

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BAYWOOD COLONY VILLAS ASSOCIATION, INC.**

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AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BAYWOOD COLONY VILLAS ASSOCIATION, INC.

*[Substantial rewording of the Association's Articles of Incorporation.
See the Association's Articles of Incorporation and amendments for present text.]*

The Members of Baywood Colony Villas Association, Inc. adopt these Amended and Restated Articles of Incorporation (these "Articles"). The original Articles of Incorporation were filed with the Florida Department of State, Division of Corporations on July 29, 1971.

ARTICLE 1
NAME AND PRINCIPAL ADDRESS

1.1 **Name.** The name of the Corporation shall be Baywood Colony Villas Association, Inc. (the "Association").

1.2 **Principal Address.** The principal address of the Association shall be c/o Casey Condominium Management, 4370 S. Tamiami Trail, #102, Sarasota, Florida 34231. The Association's Board of Directors may change the location of the principal address from time to time.

ARTICLE 2
PURPOSE

2.1 **Purpose.** The purpose for which the Association is organized is to provide an entity pursuant to Chapter 718, Florida Statutes (the "Condominium Act"), for the operation of Baywood Colony Villas, a Condominium, Section One and Baywood Colony Villas, a Condominium, Section Two (collectively, the "Condominium"), located upon lands in Sarasota County, Florida.

2.2 **Distribution of Income.** The Association shall make no distribution of income to its Members, Directors or Officers unless otherwise provided by the Second Amended and Restated Declaration of Condominium of Baywood Colony Villas, a Condominium, Section One or the Second Amended and Restated Declaration of Condominium of Baywood Colony Villas, a Condominium, Section Two (collectively, the "Declaration") or Florida law.

ARTICLE 3
POWERS

3.1 **Powers.** The powers of the Association shall include and be governed by the following provisions:

3.1.1 **Common Law and Statutory Powers.** The Association shall have all of the common law and statutory powers of a corporation not for profit not in conflict with the terms of these Articles, including those set forth in Chapter 718, Florida Statutes (the

"Condominium Act") and Chapter 617, Florida Statutes (the "Florida Not for Profit Corporation Act") except as limited by these Articles, the Declaration, the Amended and Restated Bylaws of Baywood Colony Villas Association, Inc. (the "Bylaws") and any rules and regulations adopted by the Association's Board of Directors (the "Rules and Regulations") (collectively, the Governing Documents").

3.1.2 **Specific Powers.** The Association shall have all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration, as it may be amended from time to time, including, but not limited to, the following:

(a) To make and collect Assessments against Members as Unit Owners to defray the costs, expenses and losses of the Condominium.

(b) To use the proceeds of Assessments in the exercise of its powers and duties.

(c) To undertake the maintenance, repair, replacement and operation of the Condominium Property.

(d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its Members as Unit Owners and its Directors, Officers, agents, committee members and volunteers.

(e) To undertake the reconstruction of improvements after casualty, and the further improvement of the Condominium Property.

(f) To make, amend and rescind reasonable Rules and Regulations respecting the use of the Condominium Property, including the Units, Common Elements and Association Property.

(g) To approve or disapprove the transfer, sale, lease, mortgage and ownership of Units in accordance with the Declaration or the Bylaws.

(h) To enforce, including by legal means, the provisions of the Condominium Act, the Declaration, these Articles, the Bylaws, and the Rules and Regulations.

(i) To contract for the management and maintenance of the Condominium Property and to authorize a Florida licensed community association manager ("CAM") to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of fees and Assessments, preparing checks or electronic transfers for the payment of bills and invoices on behalf of the Association, preparation of records, financial statements and income tax forms and budget models and associated budget related documents, assist in the preparation of minutes, counting of proxy votes, enforcement of Rules and Regulations and maintenance, repair and replacement of the common elements with funds as shall be made available by the Association for such purposes. The Association and its Directors

and Officers shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Condominium Act, including but not limited to the making of Assessments, promulgation of Rules and Regulations and execution of contracts on behalf of the Association.

(j) To contract for the management or operation of portions of the Common Elements susceptible to separate management or operation and to lease such portions of the Common Elements as the Board of Directors deems appropriate.

(k) To employ personnel to perform the services required for proper operation of the Condominium.

(l) To purchase any land or recreation lease upon the approval of not less than two-thirds (2/3) of the Voting Interests of the Association.

(m) To grant, modify or move easements over, under or through the Common Elements or property owned by the Association.

(n) To sue and be sued.

(o) To borrow money and secure the same by assigning Assessments, lien rights, Assessment collection authority, and by execution of mortgages encumbering Association Property, but not the Common Elements, and to acquire property or interests therein encumbered by mortgages which are to be paid or assumed by the Association

3.1.3 Emergency Powers. In the event of an emergency as defined herein, the Board of Directors may exercise the emergency powers described herein, and any other powers authorized by the Condominium Act or Sections 617.0207 and 617.0303, Florida Statutes. For purposes of this paragraph only, an emergency exists during a period of time that the Condominium, or the immediate geographic area in which the Condominiums are located, is subject to: a state of emergency declared by civil or law enforcement authorities; a hurricane watch or warning as issued by a governmental authority; a partial or complete evacuation order issued by civil or law enforcement authorities; the declaration of a federal or state "disaster area" status; or catastrophe, whether natural or manmade, which seriously damages, or threatens to seriously damage the physical existence of the Condominium. During an emergency as defined herein, the Board of Directors may exercise the following emergency powers:

(a) Conduct meetings of the Board of Directors and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including, but not limited to, publication, telephone, radio, United States mail, electronic mail, the Internet, public service announcements, and conspicuous posting in the Condominium or any other means the Board of Directors deems reasonable under the circumstances. Notice of Board of Directors' decisions may be communicated as

provided herein. The Directors in attendance at such a meeting of the Board of Directors, if more than one (1) Director, shall constitute a quorum.

(b) Cancel and reschedule any membership meeting, committee meeting or meeting of the Board of Directors.

(c) Name as interim assistant Officers persons who are not Directors, which assistant Officers shall have the same authority as the executive Officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any Officer of the Association.

(d) Relocate the Association's principal address or designate alternative principal addresses.

(e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal and other emergency assistance.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, electricity; water, sewer, or security systems; or heating, ventilating and air conditioners.

(g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board of Directors, determine any portion of the Condominiums unavailable for entry or occupancy by Unit Owners, tenants, guests, occupants, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the Condominium in the event of a mandatory evacuation order in the locale in which the Condominium is located. Should any Unit Owner, Tenant, Guest, Occupant, or Invitee fail or refuse to evacuate the Condominium where the Board of Directors has required evacuation, the Association shall be immune from any and all liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board of Directors, determine whether the Condominium Property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the Declaration.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of mold, mildew or fungus by removing and disposing of wet drywall, insulation, carpet, carpet pad, wood flooring, tile, baseboards, air ducts, insulation, cabinetry, any and all personal property or belongings of a Unit Owner or occupant, including but not limited to furniture, clothes, mattresses, and all other fixtures on or within the Common Elements, Association Property or the

Units, even if the Unit Owner is obligated by the Declaration or Florida law to insure or replace those fixtures and to remove personal property from a Unit.

(k) Contract, on behalf of any Unit Owner, for items or services for which Unit Owners are otherwise individually responsible for, but which are necessary to prevent further damage to the Common Elements, Condominium Property or Association Property. In such event, the Unit Owner on whose behalf the Board of Directors has contracted shall be responsible for reimbursing the Association for the actual costs of the items or services, and the Association may use any Assessment and claim of lien authority provided by Section 718.116, Florida Statutes, or the Declaration, to enforce collection of such charges.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the Declaration, the Articles of Incorporation, or the Bylaws, the Board of Directors may levy one or more Special Assessments without a vote of the Unit Owners.

(m) Without Unit Owner approval, borrow money and pledge Association assets as collateral to fund emergency repairs and carry out the duties of the Association when operating funds are insufficient. This paragraph does not limit the general authority of the Association to borrow money, subject to such restrictions as are contained in the Articles of Incorporation, the Declaration, or the Bylaws.

(n) Corporate action taken in good faith to meet the emergency needs of the Association or its Members shall bind the Association; have the rebuttable presumption of being reasonable and necessary; and may not be used to impose liability on a Director, Officer, or employee of the Association.

The special powers authorized above shall be limited to the time period reasonably necessary to protect the health, safety, and welfare of the Condominium Property, the Association and Association Property, the Units, and the Unit Owners, Tenants, Guests, Occupants and Invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs to the Common Elements and Association Property.

3.2 Purchasing Units. The Association shall not have the power to purchase a Unit in the Condominium without approval of not less than two-thirds (2/3) of the Voting Interests of the Association, except at sales in foreclosure of liens for Assessments for common expenses or deeds in lieu of foreclosure, which shall not require approval by the membership.

3.3 Association Property. All funds and the title of all properties acquired by the Association and their proceeds shall be held in trust for the members in accordance with the provisions of the Governing Documents.

3.4 Limitation on Exercise of Powers. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Condominium Documents and the Condominium Act.

ARTICLE 4 **MEMBERS**

4.1 **Membership.** The Members of the Association shall consist of all of the record Owners of Units in the Condominium as shown by recordation of a deed or other appropriate instrument in the Public Records of Sarasota County, Florida and the record owners of units in such other condominiums managed by the Association; and after termination of the Condominium shall consist of those who are Members at the time of such termination, their successors and assigns.

4.2 **Change of Membership.** After receiving approval of the Association required by the Declaration, change of membership in the Association shall be established by recording in the Public Records of Sarasota County, Florida, a deed or other instrument establishing a record title to a unit in the Condominium and the delivery to the Association of a certified copy of such instrument. The Owner designated by such instrument automatically becomes a member of the Association and the membership of the prior owner is automatically terminated.

4.3 **Limitation of Transfer of Shares.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to a Unit.

4.4 **Vote.** The Owner of each Unit, individually, or the Owners of each Unit, collectively, shall be entitled to one (1) vote on behalf of the Unit. The manner of exercising voting rights shall be determined by the Bylaws.

ARTICLE 5 **DIRECTORS**

5.1 **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors determined by the Bylaws, but in no event consisting of less than three (3) nor more than seven (7) Directors, and in the absence of such determination, shall consist of three (3) Directors. Directors shall be Members of the Association.

5.2 **Election of Directors.** Directors of the Association shall be elected at the annual meeting of the Members, in the manner determined by the Bylaws.

5.3 **Removal and Replacement of Directors.** Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

ARTICLE 6 **OFFICERS**

6.1 The affairs of the Association shall be administered by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors at its organizational meeting following the annual meeting of the Members of the Association, and shall serve at the pleasure of the Board of Directors.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification of Officers and Directors.

7.1.1 **Indemnity.** The Association shall indemnify any Officer, Director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, Officer, or committee member of the Association, against expenses, including reasonable attorney's fees and appellate attorney's fees; judgments; fines; and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, directors, and committee members as permitted by Florida law.

7.1.2 **Defense.** To the extent that a Director, Officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorney's fees and appellate attorney's fees, actually and reasonably incurred by him or her in connection therewith.

7.1.3 **Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or committee member subject to the understanding and agreement of such Director, Officer, or committee member to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized herein.

7.1.4 **Miscellaneous.** The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

7.1.5 **Insurance.** The Association has the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, committee member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of Article 7 herein.

7.1.6 **Amendment.** Notwithstanding anything to the contrary herein, the indemnity provisions herein may not be amended without the approval in writing of all persons whose interests would be adversely affected by such amendment.

ARTICLE 8 BYLAWS

8.1 The Bylaws may be amended in the manner provided in the Bylaws.

ARTICLE 9 AMENDMENTS

9.1 Amendments to the Articles shall be proposed and adopted in the following manner:

9.1.1 **Proposal.** A resolution for the adoption of a proposed amendment may be proposed either by the Board of Directors or by not less than thirty-five percent (35%) of the membership of the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

9.1.2 **Adoption.** Amendments to the Articles of Incorporation shall be approved by not less than two-thirds (2/3) of the Members present, in person or by proxy, at any meeting considering the proposed amendment at which a quorum has been obtained.

9.1.3 **Limitation on Amendments.** No amendment shall make any changes in the qualifications for membership, nor the voting rights of members, nor any change in Article 3, Section 3.3 herein, without approval in writing of all Members and the joinder of all record owners of mortgages upon the Condominium property. No amendment shall be made that is in conflict with the Condominium Act or the Declaration.

9.1.4 **Certification.** A copy of each amendment shall be certified by the Secretary of the State of Florida, and be recorded in the Public Records of Sarasota County, Florida.

ARTICLE 10 TERM

The term of the Association shall be perpetual, unless sooner dissolved according to law.

ARTICLE 11
SUBSCRIBERS

The names and addresses of the original subscribers of these Articles of Incorporation, were as follows:

NAME	POST OFFICE ADDRESS
W. Dewey Kennell	5900 Tidewell Avenue, Sarasota, FL
Hazel Price	5900 Tidewell Avenue, Sarasota, FL
Robert W. Beaudry	3970 Roberts Point Road, Sarasota, FL

ARTICLE 12
MISCELLANEOUS

12.1 **Interpretation.** Unless defined herein, terms used herein shall have the same meaning as defined in the Declaration or the Condominium Act. The Board of Directors is responsible for interpreting the provisions of the Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations. The Board of Directors' interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board of Directors is not wholly unreasonable shall conclusively establish the validity of such interpretation.

12.2 **Registered Office and Agent.** The registered agent and office of the Association, until otherwise determined by the Board of Directors, shall be Casey Condominium Management, 4370 S. Tamiami Trail, #102, Sarasota, Florida 34231. The Board of Directors is authorized to change its registered agent and office in the manner provided by Florida law.

12.3 **Florida Statutes.** Any reference to a statute or statutory provision herein, including, but not limited to, the Condominium Act, and the Florida Not For Profit Corporation Act, shall include future amendments and renumbering from time to time.

12.4 **Conflicts.** The term "Condominium Documents," as used in these Articles of Incorporation and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, Bylaws, the Rules and Regulations of the Association, the Plat, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control: (i) the Declaration of Condominium; (ii) the Articles of Incorporation; (iii) the Bylaws; and (iv) the Rules and Regulations.

12.5 **Gender.** The use of the term "he," "she," "his," "hers," "their," "theirs" and all other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

12.6 **Severability.** In the event that any provisions of these Articles of Incorporation are deemed invalid, the remaining provisions shall be deemed in full force and effect.

12.7 **Headings.** The headings of paragraphs or sections herein are for convenience purposes only, and shall not be used to alter or interpret the provisions therein.