

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
BANYAN TRACE MASTER ASSOCIATION, INC.
a Florida corporation not-for-profit**

Note: This is a substantial rewording of the Articles of Incorporation for BANYAN TRACE MASTER ASSOCIATION, INC., a Florida corporation not-for-profit as the same are filed under Document #N02000005004 with the Secretary of State for the State of Florida. See that document's Provisions I through XVI for the present text.

The undersigned corporation, pursuant to Chapter 617 of the laws of the State of Florida, hereby adopts the following Amended and Restated Articles of Incorporation:

**ARTICLE 1
Name**

The name of the corporation is BANYAN TRACE MASTER ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the Bylaws of the Association as the "Bylaws".

**ARTICLE 2
Purpose**

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of those common areas serving certain condominiums located in Lee County, Florida, and known as THE FAIRWAY VILLAS AT BANYAN TRACE, A CONDOMINIUM; THE FAIRWAY VILLAS II AT BANYAN TRACE, A CONDOMINIUM; THE FAIRWAY VILLAS III AT BANYAN TRACE, A CONDOMINIUM; THE FAIRWAY VILLAS IV AT BANYAN TRACE, A CONDOMINIUM; THE CLUBHOUSE VILLAS AT BANYAN TRACE, A CONDOMINIUM; THE CLUBHOUSE VILLAS II AT BANYAN TRACE, A CONDOMINIUM; and THE CLUBHOUSE VILLAS III AT BANYAN TRACE, A CONDOMINIUM (the "Condominiums").

**ARTICLE 3
Definitions**

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Covenants, Conditions and Restrictions for Banyan Trace (the "Master Declaration") recorded in Official Records Book 3687 at Page 266, of the Public Records of Lee

County, Florida, unless herein or in the Bylaws 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 Master Declaration, the Bylaws, Florida Statutes Chapters 607, 617 and 718 (the "Act").

4.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, and all of the powers and duties reasonably necessary to operate the Common Area serving the Condominiums pursuant to the Declaration and as more particularly described in the Bylaws, as they may be amended from time to time, including, but not limited to, the following:

- (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 Common Area, and other property acquired or leased by the Association;
- (d) To purchase insurance upon the Common Area and insurance for the protection of the Association, its officers, directors, committee Members and Unit Owners;
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Common Area;
- (f) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the Bylaws, and the rules and regulations for the use of the Common Area;
- (g) To contract for the management and maintenance of the Common Area 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 Area 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 Chapters 607, 617 and 718 of the Florida Statutes, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association;

(h) To employ personnel to perform the services required for the proper operation of the Condominium;

4.3 **Common Area.** 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 Bylaws.

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 Act (Florida Statutes Chapter 617).

4.5 **Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of each Declaration, the Bylaws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of a Declaration and the By-Laws.

ARTICLE 5

Members

5.1 **Membership.** The Members of the Association shall consist of all of the record title Owners of Units in the Condominiums from time to time, and after termination of any Condominium, shall also consist of those who were Members at the time of such termination, and their successors and assigns.

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 (1) vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declaration and/or Bylaws (including, without limitation, as to when Unit Owners in only one Condominium vote on a matter). Any person or entity owning two (2) or more Units shall be entitled to one vote for each Unit owned.

5.4 **Meetings.** The Bylaws 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 Bylaws. 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 Bylaws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers.

ARTICLE 8
Directors

8.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of seven (7) directors. One Director shall be elected from each of the seven Condominiums served by the Association.

8.2 Duties and Power. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the Bylaws 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.

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 Act. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws. Directors' terms may be staggered as set forth in the Bylaws.

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, committee member, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' 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 a 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 Bylaw, 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.

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 Bylaws of the Association have been adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the Bylaws.

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: (a) a Notice of Proposed Member Action Without a Meeting pursuant to Fla. Stat. §617.0701, or (b) in a 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 and Chapter 718, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

11.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Members of the Association. Members' approval may be expressed by written consent pursuant to Fla. Stat. §617.0701. Directors and Members not present in person or by proxy at any meeting considering the amendment may express their approval in writing, providing the approval delivered to the Secretary at or prior to the meeting. The approvals must be by not less than a majority of the votes of all of the Members of the Association and by not less than 66-2/3% of the entire Board of Directors.

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 and the joinder of all record Owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws.

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 Lee County, Florida.

Article 12

(Mailing and Street Address)

The mailing address of the Association is c/o Schoo Management, Inc., 9411 Cypress Lake Drive, #2, Fort Myers, FL 33919. The street address of the Association is 9411 Cypress Lake Drive, #2, Fort Myers, FL 33919.

In Witness Whereof, by and through the undersigned, the Corporation has executed these Articles on the day and year set forth below.

Dated: 2-7-007

Mildred E. Murphy
Mildred E. Murphy, President

CERTIFICATION OF ADOPTION

I Hereby Certify that the foregoing Amended and Restated Articles of Incorporation of BANYAN TRACE MASTER ASSOCIATION, INC. were adopted and approved by a majority of the members of the Board of Directors at a duly-noticed meeting of the Board of Directors called for the purpose held on February 7, 2007, the number of votes cast was sufficient for approval.

Robert L. Ceglowski
ROBERT L. CEGLOSKI, Secretary