

M 74198

ATTORNEYS' TITLE

Requestor's Name

660 E. Jefferson St.

Address

Tallahassee, FL 32301

850-222-2785

City/St/Zip

Phone #

FILED
2002 JUN 27 AM 10:11
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1- KEY WEST POLO CLUB DEVELOPERS, INC.

2-

3-

4-

☒ Walk-in

☐ Pick-up time ASAP

☒ Certified Copy

☐ Mail-out

☐ Will wait

☐ Photocopy

☒ Certificate of Status

02 JUN 26 AM 9:37
OFFICE OF THE SECRETARY OF STATE
TALLAHASSEE, FLORIDA

NEW FILINGS

<input type="checkbox"/>	Profit
<input type="checkbox"/>	Non-Profit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS

<input checked="" type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

OTHER FILINGS

<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/QUALIFICATION

<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

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*****52.50 *****52.50

C. Coulllette JUN 27 2002

Examiner's Initials



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

June 26, 2002

ATTORNEYS' TITLE

TALLAHASSEE, FL

SUBJECT: KEY WEST POLO CLUB DEVELOPERS, INC.
Ref. Number: M74198

RECEIVED
02 JUN 27 AM 9:10
DEPARTMENT OF STATE
TALLAHASSEE, FL

We have received your document for KEY WEST POLO CLUB DEVELOPERS, INC. and check(s) totaling \$52.50. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

A certificate must accompany the Restated Articles of Incorporation setting forth either of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendment requiring shareholder approval. OR (2) If the restatement contains an amendment requiring shareholder approval, the date of adoption of the amendment and a statement setting forth the following: (a) the number of votes cast for the amendment by the shareholders was sufficient for approval (b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

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

If you have any questions concerning the filing of your document, please call (850) 245-6903.

Cheryl Coulliette
Document Specialist

Letter Number: 002A00040947

ARTICLES OF AMENDMENT AND RESTATEMENT
OF
ARTICLES OF INCORPORATION
OF
KEY WEST POLO CLUB DEVELOPERS, INC.

FILED
2002 JUN 27 AM 10:11
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to Chapter 607.1003, *Florida Statutes* (the "Corporation Act"), and upon approval of all directors and all shareholders, the Articles of Incorporation of KEY WEST POLO CLUB DEVELOPERS, INC., a Florida corporation (the "Corporation"), filed with the Florida Secretary of State, Tallahassee, Florida, on March 29, 1988, is hereby amended and restated by replacing the existing Articles of Incorporation in their entirety with the following:

ARTICLE I - NAME

The name of the Corporation shall be KEY WEST POLO CLUB DEVELOPERS, INC.

ARTICLE II - PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Corporation is 4307 Vineland Road, Suite H-12, Orlando, Florida 32811.

ARTICLE III - PURPOSE

The Corporation is organized solely for the purpose of (i) being a general partner of KEY WEST POLO CLUB APARTMENTS, LTD., a Florida limited partnership (the "Partnership"); (ii) acting as, and exercising all of the authority of, the general partner of the Partnership; and (iii) transacting any and all lawful business for which a corporation may be organized under the Corporation Act that is incident, necessary and appropriate to accomplish the foregoing.

The Corporation:

(a) is prohibited from incurring indebtedness, except as it is liable for the Partnership's indebtedness in its capacity as a general partner of the Partnership;

(b) is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of substantially all of its assets for so long as the loan (the "Loan") from Union Capital Investments, LLC, a Georgia limited liability company, its successors and/or assigns (the "Lender") is outstanding, and from causing the Partnership to do any of the foregoing for as long as the Loan is outstanding;

(c) is prohibited from allowing any transfer of any direct or indirect ownership interest in the Corporation such that the transferee owns, in the aggregate with the ownership interest of its Affiliates and family members in the Corporation, more than a forty-nine percent (49%) interest in the Corporation, unless (i) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the Lender and to any applicable rating agency concerning, as applicable, the Corporation, the new transferee and/or their respective owners, and (ii) the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of the securities rating; and

(d) is required to continue serving in the capacity of a general partner of the Partnership and own at least a 0.5% interest in the Partnership so long as the Loan is outstanding.

ARTICLE IV - CAPITAL STOCK

The maximum number of shares of stock that this Corporation is authorized to have outstanding at any one time is 7,500 shares of common stock, 3,750 voting and 3,750 non-voting, each having One Dollar (\$1.00) par value per share.

ARTICLE V - ADDRESS

The street address of the registered office of the Corporation is 4307 Vineland Road, Suite H-12, Orlando, Florida 32811, and the name of the current registered agent of the Corporation at that address is Robert C. Rohdie.

ARTICLE VI - TERM OF EXISTENCE

This Corporation is to exist perpetually.

ARTICLE VII - PREEMPTIVE RIGHTS

Every shareholder upon the sale for cash of any new stock of this Corporation and of the same kind, class or series as that which he already holds will have the right to purchase his prorata share thereof at the price at which it is offered to others.

ARTICLE VIII - DIRECTORS

This Corporation will have two (2) directors. The names and street addresses of the initial members of the Board of Directors are:

Alan H. Ginsburg

2220 Lucien Way #450
Maitland, Florida 32751

Robert C. Rohdie

4307 Vineland Road, Suite H-12
Orlando, Florida 32811

The unanimous consent of all of the Directors is required for the Corporation to, and for the Corporation to cause the Partnership to:

(a) File or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;

(b) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or the Partnership or a substantial portion of either of their property;

(c) Make any assignment for the benefit of creditors of the Corporation or the Partnership; or

(d) Take any action in furtherance of any of the foregoing.

ARTICLE IX - OFFICERS

The names and addresses of the officers of the Corporation who shall hold office until their successors are elected or appointed are:

Alan H. Ginsburg
2220 Lucien Way #450
Maitland, Florida 32751

President

Robert C. Rohdie
4307 Vineland Road, Suite H-12
Orlando, Florida 32811

Vice President/Secretary/Treasurer

ARTICLE X - SEPARATENESS/OPERATIONS MATTERS

For so long as the Loan remains unpaid, in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these Articles of Incorporation, the Corporation will conduct its affairs in accordance with the following provisions:

(a) It will maintain records and books of account separate from those of any other Person.

(b) It will maintain its bank accounts separate from any other Person.

- (c) It will not commingle assets with those of any other Person, and will hold all its assets in its own name.
- (d) It will conduct its own business in its own name.
- (e) It will maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on the financial statements of any other Person.
- (f) It will file its tax returns separate from those of any other Person.
- (g) It will pay any liabilities and expenses out of its own funds, including salaries of any employees, not out of funds of any other Person.
- (h) It will observe all corporate and other organizational formalities.
- (i) It will enter into any transactions with Affiliates only on a commercially reasonable basis and on terms similar to those of an arms-length transaction.
- (j) It will pay the salaries of its own employees from its own funds.
- (k) It will maintain a sufficient number of employees in light of its contemplated business operations.
- (l) It will not guarantee or become obligated for the debts of any other Person, including any Partner or Affiliate.
- (m) It will not hold out its credit as being available to satisfy the obligations of any other Person.
- (n) It will not acquire the obligations or securities of its Affiliates or Partners.
- (o) It will not make loans to any other Person or to buy or hold evidence of indebtedness issued by any other Person (other than cash and investment grade securities).
- (p) It will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate.
- (q) It will use separate stationery, invoices and checks bearing its own name.

(r) It will not pledge its assets for the benefit of any other Person, other than with respect to the Loan.

(s) It will hold itself out as a separate entity.

(t) It will correct any known misunderstanding regarding its separate identity.

(u) It will not identify itself as a division of any other Person.

(v) It will maintain adequate capital in light of its contemplated business operations.

(w) It will not form, acquire or hold any subsidiary.

ARTICLE XI - AMENDMENTS TO THESE ARTICLES OF INCORPORATION

The Corporation is prohibited from amending the provisions specified in Article III, Article VIII, Article X, this Article XI and Article XII without the consent of the Lender or, after securitization of the Loan only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the Lender or its assigns.

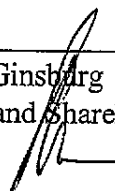
ARTICLE XII - DEFINITIONS

For purposes of this First Amendment to Articles of Incorporation, the following terms will have the following meanings:

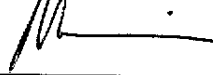
(a) "Affiliate" means any Person controlling or controlled by or under common control with the Corporation including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Corporation, or any Affiliate thereof and (ii) any Person which receives compensation for administrative, legal or accounting services from the Corporation, or any Affiliate. For purposes of this definition, "control" when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(b) "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

The foregoing amendment was adopted by the Corporation on the 12 day of June, 2002.



Alan H. Ginsburg
Director and Shareholder



Robert C. Rohdie
Director and Shareholder

KEY WEST POLO CLUB DEVELOPERS, INC.
CERTIFICATE OF BOARD OF DIRECTORS AND SHAREHOLDERS
ACTION BY CONSENT

The undersigned, being the sole members of the Board of Directors and the holders of 100% of the issued and outstanding stock (the "Shareholders") of KEY WEST POLO CLUB DEVELOPERS, INC., a Florida corporation (the "Corporation"), hereby consent to the following actions of the Board of Directors and the Shareholders of the Corporation and instruct the Vice President of the Corporation to enter this Certificate in the minutes of the proceedings of the Corporation.


The Board of Directors and Shareholders hereby adopt the following resolutions:

1. **BE IT RESOLVED**, that the Articles of Incorporation of the Corporation be amended and restated by executing and filing with the Department of State of the State of Florida the attached Articles of Amendment and Restatement of the Articles of Incorporation.
2. **BE IT FURTHER RESOLVED**, that the Corporation, in its capacity as the Managing General Partner of KEY WEST POLO CLUB APARTMENTS, LTD., a Florida limited partnership (the "Partnership"), is hereby authorized to enter into such loan documents as the Vice President of the Corporation may deem necessary or advisable in connection with that certain Commitment Letter dated April 24, 2002 (the "Commitment Letter"), as it may be amended from time to time, from Union Capital Investments, LLC, in the amount of Fifteen Million Dollars (\$15,000,000.00) (the "Loan"), and to be secured by an Amended and Restated Mortgage and Security Agreement encumbering certain real property owned by the Partnership and located in Monroe County, Florida.
3. **BE IT FURTHER RESOLVED**, that the terms and conditions of all documents to be executed by the Corporation on behalf of the Partnership pursuant to the terms of the Commitment Letter in connection with the Loan will be determined by such Vice President in his judgment and discretion, and the execution and delivery of any document or instrument by such Vice President will constitute conclusive evidence that the terms and conditions contained in such documents or instruments have been approved by such Vice President on behalf of the Corporation pursuant to this resolution.
4. **BE IT FURTHER RESOLVED**, that such Vice President is hereby authorized on behalf of the Corporation to take such actions to implement the foregoing resolution as he deems necessary or appropriate, as conclusive evidenced by the taking of such actions by such officer, including, but not limited to, the execution and delivery of any and all documents, agreements, guaranties, representations, warranties, indemnities and any other instruments of any kind or nature whatsoever as required by the Commitment Letter.

5. **BE IT FURTHER RESOLVED**, that any and all actions heretofore taken by any officer of the Corporation consistent with the foregoing resolutions are hereby approved, ratified and confirmed in all respects.

Execution of this Certificate by the undersigned, being the sole members of the Board of Directors and the sole Shareholders, and the subsequent insertion of this Certificate in the minute book of the Corporation, waives any requirement of a formal meeting of the Board or of the Shareholders to conduct the business referred to herein.

DATED this 12 day of June, 2002.



Alan H. Ginsburg, Director and Shareholder



Robert C. Rohdie, Director and Shareholder