

Prepared By/Return To: ✓  
Randall J. DeHayes  
4521 PGA Boulevard Box 327  
Palm Beach Gardens, FL 33418

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**CERTIFICATE OF AMENDMENTS TO AND RESTATEMENT OF THE DECLARATION  
OF COVENANTS, RESTRICTIONS AND CONDITIONS  
FOR XANADU BY THE SEA  
AND  
AMENDED AND RESTATED ARTICLES OF INCORPORATION, AMENDED AND  
RESTATED BYLAWS, AND AMENDED ARCHITECTURAL REQUIREMENTS  
FOR  
XANADU BY THE SEA**

THIS CERTIFICATION OF AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS, AND CONDITIONS FOR XANADU BY THE SEA, THE ARTICLES, BYLAWS, AND ARCHITECTURAL RESTRICTIONS is made this 25<sup>th</sup> day of AUGUST 1997, by the President and Secretary of Xanadu By The Sea Property Owners Association, Inc. ("Association").

**WITNESSETH:**

WHEREAS, the Association is the Association responsible for the management and operation of Xanadu by The Sea pursuant to the Declaration of Covenants, Restrictions and Conditions for Xanadu By The Sea, as recorded in Official Records Book 2718, Page 1811, Palm Beach County, Florida. The Plat of Xanadu By The Sea is recorded in Plat Book 33, Pages 70 and 71 of the Public Records of Palm Beach County, Florida.

WHEREAS, the Declaration and Articles provide that each may be amended by the Board at any regular or special meeting of the Board; and

WHEREAS, the By-Laws provide that they may be amended by the members at any regular or special meeting;

NOW THEREFORE, the President and Secretary of the Association hereby certify the following:

1. The annual meeting of the members of the Association, was called in part for the purpose of amending and restating the Bylaws, was duly noticed and held on March 12, 1997 (recessed and



AMENDED AND RESTATED  
 DECLARATION OF  
 COVENANTS, RESTRICTIONS AND CONDITIONS  
 FOR  
 XANADU BY THE SEA

(Language added is underlined, language deleted is struck through)

VILLAGES OF XANADU, INC., a Florida corporation (hereinafter called "Developer" or "Declarant"), the owner of the real property subject to this Declaration, hereby declares the property known by official plat designation as XANADU BY THE SEA, a subdivision in the Town of Jupiter, pursuant to a plat filed for record on August 5, 1977, and recorded in Plat Book 33 at Pages 70 and 71, Public Records of Palm Beach County, Florida (hereinafter referred to as "Subdivision"). The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a lot or any other interest in the property, or the lease, occupancy, or use of any portion of a lot or property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

SECTION I  
PURPOSE

The purpose of this Declaration is to enhance and protect the value, attractiveness and desirability of the lots, housing, or other tracts constituting the subdivision.

SECTION II

(A) "Association" shall mean and refer to XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC., a Florida Corporation, not for profit its successors and assigns.

(B) "Common Area" shall mean all real property owed by the association for the common use and enjoyment of the owners, including the beach property. The common area to be owned by the association at the time of conveyance of the first lot is described on the aforesaid Plat as "Tract A", Villages of Xanadu, Inc.

(C) "Declarant" shall mean VILLAGES OF XANADU, INC., or its successors.

(D) "Lot" shall mean any plot of land shown on the recorded subdivision map referred to above with the exception of the common area.

(E) "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden-management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

(F) "Member" shall mean every person or entity who holds membership in the association.

(G) "Mortgage" shall mean a conventional mortgage or a deed of trust.

(H) "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

(I) "Owner" shall mean the record title property owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the subdivision, and shall include contract sellers, but shall not include those holding title merely as security for performance of a obligation.

(J) "Subdivision" shall mean the subdivided real property hereinbefore described and such additions thereto as may be brought within the jurisdiction of the association as hereinafter provided.

(K) "Builder" shall mean a general or building licensed home building contractor licensed in the State of Florida, and shall also include an owner builder.

(L) "Assessment" means a) an owner's share of the common expenses which from time to time is assessed against an owner by the association in the manner herein provided and, b) such amount as may be charged against an owner's property either for special services rendered to that property or amounts charged against that lot for violations of these Covenants, Conditions and Restrictions.

(M) "Board of Directors" or "Board" means the representative body which is responsible for the administration of the association's affairs. All operations of the association shall be by the Board unless the documents specifically require an owner vote.

(N) "Guest" means any person who is not the owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the lot on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of cash or non-cash consideration.

(O) "Single Family" means persons related by blood, or up to two persons unrelated by blood, living together as a family and their children, if any. Occupancy under the "single family" definition shall be in accordance with applicable state, Federal, or county laws or ordinances.

SECTION ARTICLE III  
MEMBERSHIP IN ASSOCIATION; VOTING RIGHTS

Every record title property owner of a lot shall be a member of the association; membership shall be appurtenant to and may not be separated from ownership of a lot.

The association shall have one class ~~two classes~~ of voting members as follows:

(A) Class A Members shall be all record title property owners ~~with the exception of declarant~~, and shall be entitled to one vote for each lot owned. When more than one person holds record title a ~~interest~~ in a given lot, all such persons shall be members and the vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any lot. ~~owned by Class A members.~~

~~(B) Class B member shall be declarant, who shall be entitled to two votes for each lot owned, and for so long as the Class B members owns at least 50% of the lots (by number) in the subdivision it 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 one or more lots in subdivision, or for five (5) years from the date hereof, whichever first occurs, it shall have the right to appoint two directors. The Class B member shall cease when the Class B member no longer owns any lot in the subdivision.~~

SECTION IV  
ASSESSMENTS

(A) Lien and personal obligation of assessments. Declarant hereby covenants for each lot within the subdivision, and each owner of a lot is hereby deemed to covenant by acceptance of his deed for such lot, whether or not it shall be so expressed in his deed, to pay to the association (1) annual assessments and (2) special assessments, ~~for capital improvements.~~ Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with late fees interest, costs and reasonable attorneys' fees, shall be a charge on the land and a continuing lien on each lot against which such an assessment is made. Each such assessment, together with late fees interest, costs and reasonable attorneys' fees shall also be the personal

obligation of the record title property owner of person or persons who ~~owned~~ the lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them.

(B) Purpose of annual assessments. The annual and special assessments levied by the association shall be used exclusively to promote the health, safety and welfare of the residents in the subdivision, and for the improvement and maintenance of the common areas and otherwise in accordance with this Declaration. ~~and of the homes situated within the subdivision.~~ Annual or special assessments shall include, and the association shall acquire and pay for out of the funds derived from annual or special assessments, the following:

1. Maintenance and repair of the common area, including, but not limited to, landscaping and maintenance of landscaped areas.
2. Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility service for the common area.
3. Acquisition of trees, plants, furnishings and equipment for the common area as may be determined by the association, including without limitation all equipment, furnishings and personnel necessary or proper for use of the recreational facilities, if any.
4. Maintenance, beautification and repair of common areas, storm drains and private streets within the confines of the subdivision.
5. Any necessary fire insurance covering the full insurable replacement value of the common area with extended coverage.
6. Liability insurance insuring the association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of their occupation and use of the common area. The policy limits shall be set by the association, and shall be reviewed at least annually and increased or decreased in the discretion of the association.
7. Worker's ~~Workmen's~~ compensation insurance to the extent necessary to comply with Florida Law and any other insurance deemed necessary by the board of directors of the association.
8. A standard fidelity bond covering all members of the board of directors of the association and all other

employees of the association in an amount to be determined by the board of directors.

9. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the association is required to secure or pay pursuant to the terms of this declaration or by law, or which shall be necessary or proper in the opinion of the board of directors of the association for the operation of the common areas, for the benefit of the lot owners, or for the enforcement of these restrictions. This shall include the costs and expenses of a bulk cable television contract, which may be approved by the Board, however, the cost of such shall be approved by the members in accordance with Sections C and D below if said expenses are not a part of the regular annual assessments.

10. In the event the need for maintenance or repair is attributable to the willful or negligent act of the owner of a lot, his family, guests, or invitees, including the failure to properly maintain the lot, the cost plus 25% of such maintenance or repairs shall be added to and become part of the assessment against the owner's lot, to which such lot is subject.

11. To promote the health, safety, and welfare of the members of the Xanadu By The Sea Property Owners Association, Inc. and to enhance and protect the value, attractiveness, and desirability of the lots constituting the Xanadu By The Sea subdivision, the Board of Directors, exercising the power given them through the Articles and Bylaws of this Association and the Declaration of Covenants, Restrictions, and Conditions for Xanadu By The Sea hereby declare that the 35-foot right-of-way strip of land at the entrance to the community previously landscaped by the Association (and which is dedicated to the Town of Jupiter by the plat), be maintained by the Association with funds from the members raised through annual or special assessments, and said portion of the annual or special assessments shall be subject to all of the protections and remedies for violation or default as set forth in S. IV, Section VIII, of the said Declaration.

(C) Maximum annual assessment.

1. ~~Until August 1 of the year immediately following the conveyance of the first lot by declarant to any owner, the maximum annual assessment, shall be Ninety Six and no/100 (96.00) Dollars.~~

~~1. 2-~~ From and after ~~August 1~~ of the year immediately following the conveyance of the first lot by declarant to an owner, the maximum annual assessment may be increased each year not more than fifteen (15%) per cent above the maximum assessment for the previous year without a vote of the members.

~~2. 3-~~ From and after ~~August 1~~ of the year immediately following the conveyance of the first lot by declarant to an owner, the maximum annual assessment may be increased above fifteen (15%) percent by the vote or written assent of a majority of the total votes of the each class of members. (i.e. 33 affirmative votes)

~~3. 4-~~ The board of directors of the association may fix the annual assessment at an amount not in excess of the maximum.

(D) Special assessments for capital improvements.

In addition to the annual assessments authorized above, the association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a ~~capital improvement on~~ the common area, including fixtures and personal property related thereto. Any such assessment must be approved by a majority of the votes each class of the members cast at a meeting at which a quorum is present. Further, the Board may issue a special assessment against a particular lot for reimbursement of any costs or expenses incurred by the association in maintaining any improperly maintained lot or due to damage to the common area caused by, or for which the lot owner is responsible. The association may lien and foreclose to collect any such special assessment.

(E) Notice and quorum for action authorized under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized by Section C or D shall be sent to all members not less than ten (10) nor more than thirty (30) days in advance of such meeting. ~~In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority, such class of members, members who were not present in person or by proxy may give their assent in writing within thirty (30) days after the date of such meeting.~~

(F) Uniform rate of assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, except for individual lot special assessments due to the owner's failure to properly maintain the lot or for damage caused by a lot owner or those for which he is responsible. The board may, at it's discretion, charge an additional assessment against the owner of a lot for the purpose of mowing or otherwise maintaining the lot.

(G) Commencement and collection of annual assessments.

~~The annual assessments provided for herein shall commence as to all lots on August 1, 1978. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.~~ The board of directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments may be made payable monthly, quarterly or otherwise as determined by the Board. Notice of the annual assessments shall be sent to every owner subject thereto. The association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the association, setting forth whether the assessments against a specific lot have been paid.

(H) Effect of nonpayment of assessments; remedies of the association. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall be subject to a late fee as set by the Board from time to time ~~bear interest from the due date at the rate of eight and one half (8 1/2%) per cent per annum.~~ The association may bring an action against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the common area or abandonment of his lot.

(I) Subordination of assessment lien to mortgages.

The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

(J) If the association borrows money in accordance with the association documents provisions, any such sums shall be treated as a special assessment against a particular lot, which obligation shall run with and bind the lot, and be subject to lien and foreclosure by the association if the lot owner fails to pay it in a timely manner.

SECTION V  
PROPERTY RIGHTS

(A) Owner's Easements of Enjoyment. Every owner of a lot shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to such lot, subject to the following rights of the association:

1. ~~The right to suspend the voting rights of any owner for periods during which assessments against his lot remain unpaid, and the right, after hearing by the board of directors, to suspend such use rights for a period not exceeding thirty (30) forty two (42) days for any infraction of the provisions of the Declaration, Articles, By-laws or published rules and regulations of the association.~~

2. The right to dedicate, transfer and grant easements to all or any part of the common area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by a majority of the total votes of the members. (i.e. 33 affirmative votes)

(B) Delegation of Use. Subject to such limitations as may be imposed by the by-laws, each owner may delegate his right of enjoyment in and to the common areas and facilities to the members of his family, his guests, tenants and invitees.

(C) Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent lots and between each lot and any portion or portions of the common areas adjacent thereto for any easement due to unwilful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction or alteration is in accordance with the terms of this declaration. Such easement shall exist to a distance of not more than one foot as measured from any point on the common boundary between adjacent lots, and between each lot and any adjacent portion of the common area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the wilful conduct of an owner.

(D) Other Easements.

1. Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision plat. Within these easement, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement areas of each lot and all improvements therein shall be continuously maintained by the owner of such lot, except for improvements for maintenance of which a public authority or utility company is responsible.

2. No dwelling unit or other structure of any kind shall be built, erected or maintained on any such easement,

reservation, or right of way and such easements, reservations and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, ~~and shall also be open and accessible to declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations and rights of way are reserved.~~

(E) Right of Entry. The association, through its duly authorized employees and contractors, shall have the right after reasonable notice to the owner thereof, to enter any lot at any reasonable hour on any day to perform such maintenance as may be authorized herein.

(F) No Partition. There shall be no judicial partition of the common area, nor shall declarant, or any owner or any other person acquiring any interest in the subdivision or any part thereof, seek judicial partition thereof. ~~However, nothing contained herein shall be construed to prevent judicial partition of any lot owned in co-tenancy.~~

SECTION VI  
RESIDENTIAL RESTRICTIONS

(A) Each lot in the subdivision, subject to this Declaration may be used for a single family residential living unit and for no other purposes.

(B) Only one dwelling unit shall be constructed on a lot and such house, and also vacant lots, must be maintained in a first class condition at all times.

(C) No business building may be erected on any lot in the subdivision and no trade, business, or profession may be conducted on any part thereof; except that the use of telephones, facsimile machines, and computers in the owners' house shall be permitted. (i.e. uses which do not affect any other homeowner nor use of the common areas or lots). ~~Notwithstanding anything herein to the contrary, Developer and persons or entities acquiring title from Developer who are home builders shall be able to build and maintain sales models and offices with the written consent of Developer until such time as the last lot in subdivision is developed and sold by Developer or developed and sold by Developer's grantees who are home builders.~~

(D) The restrictions herein set forth in Section VI and elsewhere in the association documents, shall apply to all the property in subdivision.

(E) No tents, trailers, commercial vans, shacks, tanks, temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without written consent of Developer and the Association and the lot owner; however, the foregoing shall not restrict or prevent the construction and maintenance of temporary sales models and offices and such other temporary facilities as are essential to the development of the subject lands, construction thereon and selling of the housing facilities created, provided that such are in compliance with appropriate governmental requirements applicable thereto.

(F) ~~No sign of any kind shall be displayed to the public view on any lot, or of the common area, except one sign of not more than five (5) square feet advertising an "open house" related to the sale of a property, or a sign used by a builder to advertise a property containing the builder's name and telephone number for the period from commencement of construction through receipt of the certificate of occupancy, may be displayed on a lot. The "open house" sign may not be displayed overnight.~~

(G) Nothing shall be done on any lot or common area in the subdivision which may be, or may become, an annoyance or nuisance to the neighborhood. In the event of any question as to what may be or may become a nuisance, such question shall be submitted to the board Association for a decision in writing and its decision shall be final.

(H) ~~Subsequent to a sale or other conveyance of a lot by Developer, No weeds, underbrush or other unsightly growths, or storage of materials or equipment, shall be permitted to grow or remain upon any such lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon, and said lots shall be mowed at least every two (2) weeks. In the event that the owner of such lot shall fail or refuse to keep the lot demised premises properly mowed, free of weeds, underbrush, materials or equipment, or refuse piles or other unsightly growths or objects, then the Association's board or its' designee, may enter upon said lot premises and mow, clean up or remove the same at the expense of the owner. The owner shall be responsible for the actual expense plus a 25% charge. and Any such entry shall not be deemed a trespass. The association may lien the lot (and foreclose) to collect any sums expended and/or charged by the association to maintain a lot in proper condition.~~

(I) No rubbish, trash, garbage or other waste material shall be kept or permitted on any lot or on the common area except in sanitary containers located in appropriate areas concealed from public view. Trash, including rubbish, garbage, and any other waste material may be placed at the street no earlier than 9:00 p.m. on the evening prior to pickup day. All trash receptacles or containers must be moved from the street and concealed from view by 7:00 p.m. of the day of pick-up.

(J) ~~(G)~~ The use of Xanadu Place, any parking area or part of any lot or part of any cul-de-sac which may be in front of, adjacent to, or part of any lot (excluding private driveways) as a habitual parking place for any type of vehicle, including commercial or recreational vehicles, trailer, boat or air craft is prohibited. The term habitual is defined to include the overnight or daytime parking of vehicles for more than one consecutive day.

~~The use of any driveway or parking area which may be in front of, adjacent to or part of any lot as a habitual parking place for commercial or recreational vehicles, trailers, boats, or aircraft is prohibited.~~

The term "Commercial Vehicles" shall include all automobiles, vans, panel vans, sports utility vehicles, trucks, and other vehicular equipment including stations wagons which bear signs or shall have printed on the sides of same, reference to any commercial or governmental undertakings or enterprise or which are used for a commercial purpose. The term "Recreational Vehicles or trailers" shall include all buses, campers, pick-up trucks, vehicles with raised bodies, vans set up as living quarters, boats, and similar vehicles and trailers. Provided, however, that nothing in this paragraph shall prohibit the use of passenger vans (such as Aerostars, Caravans, etc.), or passenger sports utility vehicles (Broncos, Blazers, etc.) which are used solely as personal vehicles. Overnight parking or storage of unauthorized vehicles such as trucks, pickup trucks, buses, recreational vehicles or commercial vehicles is prohibited. Such vehicles can be left in the garage with the garage door closed, and Vehicle or boat repairs or restoration on any lot or the common area is prohibited, except for emergency repairs and then only to the extent necessary to enable movement of the vehicle to a repair facility. Occasional over night parking of guests' vehicle or vehicles intended for moving into or out of a residence will be allowed with notification to a member of the Board of Directors. The vehicle must have a visible sign with a director's signature. (Names of the directors are posted at the mailbox locations.) Failure to report the temporary parking could result in towing which the association may do to any unauthorized or violating vehicles. Overnight parking is termed to mean between the hours of ~~midnight 1:00 a.m.~~ to 6:00 a.m. All residents are to park their vehicles in their garage or private driveway. It shall be the responsibility of each and every resident to ensure that any person providing a frequent or regular service to them must adhere to the parking requirements of this paragraph.

(K) No wall, fence, hedge, or other barrier, or similar structure shall be placed, constructed, erected or permitted in the subdivision except with the express written permission of the Association.

(L) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, or common areas, ~~except dogs, cats or other household pets may be kept on lots subject to such rules and regulations as may be adopted by the association, provided that they are not kept, bred or maintained for any commercial purpose.~~ No more than two (2) animals of any description per lot. The owners must immediately clean up any waste or defecation of any animal. All owners must also comply with applicable state, county, or town regulations. If any bird or animal creates a nuisance, as determined by the board, it shall immediately be removed from the subdivision.

(M) ~~No portion of any lot or common area shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the homes to be constructed in subdivision.~~

(N) ~~Unless prior written approval has been obtained from the association and developer, No exterior radio, television, or other antenna or aerial may be erected or maintained. Nothing herein shall be construed to prohibit the installation of a television signal receiving dish no larger than 1 meter in diameter, provided that the location of the dish is approved in writing by the board. No dish may be installed except in compliance with applicable law on these buildings or lands. provided, however, that outside television antennas of a type approved by the association will be permitted until such time as cable television is secured by the property owner or made available to property owners through the association.~~

(O) No changes in elevations of property subject to these restrictions shall be made which will cause undue hardship to adjoining property with respect to natural runoff of rain water.

(P) All landscaped areas shall be maintained in a live, healthy and growing condition, properly watered and trimmed. Any planting of grass, shrubs or trees which are removed or become dead or badly damaged shall be replaced within ten (10) days with similar sound, healthy plant materials. Major changes in landscaping shall be submitted to the Board or its designated committee for its approval.

(Q) No permanent hurricane or storm shutters shall be installed unless the same be of a type approved by the association.

(R) No mailbox, mailbox stand, package receptacle or other unit to be utilized for the purpose of receiving mail or parcels shall be erected or placed upon any lot or common area in the subdivision other than collective mailbox and package receptacles erected for the use of all residents in the common area.

(S) Lawful use. No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the property shall be the same as the responsibility for the maintenance and repair of the property concerned.

(T) Noise. Any non-emergency work, including remodeling or repairs, requiring the use of tools such as drills, hammers, etc., is to be confined between the hours of 7:30 A.M. to 8:00 P.M. Monday through Saturday, and is not permitted on Sundays or holidays. If EMERGENCY WORK requiring the use of tools such as drills, hammers, etc., is necessary outside the hours indicated above, or on weekends or holidays, permission for such work must be obtained from the association. Radios, T.V.'s, stereo and other sound systems, etc., should be kept at a minimum volume between the hours of 10:00 P.M. and 8:00 A.M.

(U) Leasing. Homes may be rented providing the occupancy is only by the Lessee and his family. No home may be leased more than four (4) times in any calendar year. A lease includes any time during which the home is occupied by a tenant. (For example, a lease which starts in November of one year and ends in January of the next year will count as two lease terms.) All rentals are subject to the approval of the Board and no rooms may be rented and no transient tenants accommodated. Sub-leasing is not permitted. A rental or lease is a grant by the unit owner of a temporary right of use of the home for valuable consideration.

(V) Sale or lease. No owner may dispose of a lot or any interest therein by sale, gift, or by lease without approval of the Association. If the purchaser or lessee is a corporation, the approval shall be conditioned upon the approval by the Association of all occupants of the home. The approval of the association shall be obtained in the manner hereinafter provided.

(a) Notice to Association. An owner intending to make a bona fide sale, gift, or lease, or other transfer of his home or lot or any interest therein shall give notice to the association of such intention, together with the name and address of the intended purchaser, grantee, or lessee, an application processing fee (transfer fee) in the amount of \$100.00 (or such other amount set by the Board from time to time), a copy of their driver's license, and such other information as the association may reasonably require, and the terms of the proposed transaction. The association may also require a security deposit for a tenant, in an amount allowed by law, and set by the Board from time to time, to protect against damage to the common areas or Association property.

(b) Election of Association. Within 30 days after receipt of such notice, a copy of their driver's license, the application fee, and other materials reasonably required, if a sale, the association must either approve a proposed sale or furnish a purchaser approved by the Association who will accept the transaction upon terms as favorable to the seller as the terms stated in the contract, except that a purchaser furnished by the Association may have not less than 60 days subsequent to the date of approval within which to close the transaction, and except that the approval of a corporation may be conditioned as elsewhere stated. If the proposed transfer is by gift, the association shall have the right to approve or deny the transfer (within 30 days) but shall have no obligation to provide a substitute transferee. The approval of the association shall be in recordable form and shall be delivered to the purchaser and recorded in the Public Records of Palm Beach County. If the transaction is a lease, the association shall, within 30 days after receipt of the notice and appropriate information or materials, either approve or disapprove the proposed tenants. If the association disapproves the proposed tenants it shall have no obligation to furnish a substitute lessee.

(c) Unauthorized transactions. Any sale, transfer, or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the association.

#### SECTION VII PLAN APPROVAL

No building, structure or other improvements of any kind shall be constructed, erected, or altered upon any lot in the subdivision unless and until the plans for such building, structure or other improvements have been first approved by the association and developer or developer's designee. The Board may assign this approval process to an architectural and landscape committee.

All setback areas, yards, walkways, driveways and parking areas shall be maintained and kept in a neat and clean condition, free of refuse and debris.

All proposed construction, improvement, or alteration must comply with the Xanadu By The Sea Construction Requirements - Architectural Requirements, which are attached hereto as an Exhibit. These requirements may be changed, amended, or added to at any time, by the board of directors. Any changes shall be provided to the members of the association. The association may charge a review fee, in an amount set by the board from time to time, for any plan submission.

SECTION VIII  
DURATION; REMEDIES  
AND AMENDMENT

(A) The easements, covenants, conditions and restrictions set forth in this Declaration shall constitute ~~parties~~ covenants running with the land, shall be binding upon all parties having any right, title or interest in lands in the subdivision or any part thereof, their heirs, successors, or assigns, and shall inure to the benefit of and be enforceable by ~~developer or~~ the association and the lot owners, and failure to enforce any restriction, covenant, condition, obligation, reservation, right, power or change hereinbefore or hereinafter contained, however long continued, shall in no event be deemed a waiver of the right to enforce as aforesaid as to the same breach or violation occurring prior or subsequent thereto. Failure to enforce ~~de~~ same shall not, however, give rise to any liability on the part of ~~developer or~~ the association with respect to parties aggrieved by such failure.

(B) REMEDIES FOR VIOLATION: Each owner shall be governed by and shall comply with the terms of the documents (the Declaration, By-laws, Articles, and Rules and Regulations) and regulations adopted pursuant thereto and said documents and regulations as they may be amended from time to time. A default shall entitle the association or other owners to the following relief:

1. Legal proceedings. Failure to comply with any of the terms of the documents and regulations adopted pursuant thereto shall be grounds for relief, which relief may include but shall not be limited to an action to recover sums due for damages or injunctive relief or both, and which actions may be maintained by the association or in a proper case by an aggrieved owner. The association shall have all remedies provided by law. Additionally, the association may fine a unit owner for any such violations or defaults in accordance with law.

a. Fining. The association's board or its designee may levy fines, in such amounts as set by the board from time to time. The initial amount of fines shall be:

- (1) First offense \$25.00
- (2) Second offense \$50.00

If the fines are not paid, or there are subsequent violations, the matter will be turned over to the association's attorney to initiate litigation. The following is a list of examples of possible violations under the association's documents, but is not intended to be all inclusive.

- (1) All parking offenses.
- (2) Rules pertaining to garbage pick up and lawn clippings.

- (3) Landscaping.
- (4) Architectural violations and failure to properly maintain the lot and/or home.
- (5) Improper storage of items on the exterior of the residence.
- (6) Noise problems.
- (7) Driving violations.
- (8) Failure to give proper notice of transfer, sale, or lease.

Prior to the levying of a fine there will be a hearing before the board or its' designated committee at which the alleged offender may present evidence regarding his\her behavior or position on the matter. The alleged offender will receive at least 14 days notice in advance of said hearing. Fining procedures will be operated in compliance with applicable law. Any fine not paid shall be collectible by the association in the same manner as delinquent assessments, and the association shall have the right to lien and foreclose on a lot in order to collect said fine.

2. Negligence. An owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents or lessees. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a lot or its appurtenances.

3. Costs and attorneys' fees. In any proceeding arising because of an alleged default by an owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court. Additionally, the association shall be reimbursed for all legal costs and expenses incurred as a result of the Association hiring an attorney to obtain compliance with any document provisions. The owner who has violated the document provisions shall be responsible for such reimbursement.

4. No waiver of rights. The failure of the association or owner to enforce any covenant, restriction or other provision of the documents shall not constitute a waiver of the right to do so thereafter.

Violation or breach of any condition, restriction or covenant herein contained shall give the developer or association or owner in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, restrictions or covenants, and to prevent the violation or breach of any and the expense of such litigation shall be borne by the then owner or owners of the subject property, provided such proceeding results in a finding that such owner was in violation of said restrictions.

~~Expenses of litigations shall include reasonable attorney's fees incurred by developer or association in seeking such enforcement. The invalidation by any court of any of the restrictions herein contained shall in no way affect any of the other restrictions, but they shall remain in full force and effect.~~

(C) AMENDMENT: ~~These restrictions may be amended by developer so long as it owns any property subject to said restrictions and thereafter these restrictions may be amended by the association by majority vote of the total votes of the association its board of directors. (i.e. 33 affirmative votes)~~

~~Wherever developer's approval is contemplated or required, such approval shall only remain a requirement or a privilege, as the case may be, during the period that Developer shall hold fee simple title to all or any portion of the land comprising subdivision.~~

This is not a certified copy

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 V

VOTING 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 VI

BOARD 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, Florida
NERBERT C. WETHERBY	1422 South Atlantic Drive, East Lantana, Florida
SUSAN P. TWITTY	530 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 VIIOFFICERS

(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 VIIICORPORATE EXISTENCE

The Association shall have perpetual existence.

ARTICLE IXBY-LAWS

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

ARTICLE XAMENDMENT 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 XISUBSCRIBERS

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

~~ARTHUR E. HILLBRATH, JR. 326 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 XIIINDEMNIFICATION 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 contract 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 365 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.

THIS IS NOT A CERTIFIED COPY

AMENDED AND RESTATED  
BYLAWS OF  
XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC.  
A NONPROFIT CORPORATION

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

ARTICLE I  
NAME AND LOCATION

The name of the corporation is XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC. The principal mailing address office of the corporation shall be at 502 Xanadu Place, Jupiter, FL. 33477 ~~865 North Dixie Highway, Lantana, Florida,~~ or such other address as may be designated by the Board from time to time but meetings of members and directors may be held at such places within the State of Florida as may be designated by the board of directors.

ARTICLE II  
DEFINITIONS

1. "Association" shall mean and refer to XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns.
2. "Common Area" shall mean all real property owned by the association for the common use and enjoyment of the owners.
3. "Declarant" shall mean and refer to VILLAGES OF XANADU, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from declarant for purposes of development.
4. "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions and Conditions applicable to the subdivision and recorded on August 5, 1977 in the Public Records of Palm Beach County, Florida, in Official Records Book 2718 33 at Page 1811 and any amendments thereto ~~70 and 71~~.
5. "Lot" shall mean and refer to any plot of land shown on the recorded subdivision plat with the exception of the common area.
6. "Member" shall mean and refer to any person entitled to membership in the association as provided in the articles or declaration.
7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the subdivision, including contract sellers, but

excluding those holding title merely as security for the performance of an obligation.

8. "Subdivision" shall mean and refer to that certain tract of real property described in the declaration, and such additions thereto as may be brought within the jurisdiction of the association pursuant to the provisions of the declaration.

ARTICLE III  
MEETINGS OF MEMBERS

1. Annual Meetings. ~~The first annual meeting of members shall be held within one year from the date of incorporation of the association or not later than sixty (60) days after fifty (50%) per cent of the lots have been sold, whichever first occurs. Subsequent Annual meetings of members shall be held in the month of March, at a time, date, and place determined by the Board. on the same day of the same month of each year thereafter at the hour of 10:00 o'clock a.m. If the day for the annual meeting of members is a legal holiday, the meeting will be held at the same hour on the next following day which is not a legal holiday.~~

2. Special Meetings. Special meetings of members may be called at any time by the president or by the board of directors, or on written request of members who are entitled to vote one-fourth of all votes (i.e. 16 votes) of the Class-A membership. The business at a special meeting shall be limited to the items specified in the notice of the meeting.

3. Notice of Meetings. Written notice of each meeting of members shall be given by, or at the direction of, the secretary or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) but not more than thirty (30) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the association, or supplied by such member to the association for the purpose of receiving notice. Such notices shall specify the day, hour and place of the meeting, and in the case of a special meeting, the purpose of the meeting. Persons entitled to notice may waive notice of any meeting at any time but only by written waiver.

4. Quorum. The presence at the meeting, in person or by proxy, of members entitled to cast thirty percent (30%) the majority of the votes of each class of the membership shall constitute a quorum for authorization of any action, except as may otherwise be provided in the articles of incorporation, Florida Statutes, the Declaration, or these bylaws. If a quorum is not present at any meeting, or in order to allow more time for members to vote, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than

announcement at the meeting, until a quorum is present. Whenever the approval or decision of the members is required, such approval or decision shall require the approval of a majority of the votes cast at a meeting at which a quorum is present, unless the documents, or Florida law, requires a different number.

5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Proxies shall be revocable, and the proxy of any owner shall automatically terminate on conveyance by him of his lot. Under current law, general proxies may be used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Association at or before the appointed time of the meeting or reconvening thereof. Holders of proxies need not be members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides to substitute another person to hold the proxy. Proxy voting shall comply with the applicable Florida Statutes.

6. The order of business at the annual members' meetings, and, as far as practical at all other members' meetings, shall be:

- (a) Election of chairman of the meeting.
- (b) Calling of the roll and certifying of proxies.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of officers.
- (f) Reports of committees.
- (g) Election of inspectors of election.
- (h) Election of directors.
- (i) Unfinished business.
- (j) New business.
- (k) Appointment of nominating committee.
- (l) Adjournment.

The order shall change to conform to applicable Florida Law.

7. Action without a meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such members as elsewhere herein set forth)

having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which a quorum of members (or authorized persons) entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. Members may also consent in writing to actions taken at a meeting by providing a written statement to that effect and their vote shall be fully counted as though they had attended the meeting.

ARTICLE IV  
BOARD OF DIRECTORS--TERM OF OFFICE;  
FIRST ELECTION; REMOVAL

1. Number. The affairs of the association shall be managed by a board of five (5) directors who must need not be members of the association.

2. Term of Office. At the first annual meeting, the members shall elect directors as provided in the Articles of Incorporation of the association. The Board shall consist of staggered terms to insure some continuity of the Board.

3. Removal. Any director may be removed from the board, with or without cause, by a majority vote of the members of the association. In the event of death, resignation, or removal of a director, his successor shall be selected by the remaining members of the board and shall serve for the unexpired term of his predecessor, or in accordance with current law.

ARTICLE V  
BOARD OF DIRECTORS--NOMINATION AND ELECTION

1. Nomination. Nomination for election to the board of directors shall be by nomination committee. However, nominations may also be made from the floor at any annual meeting of members and any member may nominate himself. The nominating committee shall consist of a chairman who shall be a member of the board of directors and two or more members of the association. The committee shall be appointed by the board of directors prior to each annual meeting to serve from the close of such meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the board of directors as it shall in its discretion determine, but in no event shall it nominate less than the number of vacancies to be filled.

2. Election. Election to the board of directors shall be by secret written ballot, or proper proxy, or as otherwise required by law. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the declaration. Persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI  
BOARD OF DIRECTORS--MEETINGS

1. Regular Meetings. Regular meetings of the board of directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the board. In the event the regular date for a meeting falls on a legal holiday, such meeting shall be held at the same time on the next following day which is not a legal holiday.

2. Special Meetings. Special meetings of the board of directors shall be held when called by the president of the association, or by any two directors, after not less than twenty four(24) hour notice to each director.

3. Quorum. A majority of the directors shall constitute a quorum for the transaction of business. The majority of those directors present may, at any Board meeting, adjourn the meeting from time to time. Every act performed or decision made by a majority of directors present at a duly held meeting in which a quorum is present shall constitute the act or decision of the board.

4. Notice of Board Meeting. Notice of board meetings shall comply with applicable Florida law. Meetings of the board of directors shall be open to all unit owners. Current corporate law requires that notice of such meetings be posted at a designated location on the property at least forty-eight (48) continuous hours in advance for the attention of the members of the Association, except in the event of an emergency in which case the notice shall be posted as soon as practicable after the need for emergency meeting is known to the Association. All notices shall include an agenda for all known substantive matters to be discussed, or have an agenda attached to it. Meetings at which a regular monthly or quarterly assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. Board meetings with the association's attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege shall not be open to the members.

ARTICLE VII  
BOARD OF DIRECTORS--POWERS AND DUTIES

1. Powers. The board of directors shall have power to
- (a) Adopt and publish rules and regulations governing the use of the common areas and facilities including the personal conduct of the members and their guests thereon, and to establish penalties for infractions of such rules and regulations;
  - (b) Suspend the ~~voting rights and~~ right to use of the recreational facilities of any member during any period in which such member is in default in the payment of any assessment levied by the association. Such rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days for infraction of published rules and regulations;
  - (c) Exercise on behalf of the association all powers, duties and authority vested in or delegated to the association and not specifically reserved to the membership by the declaration, articles of incorporation, or by other provisions of these bylaws;
  - (d) Declare the office of a member of the board of directors to be vacant in the event that such member is absent from two (2) consecutive regular meetings of the board of directors; and
  - (e) Employ a manager, independent contractors, and such other employees as they may deem necessary and to prescribe their duties.
  - (f) Use the proceeds of assessments, fees, and fines, in the exercise of its powers and duties.
  - (g) Maintain, repair, replacement, improvement, and operation of the property.
  - (h) Reconstruct improvements after casualty and the further improvement of the property.
  - (i) Approve or disapprove proposed purchasers, occupants, transferees, lessees and mortgagees in the manner provided by the documents.
  - (j) Enforce by legal means the provisions of the Florida Statutes, its regulations, the documents, the Declaration, the Articles of Incorporation, the By-laws of the Association, and the regulations for the use of the property.

2. Duties. It shall be the duty of the board of directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at each annual meeting, or at any special meeting at which such a statement is requested in writing by one-third (1/3) of the ~~Class-A~~ members entitled to vote thereat;

(b) Supervise all officers, agents and employees of the association and see to it that their duties are properly performed;

(c) As more fully provided in the declaration to:

(1) Fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period.

(2) Send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date, or to bring an action at law against the owner personally obligated to pay the same.

(d) Issue, or cause an appropriate officer to issue, on demand by any person, a certificate setting forth whether or not any assessment has been paid. A statement in a certificate to the effect that an assessment has been paid shall constitute conclusive evidence of such payment. The board may impose a reasonable charge for the issuance of these certificates.

(e) Procure and maintain adequate liability and hazard insurance on all property owned by the association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause the common area to be maintained.

(h) Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket

expenses relating to the proper discharge of their respective duties.

ARTICLE VIII  
OFFICERS AND THEIR DUTIES

1. Enumeration of Offices. The officers of the association shall be a president and vice president, who shall at all times be members of the board of directors, and a secretary, treasurer, and such other officers as the board may from time to time by resolution create.

2. Election of officers. The election of officers shall take place at the first meeting of the board of directors following each annual meeting of members, which meeting shall take place within ten (10) days of the election at the annual meeting.

3. Term. The officers of the association shall be elected annually by the board. Each shall hold office for a term of one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

4. Special Appointments. The board may elect such other officers as the affairs in the association may require, each of whom shall hold office for such period, have such authority and perform such duties as the board may, from time to time, determine.

5. Resignation and removal. Any officer may be removed from office by the board at any time with or without cause. Any officer may resign at any time by giving written notice to the board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, ~~and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.~~

6. Vacancies. A vacancy in any office may be filled by appointment of the board. The officer appointed to such vacancy shall serve for the unexpired term of the officer he replaces.

7. Multiple offices. The offices of secretary and treasurer may be held by the same person. A person may hold more than one office except that a person may not hold the office of President and Secretary at the same time. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the board of directors; shall see that orders and resolutions of the board are carried out; may shall

sign all leases, mortgages, deeds and other instruments, and ~~may shall~~ co-sign all checks and promissory notes.

(b) Vice President. The vice president shall act in the place of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the board and of the members; keep the corporate seal of the association and affix it to all papers so requiring; serve notice of meetings of the board and of members; keep appropriate current records showing the members of the association together with their addresses; and perform such other duties as may be required by the board or by law. Minutes of all meetings of the members of the association, and of the Board of Directors, must be maintained in written form, or in another form that can be converted to written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director must be noted in the minutes.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all funds of the association, and shall disburse such funds as directed by resolution of the board of directors; shall sign all checks and promissory notes of the association; shall keep proper books of account; ~~shall cause an annual audit of the association books to be made by a certified public accountant at the completion of each fiscal year;~~ and shall prepare with the board an annual budget and statement of income and expenditures, a copy of which documents shall be delivered to each member, and a report on which shall be given at the regular annual meeting of members.

ARTICLE IX  
COMMITTEES

The President of the association shall appoint such committees as he deems necessary or advisable to carry out the duties of the association as set forth in the declaration and these by laws. Any such appointments are subject to approval by the board of directors and any committee established by the President, or any person appointed to such committee, may be dissolved or replaced by the board at a special meeting of the board called for this purpose, or at any regular meeting, by majority vote of the members of the board.

Additionally, the board of directors may appoint from time to time such standing or temporary committees as the board may deem necessary and convenient for the efficient and effective operation of the association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If a committee has delegated to it the authority to bind the Association or act for and in the place of the board, including the power to authorize the expenditure of funds or prepare a proposed budget, the committee shall hold its meetings and give notice of such meeting with the same formalities as required for board meetings. If the law is changed to allow committee meetings to be private then all such meetings shall be private or closed to owners if they are not members of the committee.

#### ARTICLE X ASSESSMENTS

As more fully provided in the declaration, each member is obligated to pay to the association annual and special assessments which are secured by a continuing lien on the property against which such assessments are made. Any assessments not paid when due are considered delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall be subject to a late fee, (initially in the amount of \$25.00, which is subject to change by the Board on an annual basis) bears interest from the date of delinquency at the rate of eight and one half (8 1/2) per cent per annum, and the association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against his property. Interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of any assessment due. No owner may waive or otherwise escape liability for assessments by nonuse of the common area or abandonment of his lot.

#### ARTICLE XI BOOKS, RECORDS AND INSPECTION

1. Official Records. The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.

(b) A copy of the bylaws of the association and of each amendment to the bylaws.

(c) A copy of the articles of incorporation of the association and of each amendment thereto.

(d) A copy of the declaration of covenants and a copy of each amendment thereto.

(e) A copy of the current rules of the homeowners' association.

(f) The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least seven (7) years.

(g) A current roster of all members and their mailing addresses and parcel identifications.

(h) All of the association's insurance policies or a copy thereof, which policies must be retained for at least seven (7) years.

(i) a current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed must also be considered official records and must be kept for a period of one (1) year.

(j) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of (at least seven (7) years. The financial and accounting records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures.

2. A current account and a periodic statement of the account for each member, designating the name and current address for each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.

4. Any other records that identify, measure, record, or communicate financial information.

2. Inspection and Copying of Records. The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community.

(a) The failure of an association to provide access to the records within ten (10) business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be \$50.00 per calendar day up to ten (10) days, the calculation to begin on the eleventh (11th) business day after receipt of the written request.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

The association may change these provisions if so allowed by law.

~~The books, records and papers of the association shall be subject to inspection by any member during ordinary business hours. The declaration, articles of incorporation and bylaws of the association shall be available for inspection by any member at the principal office of the association, where copies shall be made available for sale at a reasonable price.~~

ARTICLE XII  
CORPORATE SEAL

The association shall have a seal in circular form having within its circumference the words: XANADU BY THE SEA PROPERTY OWNERS ASSOCIATION, INC., a Florida corporation, not for profit.

ARTICLE XIII  
FISCAL YEAR

1. The fiscal year of the association shall be the calendar year, ~~except that the first fiscal period shall begin on the date of incorporation and shall end on December 31st of the year of incorporation.~~

2. Financial Reporting. The association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5) (within ten (10) business days), provide each 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 member. The financial report must consist of either:

(a) Financial statements presented in conformity with generally accepted accounting principles; or

(b) A financial report of actual receipts and expenditures, cash basis, which report must show:

1. The amount of receipts and expenditures by classification; and

2. The beginning and ending cash balances of the association.

ARTICLE XIV  
AMENDMENTS

These bylaws may be amended, at a regular or special meeting of members, by the affirmative vote of a majority (i.e. 33 affirmative votes) of a quorum of the total votes of the members of the association. present in person or by proxy.

ARTICLE XV  
CONFLICTS

In the case of any conflict between the articles of incorporation and these bylaws; the articles shall control, in the case of any conflict between the declaration and these bylaws the declaration shall control.

XANADU BY THE SEA CONSTRUCTION REQUIREMENTS  
ARCHITECTURAL REQUIREMENTS

1. No structure shall exceed two stories in height. The first floor elevation shall be a minimum of 1.5' above the crown of the subdivision road (now known as Xanadu Place) or the adjacent cul-de-sac, or as required by the Town of Jupiter, whichever is greater.
2. Each dwelling shall contain a minimum of 1,500 square feet of enclosed living area, exclusive of a two car garage, screen porches and patios, etc.
3. There shall be a minimum of four parking spaces within the property line. This could be a combination of two in the garage and two outside the garage. Each outside parking space should be a minimum of 9 feet wide and 18 feet long. Parking in the street and cul-de-sacs will not be permitted. Garages shall be enclosed.
4. Driveways shall be of concrete cobblestone or approved paver blocks or similar products approved by the Board. Concrete curb and sidewalk to remain.
5. Roof shall be of such substance and materials that will compliment the design of the structure pending the approval of the Board.
6. Exterior shall be wood frame or a wood frame appearance in design pending pre-approval of the Board.
7. As for exterior colors, a paint sample must be attached and pre-approved by the Board.
8. Landscaping plans to be approved by the Board or it's designated committee. Landscaping should be contained within the property lines, and include an automatic sprinkler system. Landscaping must be completed at the end of construction before obtaining a certificate of occupancy.

## MANNERS OF CONSTRUCTION

1. Construction materials and debris must be contained on the construction site or on nearby site, if written permission is provided by lot owner. Continuous clean up and removal of debris from construction site so as to insure the safety and welfare of neighborhood is required. In the event of Hurricane warnings the owner, builder, contractor and ~~or~~ subcontractor must secure all materials. Temporary sanitary facilities shall be provided on site. Location of sanitary facility should be in such a place as not to be unsightly to neighbors.

2. Construction parking: No parking on sidewalks, cul-de-sacs or street other than delivery of pertinent building materials or supplies. Exception will be considered upon an individual basis by pre-approval of the Board.

3. Building time according to the Town of Jupiter Ordinances: Start at 7:30 a.m. and end at 8:00 p.m., Monday through Saturday. No work allowed on Sunday or holidays.

4. Replace or repair any damage to adjoining common property including streets, sidewalks, and landscaping prior to issuance of Certificate of Occupancy.

~~5. 6-~~ No sign of any kind shall be displayed to the public view on any lot, or the common area, except one sign of not more than five (5) square feet advertising an "open house" related to the sale of a property. The "open house" sign may not be displayed overnight. ~~A sign may be used by a builder to advertise a property containing only the builder's name and telephone number for the period from commencement of construction through receipt of the Certificate of Occupancy.~~

~~6. 7-~~ The period of time for completion shall ~~should~~ not exceed nine (9) months.

~~7. 8-~~ (a) There must be a minimum separation of ten (10) feet between dwellings and no dwelling shall be constructed within ten (10) feet of any other dwelling except in those instances where two adjacent dwellings both utilize the same lot line as a zero lot line for construction purposes.

(b) Observe the following setbacks:

Collector Drive	10 feet
Cul-de-sacs	20 feet
Xanadu Boundary Line	5 feet
Side and Rear	Zero feet

NOTE: These guidelines do not necessarily reflect all applicable building restrictions and are subject to change. All building must conform to the "Covenants" and the applicable building and zoning ordinances of the Town of Jupiter and other applicable governmental agencies.

