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DIVISION OF CORPORATION

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*Amend*

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03 FEB 14 PM 4:33  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA

2/17/03



ACCOUNT NO. : 072100000032

REFERENCE : 932725 6258A

AUTHORIZATION : *Patricia Pigato*

COST LIMIT : \$ 43.75

ORDER DATE : February 14, 2003

ORDER TIME : 2:24 PM

ORDER NO. : 932725-005

CUSTOMER NO: 6258A

CUSTOMER: Mr. Anthony J. Catalano  
Bond Schoeneck & King, P.a.  
Suite 250  
4001 Tamiami Trail North  
Naples, FL 34103

DOMESTIC AMENDMENT FILING

NAME: PROMENADE AT BONITA BAY, INC.

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY

CONTACT PERSON: Norma Hull -- EXT# 1115

EXAMINER'S INITIALS: \_\_\_\_\_

FILED

03 FEB 14 PM 4:33

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
PROMENADE AT BONITA BAY, INC.

Pursuant to the provisions of Section 607.1006, Florida Statutes, this Florida profit corporation adopts the following Articles of Amendment to its Articles of Incorporation, effective February 18, 2003:

FIRST

The following Article VI is adopted:

ARTICLE VI

Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers PROMENADE AT BONITA BAY, INC. (the "Corporation"), the following provisions shall be operative and controlling so long as the loan (the "Loan") by CIBC INC. or its successors and/or assigns (collectively, the "Lender") to the Corporation is outstanding:

1. The sole purpose of the Corporation is to acquire, own, hold, maintain and operate Promenade at Bonita Bay Shopping Center located at 26795-26841 South Bay Drive, Bonita Springs, Lee County, Florida (the "Property") together with such other activities as may be necessary or advisable in connection with the ownership of the Property. The Corporation shall not engage in any business, and it shall have no purpose, unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the limited purposes of the Corporation.
2. The Corporation shall have no authority to perform any act in violation of any (a) applicable laws or regulations or (b) any agreement between the Corporation and the Lender.
3. The Corporation shall not:
  - (a) make any loans to any shareholders or any Affiliates (as defined below);

(b) except as permitted by the Lender in writing, sell, encumber (except with respect to Lender) or otherwise transfer or dispose of all or substantially all of the properties of the Corporation (a sale or disposition will be deemed to be "all or substantially all of the properties of the Corporation" if the sale or disposition includes the Property or if the total value of the properties sold or disposed of in such transaction and during the twelve months preceding such transaction is sixty six and two thirds percent (66-2/3%) or more in value of the Corporation's total assets as of the end of the most recently completed corporate fiscal year);

(c) to the fullest extent permitted by law, dissolve, wind up or liquidate the Corporation;

(d) merge, consolidate or acquire all or substantially all of the assets of an Affiliate of same or other person or entity;

(e) change the nature of the business of the Corporation; or

(f) except as permitted by the Lender in writing, amend, modify or otherwise change these Articles of Incorporation (or, after securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment, modification or change would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) permission of the Lender in writing).

4. The Corporation shall not, and no person or entity on behalf of the Corporation shall, without the prior written affirmative vote of one hundred percent (100%) of the Board of Directors, including the affirmative vote of the Independent Director (as defined below): (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it; (c) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (d) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or a substantial part of its property; (e) make any assignment for the benefit of creditors; (f) admit in writing its inability to pay debts generally as they become due or declare or effect a moratorium on its debts; or (g) take any corporate action in furtherance of any such action provided, however, that none of the foregoing actions may be taken or authorized unless there is at least one Independent Director then serving in such capacity.

5. The Corporation shall have no indebtedness or incur any liability other than (a) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business of operating the Property, provided, however, that such unsecured indebtedness or liabilities (i) are in amounts that are normal and reasonable under the circumstances, but in no event, to exceed in the

aggregate three percent (3%) of the outstanding principal amount of the Loan and (ii) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred and (b) the Loan. No indebtedness other than the Loan shall be secured (senior, subordinated or pari passu) by the Property.

6. The Corporation shall at times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Affiliates of same, including, without limitation, as follows:

(a) At least one (1) of the directors of the Corporation shall be an Independent Director. Independent Director means a natural person who has not been, and during the continuation of his or her services as Independent Director (i) except in the capacity as an Independent Director of the Corporation, is not a present or former employee, officer, director, shareholder, partner, member, counsel, accountant, advisor or agent of the Corporation or any Affiliate of same, (ii) is not a present or former customer or supplier of the Corporation or any Affiliate of same, or other person or entity who derives or is entitled to derive any of its profits or revenues or any payments (other than any fee paid to such director as compensation for such director to serve as an Independent Director) from the Corporation or any Affiliate of same, (iii) is not (and is not affiliated with an entity that is) a present or former advisor or consultant to the Corporation or any Affiliate of same, (iv) is not a spouse, parent, child, grandchild or sibling of, or otherwise related (by blood or by law) to, any of (i), (ii) or (iii) above, and (v) is not affiliated with a person or entity of which the Corporation or any Affiliate of same is a present or former customer or supplier, provided, however, that an entity that provides independent directors as a service for a fee is not prohibited under this paragraph 6(a) from providing one or more independent directors to the Corporation. In the event of the death, incapacity, resignation or removal of an Independent Director, the Board of Directors of the Corporation shall promptly appoint a replacement Independent Director and no action requiring the consent of the Independent Director shall be taken until a replacement Independent Director has been appointed. In addition, no Independent Director may be removed unless his or her successor satisfying the definition hereunder has been appointed.

(b) The Corporation shall allocate by written agreement fairly and reasonably any rent, overhead and expenses for shared office space. The Corporation shall use its own separate stationery, invoices and checks.

(c) The Corporation shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate of same or any other person or entity. The Corporation shall prepare unaudited quarterly and annual financial statements, and the Corporation's financial statements shall substantially comply with generally accepted accounting principles.

(d) The Corporation shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.

(e) The Corporation shall file or cause to be filed its own separate tax returns.

(f) The Corporation shall hold itself out to the public (including any of its Affiliates' creditors) under the Corporation's own name and as a separate and distinct corporate entity and not as a department, division or otherwise of any Affiliate of same.

(g) The Corporation shall observe all customary formalities regarding the corporate existence of the Corporation, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate of same.

(h) The Corporation shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate of same shall be appointed or act as agent of the Corporation, other than, as applicable, a property manager with respect to the Property.

(i) Investments shall be made in the name of the Corporation directly by the Corporation or on its behalf by brokers engaged and paid by the Corporation or its agents.

(j) Except as required by Lender, the Corporation shall not guarantee, pledge or assume or hold itself out or permit itself to be held out as having guaranteed, pledged or assumed any liabilities or obligations of any Affiliate of the Corporation, nor shall it make any loan, except as permitted in the loan agreement with the Lender.

(k) The Corporation is and will be solvent.

(l) Assets of the Corporation shall be separately identified, maintained and segregated. The Corporation's assets shall at all times be held by or on behalf of the Corporation and if held on behalf of the Corporation by another entity, shall at all times be kept identifiable (in accordance with customary usages) as assets owned by the Corporation. This restriction requires, among other things, that (i) Corporation funds shall be deposited or invested in the Corporation's name, (ii) Corporation funds shall not be commingled with the funds of any Affiliate of same or other person or entity, (iii) the Corporation shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate of same or other person or entity, and (iv) Corporation funds shall be used for the business of the Corporation.

(m) The Corporation shall maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate of same or other person or entity.

(n) The Corporation shall pay or cause to be paid its own liabilities and expenses of any kind, including but not limited to salaries of its employees, only out of its own separate funds and assets.

(o) The Corporation shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.

(p) The Corporation shall not do any act which would make it impossible to carry on the ordinary business of the Corporation.

(q) All data and records (including computer records) used by the Corporation or any Affiliate of same in the collection and administration of any loan shall reflect the Corporation's ownership interest therein.

(r) None of the Corporation's funds shall be invested in securities issued by, nor shall the Corporation acquire the indebtedness or obligation of, any Affiliate of same.

(s) The Corporation shall maintain an arm's length relationship with each of its Affiliates and enter into contracts or transact business with its Affiliates only on commercially reasonable terms that are no less favorable to the Corporation than is obtainable in the market from a person or entity that is not an Affiliate of same.

(t) The Corporation shall correct any misunderstanding that is known by the Corporation regarding its name or separate identity.

For purposes of these Articles of Incorporation, Affiliate means any person or entity, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity. For purposes hereof, the terms "control", "controlled", or "controlling" with respect to a specified person or entity shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the shareholder(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

7. Any indemnification obligation of the Corporation shall (a) be fully subordinated to the Loan and (b) not constitute a claim against the Corporation or

its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged.

8. No transfer of any direct or indirect ownership in the Corporation may be made such that the transferee owns, in the aggregate with the ownership interests in the Corporation of transferee's Affiliates, more than a forty-nine percent (49%) interest in the Corporation unless such transfer is conditioned upon the delivery of an acceptable nonconsolidation opinion to the Lender and any applicable rating agency.

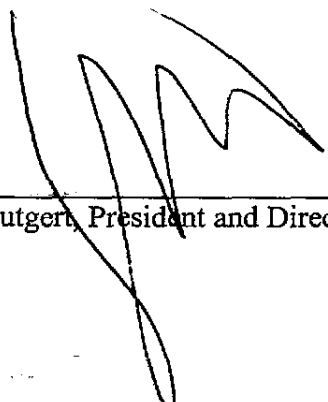
SECOND

The date of the amendment adoption is the 13 day of February, 2003.

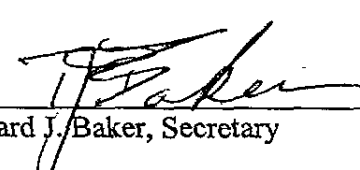
THIRD

The amendment was adopted and approved by unanimous resolution of the Board of Directors and Shareholders of the Corporation.

EXECUTED this 13 day of February, 2003.

  
\_\_\_\_\_  
Scott F. Lutgen, President and Director

Attested to:

  
\_\_\_\_\_  
Richard J. Baker, Secretary