

Division of Corporations

Page 1/ 8

**P96000054423**

Florida Department of State  
Division of Corporations  
Public Access System

DEW

## Electronic Filing Cover Sheet

**Note:** Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H03000244718 0)))

**Note:** DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

## To:

Division of Corporations  
Fax Number : (850) 205-0380

## From:

Account Name : CORPORATION SERVICE COMPANY  
Account Number : 120000000195  
Phone : (850) 521-1000  
Fax Number : (850) 521-1030

**FILED**  
03 JUL 31 PM 3:50  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**BASIC AMENDMENT****FLORIDA GOLF PROPERTIES, INC.**

**RECEIVED**  
03 JUL 31 PM 2:54  
DIVISION OF CORPORATIONS

Certificate of Status	0
Certified Copy	1
Page Count	08
Estimated Charge	\$43.75

H03000244718 0

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
FLORIDA GOLF PROPERTIES, INC.**

**FILED**  
03 JUL 31 PM 3:50  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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:

**FIRST:** The Articles of Incorporation of Florida Golf Properties, Inc. (the "Corporation") are hereby amended to add the following Article VIII, Article IX, Article X, Article XI, Article XII and Article XIII:

**ARTICLE VIII**

At all times during the Covered Period (defined below), the sole purpose of the Corporation shall be to directly or indirectly (a) acquire, own, hold, maintain, manage, operate, develop, lease, finance, mortgage, sell, exchange and otherwise invest in, deal with and dispose of golf course and golf course related properties (including, without limitation, golf course and driving range properties, all golf course related land and improvements, club houses, tennis courts, hospitality and concession businesses, parking lots, driveways and walkways), completed golf courses and golf courses under development, and interests in any of the foregoing (including, without limitation, interests in partnerships of any kind, corporations, limited liability companies or other entities whose primary business is the ownership of golf course interests and golf course leasehold interests) and (b) engage in any other lawful act or activity related to any of the foregoing.

**ARTICLE IX**

(i) To the full extent that the Florida Business Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of directors or officers, a director or officer of the Corporation shall have no liability to the Corporation or its shareholders for monetary damages.

(ii) To the full extent permitted and in the manner prescribed by the Florida Business Corporation Act and any other applicable law, the Corporation shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in

H03000244718 0

good faith and in a manner he reasonably believed to be in or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(iii) To the full extent permitted and in the manner prescribed by the Florida Business Corporation Act and any other applicable law, the Corporation shall indemnify any person, who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, 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 indemnity for such expenses which such court shall deem proper.

(iv) Any indemnification under paragraph (ii) or paragraph (iii) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraph (ii) or paragraph (iii). Such a determination shall be made according to the applicable provisions of the Florida Business Corporation Act.

(v) Unless a determination has been made that indemnification is not permissible, the Corporation shall make advances and reimbursements for expenses incurred by a director or officer in a proceeding upon receipt of an undertaking from him to repay the same if it is ultimately determined that he is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the director or officer and shall be accepted without reference to his ability to make repayment.

(vi) The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it in accordance with this Article and may also procure insurance, in such amounts as the Board of Directors may determine, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred by any such person in any such capacity or arising from his status as such, whether or not the Corporation would have power to indemnify him against such liability under the provisions of this Article.

(vii) The Corporation shall not indemnify any person seeking indemnification in connection with a proceeding, action or suit (or part thereof) initiated by such person unless the initiation thereof was approved by the Board of Directors of the Corporation.

(viii) The indemnification rights provided in this Article IX (i) shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any law, agreement or vote of stockholders or disinterested directors or otherwise, and (ii) shall inure to the benefit of the heirs, executors and administrators of the persons indemnified hereunder.

(ix) The provisions of this Article IX shall be applicable to all actions, claims, suits or proceedings commenced after the adoption hereof, whether arising from any action taken or failure to act before or after such adoption. No amendment, modification or repeal of this Article shall diminish the rights provided hereby or diminish the right to indemnification with respect to any claim, issue or matter in any then pending or subsequent proceeding that is based in any material respect on any alleged action or failure to act occurring prior to such amendment, modification or repeal.

#### ARTICLE X

During the Covered Period, the Corporation shall not:

(i) without the affirmative vote of each member of the Board of Directors of the Corporation, including, in all events described in this clause (i) of Article TENTH, Meyer (as defined in that certain Second Global Modification Agreement) and the Independent Director, institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it or file a petition seeking, or consent to, reorganization, liquidation or relief under any applicable federal or state law relating to bankruptcy, insolvency or reorganization, or 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, or make any assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due;

(ii) institute proceedings for the adjudication of GGP Mezzanine, LLC ("GGPM LLC"), a Delaware limited liability company of which the Corporation is the sole member, to be bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against GGPM LLC or file a petition seeking, or consent to, reorganization, liquidation or relief under any applicable federal or state law relating to bankruptcy, insolvency or reorganization, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of GGPM LLC or a substantial part of its property, or make any assignment for the benefit of GGPM LLC's creditors, or admit in writing GGPM LLC's inability to pay its debts generally as they become due, in each such case without the affirmative vote of each member of the Board of Directors of the Corporation, including, in all events described in this clause (ii) of Article TENTH, Meyer and the Independent Director;

- H03000244718 0

(iii) institute or join in as a petitioning creditor proceedings for the adjudication of any Gotham Golf Affiliate (as hereinafter defined) (other than the Corporation) to be bankrupt or insolvent or seeking the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of any Gotham Golf Affiliate (other than the Corporation) or a substantial part of its property; or

(iv) cause or permit GGFM LLC to take or omit to take any action that would constitute a violation of the Subordination Agreement (defined below) without the affirmative vote of each member of the Board of Directors of the Corporation, including, in all events described in this clause (iv) of Article TENTH, Meyer and the Independent Director.

As used in this certificate of incorporation:

"Covered Period" means the period of time in which (i) any amount is owing to the Lender under any of the Gotham Loan Agreements, or (ii) the loan in the initial principal amount of approximately \$3,500,000, to Gotham Golf Partners, L.P. made by GGP Mezzanine, LLC is outstanding.

"Gotham Golf Affiliates" shall mean, collectively, (i) Florida Golf Properties, Inc., a Florida corporation; (ii) FGPI, LLC, a Delaware limited liability company; (iii) GGP Investors, L.P., a Delaware limited partnership; (iv) GGP Mezzanine, LLC, a Delaware limited liability company; (v) Gotham Golf Partners, L.P., a Delaware limited partnership; (vi) Honey Run Golf Club, Inc., a Delaware corporation; (vii) YGC, Inc., a Delaware corporation; (viii) Greencastle Golf Club, Inc., a Delaware corporation; (ix) Fox Hollow Golf Club, Inc., a Delaware corporation; (x) Royal Oaks Golf Club, Inc., a Delaware corporation; and (xi) each of WILD OAKS GOLF CLUB LLC, EAGLE'S NEST GOLF CLUB LLC, GREENCASTLE GOLF CLUB LIMITED PARTNERSHIP, YORKTOWNE GOLF CLUB, INC., DOME GOLF DEVELOPMENT CORPORATION, YGC, L.P., HONEY RUN GOLF CLUB, L.P., CHALLEDON GOLF CLUB, LLC, FAIRFAX NATIONAL, LLC, MONTGOMERY COUNTRY CLUB, LLC, FOX HOLLOW GOLF CLUB, LP, SAPPHIRE MOUNTAIN GOLF CLUB, LLC, ROYAL OAKS GOLF CLUB, LP, MOUNTAIN LAUREL GOLF CLUB, LLC, SJGC, LLC, FOUR SEASONS GOLF CLUB, LLC, GLADE VALLEY GOLF CLUB, LLC, BEAR CREEK GOLF CLUB, LLC, HICKORY HEIGHTS GOLF CLUB, LLC, WESTWINDS GOLF CLUB, LLC.

"Gotham Loan Agreements" shall have the meaning set forth in the Second Global Modification Agreement.

"Independent Director" shall have the meaning set forth in the Second Global Modification Agreement.

H03000244718 0

"Lender" means Banc of America Commercial Finance Corporation, and its successors or assigns.

"Second Global Modification Agreement" means that certain Second Global Modification Agreement dated as of July 31, 2003, entered into among the Gotham Borrowers (as defined in the Second Global Modification Agreement), the Limited Guarantor, the Gotham Partners (as defined in the Second Global Modification Agreement) and the Lender.

"Subordination Agreement" means that certain Subordination Agreement dated as of July 31, 2003 among GGPM LLC, Gotham Golf Partners, L.P., the Gotham Borrowers (as defined in the Second Global Modification Agreement), the Corporation, and the Gotham Partners (as defined in the Second Global Modification Agreement), in favor of the Lender.

#### ARTICLE XI

At all times during the Covered Period, at least one member of the Board of Directors of the Corporation shall be Meyer and at least one member of the Board of Directors shall be an Independent Director; provided, however, that the failure of Meyer or the Independent Director to vote shall not affect the validity of any action taken by the Board of Directors or under the Bylaws of the Corporation that otherwise would be valid hereunder or thereunder, as the case may be, except for any action requiring the affirmative vote of each member of the Board of Directors of the Corporation under Article X of this Certificate of Incorporation. To the fullest extent permitted by law, each of Meyer and the Independent Director shall consider the interests of the Corporation, including its respective creditors, in voting or otherwise acting on matters before the Board of Directors. Neither the Corporation nor its Board of Directors may delegate to any Person (hereinafter defined) or to any committee of said Board of Directors, as the case may be, the right or obligation to act or omit to take any action requiring the affirmative vote of each member of the Board of Directors of the Corporation under this Article XI, unless such action or omission to act shall have first been so approved. As used in this Article XI, the term "Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

#### ARTICLE XII

Notwithstanding any other provision of this certificate of incorporation or applicable law, during the Covered Period, the provisions of Articles VIII, X and XI of this Certificate of Incorporation, and of this Article XII, may not be amended without the affirmative vote of each member of the Board of Directors of the Corporation, including, in all events described in this Article XII, Meyer and the Independent Director.

H03000244718 0

of the Corporation, including, in all events described in this Article XII, Meyer and the Independent Director.

#### ARTICLE XIII

The Lender shall be a third party beneficiary of the provisions of Articles VII, X, XI and XII of this Certificate of Incorporation, and this Article XIII, and, without limiting any right or remedy of or available to the Lender, the Lender shall have the right to sue in any court of competent jurisdiction to enforce the provisions thereof and hereof.

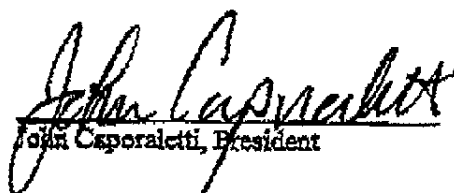
**SECOND:** The above amendments shall be effective when filed.

**THIRD:** The above amendments were approved by the shareholders. The number of votes cast for the amendments were sufficient for approval.

H03000244718 0

The date of the amendment's adoption is July 31, 2003.

Signed this 31st day of July, 2003.

  
John Casporetti, President