF XANADU, INC. or its designee, successor or assignee.~~

(b) XANADU BY THE SEA consists of a tract of land situated in Palm Beach County, Florida, legally described as:

The North 230.80 feet of the South  
717.75 feet of Government Lot 1,  
Section 8, Township 41 South, Range  
43 East, Palm Beach County, Florida.

and any other land, deeded or dedicated to the association,

ARTICLE VVOTING AND ASSESSMENTS

(a) Subject to the restrictions and limitations hereinafter set forth, each Lot ~~Class A~~ member shall have a minimum of one vote. ~~However, Class A Members shall have a vote for each lot parcel in addition to the one vote for the first parcel owned by said owner.~~ Any lot or parcel in multiple ownership shall, notwithstanding such multiple ownership, only be entitled to the same vote as if singly held. (i.e., one)

(b) ~~Class A~~ Members shall be entitled to notice of all meetings of members and shall represent themselves in person or by proxy.

~~(c) The Class B Member shall have the right to appoint a majority of the Board of Directors of the Association for so long as the Class B member owns at least 50% of the lots or parcels in XANADU BY THE SEA, and for so long as the Class B Member owns any property in XANADU BY THE SEA it shall have the right to appoint two directors.~~

(c) ~~(d)~~ The Association will obtain funds with which to operate by assessment of its members (or by borrowing as permitted in these Articles) in accordance with provisions of the Declaration of Covenants and Restrictions for XANADU BY THE SEA as supplemented by the provisions of the By-Laws of the Association relating thereto.

ARTICLE VIBOARD OF DIRECTORS

(a) The affairs of the Association shall be managed by a Board of Directors consisting of ~~not less than five (5) and not more than seven (7)~~ Directors. The Directors ~~must be~~ may, ~~but need not be,~~ members of the Association and need not be residents of the State of Florida. ~~There shall be three (3) Directors appointed by the Class B Members and a total of two (2) Directors elected by the Class A members so long as the Class B member has the right to appoint a majority of the Board of Directors; thereafter, the Class B member shall appoint two (2) Directors and the remaining Directors shall be elected as provided hereinafter.~~ Elections shall be by plurality vote.

At the 1998 first annual election to the Board of directors, the term of office of the elected Directors shall be as follows: The two Directors receiving the highest plurality vote

shall serve for a term of two (2) years and the term of office of the other three elected Directors shall be established for a term of one (1) year. Thereafter Directors shall be elected for two (2) year terms. (Two Directors in even years and three in odd years.)

~~In addition, the Class B Member shall appoint two (2) Directors to serve for a term of two (2) years and one (1) Director to serve for a term of one (1) year. Thereafter, as may Directors shall be elected and appointed, as the case may be, as the are regular terms of office of Directors expiring at such time, and The term of the Directors so elected or appointed at each annual election shall be for two (2) years expiring at the second annual election following their election and thereafter until their successors are duly elected and qualified, or until removed from office with or without cause by the affirmative vote of a majority of the total votes of the members, which elected or appointed them. In no event can a Board member appointed by the Class B Member be removed except by action of the Class B Member; nor can a Board member elected by Class a members be removed except by action of Class A members, acting as a class while the Class B member still has a right to appoint a majority of the Board and acting separately thereafter.~~

~~(b) At such time as the Class B Member shall no longer have the right to appoint a majority of the Board of Directors, Class A Members shall elect Board members separately for the directors to which their respective voting rights entitle them.~~

~~(c) The names and address of the members o the first Board of Directors who shall hold office until the annual meeting of the members to be held in the year 1978 and until their successors are elected or appointed and have qualified, are as follows:~~

<u>NAME</u>	<u>ADDRESS</u>
ARTHUR S. HILLBRATH, JR.	826 Oyster Lane West Lantana, Florid
NERBERT C. WETHERBY	1422 South Atlantic Drive, East Lantana, Florida
SUSAN P. TWITTY	538 Ibis Drive Delray Beach, Florida
CONRAD SCHAEFER	2001 Palm Beach Lakes Blvd. Suite 305 West Palm Beach, Florida
JOHN S. CALL, JR.	1475 North Lake Way Palm Beach, Florida

ARTICLE VII

OFFICERS

(a) The officers of the Association shall be a President, a Vice president, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create. Any two or more offices may be held by the same person except the office of President and Secretary. Officers shall be elected for one (1) year terms in accordance with the procedure set forth in the By-Laws.

~~(b) The names of the officers who are to manage the affairs of the Association until the annual meeting of the Board of Directors to be held in the year 1978 and until their successors are duly elected and qualified are:~~

PRESIDENT: \_\_\_\_\_ Arthur S. HillBrath, Jr.  
VICE PRESIDENT: \_\_\_\_\_ Herbert C. Wetherby  
SECRETARY: \_\_\_\_\_ Susan P. Twitty  
TREASURER: \_\_\_\_\_ Herbert C. Wetherby

ARTICLE VIII

CORPORATE EXISTENCE

The Association shall have perpetual existence.

ARTICLE IX

BY-LAWS

The first Board of Directors shall adopted By-Laws consistent with these Articles.

ARTICLE X

AMENDMENT TO ARTICLES OF INCORPORATION

~~These Articles may be altered, amended or repealed by the affirmative vote of a majority of the total votes of the association. resolution of the Board of Directors. No amendment affecting XANADU BY THE SEA shall be effective without the prior written consent of said corporation, or its successors or assigns.~~

ARTICLE XI

SUBSCRIBERS

~~The names and addresses of the subscribers are as follows:~~

~~ARTHUR S. HILLBRATH, JR. 826 Oyster Lane West  
Lantana, Florida~~

~~NERBERT C. WETHERBY 1422 South Atlantic Drive, East  
Lantana, Florida~~

~~SUSAN P. TWITTY 538 Ibis Drive  
Delray Beach, Florida~~

ARTICLE XII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

(a) The Association hereby indemnifies any Director or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

1. Whether civil, criminal, administrative, or investigative, other than one by or in the right of the Association to procure a judgment in its favor, brought to impose a liability or penalty on such person for an act alleged to have been committed by such person in his capacity as Director or officer of the Association, or in his capacity as Director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal therein, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association, and for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not in itself create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in the best interests of the Association or that he did not have had reasonable grounds for belief that such action was unlawful.

2. By or in the right of the Association to procure a judgment in its favor by reason of his being or having been a Director or officer of the Association, or by reason of his being or having been a director, officer, employee or agent of any

other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, such action was in the best interests of the Association. Such person shall not be entitled to indemnification in relation to matters as to which such person has been adjudged to have been guilty of negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper.

(b) The Board of Directors shall determine whether amounts for which a Director or officer seeks indemnification were properly incurred and whether such Director or officer acted in good faith and in a manner he reasonable believed to be in the best interests of the Association, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding.

(c) The foregoing rights of indemnification shall not be deemed to limit in any way the powers of the Association to indemnify under applicable law.

#### ARTICLE XIII

##### TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED

(a) No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors or officers, or have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contact or transaction.



(b) Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of directors or of a committee which authorized the contract or transaction.

#### ARTICLE XIV

##### DISSOLUTION OF THE ASSOCIATION

(a) Upon the dissolution of the Association, all of its assets remaining after provision for creditors and payment of all cost and expenses of such dissolution shall be distributed in the following manner:

~~1. Real property contributed to the Association without the receipt of other than nominal consideration by the Class B Member (whether or not a Class B Member at the time of such dissolution), to the Class B Member unless it refuses to accept the conveyance (in whole or in part).~~

~~1. 2. Dedication to any applicable municipal or other governmental authority of any property determined by the Board of directors of the Association to be appropriate for such dedication and which the authority is willing to accept.~~

~~2. 3. Remaining assets shall be distributed to the Property Owners in equal shares for each lot in Xanadu By The Sea Association or, if appropriate, the condominium associations according to the percentage vested interest of the respective membership of each of such associations for the benefit of the members, subject to the limitation set forth below, each member's share of the assets to be determined by multiplying such remaining assets by a fraction, the numerator of which is all amounts assessed by the Association since its organization against the property which is owned by the member at the time, and the denominator of which is the total amount (excluding penalties and interest) assessed by the Association against all properties which at the time of dissolution are part of XANADU BY THE SEA. The year of dissolution shall count as a whole year for purposes of the preceding fractions.~~

(b) The Association may be dissolved upon a resolution to that effect being approved by the affirmative vote of two-thirds (2/3) of the total votes members of the association (i.e. 43 affirmative votes) Board of Directors, and, if such decree be necessary at the time of dissolution, after receipt of an appropriate decree as set forth in Florida Statutes. In the event of incorporation by annexation or otherwise of all or part of XANADU BY THE SEA by a political subdivision of the State of Florida, the Association may be dissolved in the manner set forth above.

ARTICLE XV

DESIGNATION OF RESIDENT AGENT

The resident agent shall be as stated in the annual report for the association. In accordance with Section 48.091, 1971 Florida Statutes, SHIRLEY G. KERRIGAN is hereby designated as the resident agent for service of process within the State of Florida at 865 North Dixie Highway, City of Lantana, County of Palm Beach, Florida.

IN WITNESS WHEREOF, the said subscribers have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 1977.