

Division of Corporations

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**718465**

Florida Department of State  
Division of Corporations  
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**BANYAN CLUB, INC.**

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**G. Goulette** APR 14 2006



March 24, 2006

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

BANYAN CLUB, INC.  
2335 9TH N #505  
NAPLES, FL 34103

SUBJECT: BANYAN CLUB, INC.  
REF: 718465

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

A certificate must accompany the Restated Articles of Incorporation setting forth one of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendments requiring member approval; OR (2) If the restatement contains an amendment requiring member approval, the date of adoption of the amendment by the members and a statement that the number of votes cast for the amendment was sufficient for approval.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

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Irene Albritton  
Document Specialist

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DIVISION OF CORPORATIONS

P.O. BOX 6327 - Tallahassee, Florida 32314

**VOGEL LAW OFFICE**  
A PROFESSIONAL ASSOCIATION

Richard M. Vogel  
James D. Vogel  
Joseph E. Ujcz

Suite B, Midwest Title Building  
3936 Tamiami Trail North  
Naples, Florida 34103

Telephone (239) 262-2211  
Facsimile (239) 262-8330

April 13, 2006

**VIA FACSIMILE 1-850-205-0380**

Ms. Irene Albritton  
Florida Department of State  
P.O. Box 6327  
Tallahassee, FL 32314

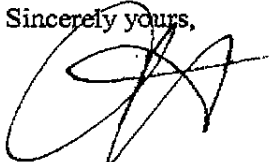
RE: Amended and Restated Articles of Incorporation  
Banyan Club, Inc.

Dear Ms. Albritton:

Per your request, please find attached the Amended and Restated Articles of Incorporation of Banyan Club, Inc., together with a Certificate of Approval.

Thank you again for your courtesy and consideration. Should you require anything further in order to file these Amended and Restated Articles, please contact me directly. (Note: the filing fee was previously paid through our Sunbiz account.)

Sincerely yours,



Chris Wohlbrandt  
L.A. for James D. Vogel, Esq.

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AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
FOR  
BANYAN CLUB, INC.

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLE 1

NAME

The name of the corporation shall be BANYAN CLUB, INC. For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles" and the By-Laws of the Association as the "By-Laws."

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Collier County, Florida, and known as BANYAN CLUB, A CONDOMINIUM (the "Condominium").

ARTICLE 3

DEFINITIONS

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Declaration of Condominium to be recorded in the Public Records of Collier County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE 4

POWERS

The powers of the Association shall include and be governed by the following:

- 4.1 General. The Association shall have all of the common law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 Enumeration. The Association shall have the powers and duties set forth in the Act and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

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- (a) To make and collect Assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
  - (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property.
  - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association.
  - (d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and Unit Owners.
  - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners.
  - (f) To approve or disapprove the leasing, transfer, ownership and possession of the Units as may be provided by the Declaration.
  - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Condominium Property.
  - (h) To contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
  - (i) To employ personnel to perform the services required for the proper operation of the Condominium.
- 4.3 Condominium Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.
- 4.4 Distribution of Income; Dissolution. The Association shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another not-for-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Statute.
- 4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

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## ARTICLE 5

### MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who are members at the time of such termination, and their successors and assigns. New members shall deliver a true copy of the recorded Deed or other instrument of acquisition of title to the Association.
- 5.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to one vote for each Unit owned.
- 5.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

## ARTICLE 6

### TERM OF EXISTENCE

The Association shall have perpetual existence.

## ARTICLE 7

### OFFICERS

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

## ARTICLE 8

### DIRECTORS

- 8.1 Number and Qualifications. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) nor more than seven (7) directors. Directors must be members of the Association.
- 8.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

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- 8.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

## ARTICLE 9

### INDEMNIFICATION

- 9.1 Indemnity. The Association shall indemnify any person 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 is or was a director, employee, officer or agent of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.
- 9.2 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.
- 9.3 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall 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, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article 9.
- 9.4 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.
- 9.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

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- 9.6 Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 9 may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

ARTICLE 10

BY-LAWS

The By-Laws of the Association may be altered, amended or rescinded in the manner provided in the By-Laws and the Declaration.

ARTICLE 11

AMENDMENTS

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

- 11.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 11.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 11.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers", without the approval in writing of all members. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws. No amendment to this paragraph shall be effective.
- 11.4 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Collier County, Florida.

DATED: March 20, 2006.

BANYAN CLUB, INC.  
A Florida Corporation

BY: \_\_\_\_\_

President

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**CERTIFICATE OF APPROVAL**  
of  
**AMENDED AND RESTATED**  
**ARTICLES OF INCORPORATION**  
for  
**BANYAN CLUB, INC.**

The undersigned, being the duly elected and acting President of Banyan Club, Inc., a Florida corporation not-for-profit, hereby certifies that at a meeting of the Members held on March 11, 2006, after due notice, where a quorum was present, and upon a vote duly taken, the Amended and Restated Articles of Incorporation for Banyan Club, Inc., as attached hereto, were approved by a sufficient majority of the Members required for approval.

DATED the 31st day of March, 2006

Witnesses:

(Sign) *Joan Hurd*  
(Print Name) JOAN HURD

(Sign) *James D. Vogel*  
(Print Name) JAMES D. VOGEL

**BANYAN CLUB, INC.**  
a Florida non-profit corporation

By: *Warren Brooks*  
**WARREN BROOKS, President**

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing Certificate was acknowledged before me this 5<sup>th</sup> day of April, 2006, by WARREN BROOKS, as President of Banyan Club, Inc., who is personally known to me, or who has produced FL Drivers License, as identification.



Joan Hurd  
MY COMMISSION # DD503726 EXPIRES  
January 3, 2010  
BONDED THROUGH TROY FARM INSURANCE, INC.

*Joan Hurd*  
Notary Public - Signature

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