

CORP DIRECT AGENTS, INC. (formerly CCRS)  
103 N. MERIDIAN STREET, LOWER LEVEL  
TALLAHASSEE, FL 32301  
222-1173

FILING COVER SHEET  
ACCT. #FCA-14

L 99000008666

CONTACT:

Pam

DATE:

5/31/02

REF. #:

0457 6964

CORP. NAME:

Bay Hill Fountains, L.L.C.

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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☐ ARTICLES OF INCORPORATION

☒ ARTICLES OF AMENDMENT

☐ ARTICLES OF DISSOLUTION

☐ ANNUAL REPORT

☐ TRADEMARK/SERVICE MARK

☐ FICTITIOUS NAME

☐ FOREIGN QUALIFICATION

☐ LIMITED PARTNERSHIP

☐ LIMITED LIABILITY

☐ REINSTATEMENT

☐ MERGER

☐ WITHDRAWAL

☐ CERTIFICATE OF CANCELLATION ☐ UCC-1

☐ UCC-3

☐ OTHER:

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STATE FEES PREPAID WITH CHECK# 502435 FOR \$ 55.00

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

200005662242--4

05/31/02--01014--017

\*\*\*\*\*55.00 \*\*\*\*\*55.00

COST LIMIT: \$

PLEASE RETURN:

☒ CERTIFIED COPY

☐ CERTIFICATE OF GOOD STANDING

☐ PLAIN STAMPED COPY

☐ CERTIFICATE OF STATUS

Examiner's Initials

**SECOND ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF  
BAY HILL FOUNTAINS, L.L.C.**

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STATE OF FLORIDA  
TALLAHASSEE

- FIRST:** The date of filing of the articles of organization was December 10, 1999.
- SECOND:** The following amendment to the articles of organization was adopted by the limited liability company to include the following language:

Single-Purpose Entity Covenants. The Limited Liability Company hereby represents, warrants and covenants, as of the date hereof and until such time as that certain loan from CIBC Inc. (the "Lender") to Bay Hill Fountains, L.L.C. secured by that certain Consolidated, Renewal, Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement and Consolidated, Renewal, Amended and Restated Promissory Note dated as of the date set forth therein, in the principal amount of \$22,000,000.00 (the "Obligations") is paid in full, that without, in each case, the prior written consent of Lender (which may be withheld or conditioned by Lender in its sole and absolute discretion for any reason or for no reason):

(a) The sole purpose of the Limited Liability Company has been, and will be, to hold title to the real property described in Exhibit A attached hereto, together with such activities as may be necessary or advisable in connection with such purpose. The Limited Liability Company shall own no other property and shall incur no debt or liability other than the Obligations set forth above. The Limited Liability Company has not engaged, and does not and shall not engage, in any business, and it has and shall have no purpose, unrelated to owning and operating the property.

(b) The Limited Liability Company shall not have the authority to perform any act in respect of the Limited Liability Company in violation of any (a) applicable laws or regulations or (b) any agreement between the Limited Liability Company and Lender (including, without limitation, the Loan Documents).

(c) The Limited Liability Company shall not:

(1) make any loans to the holder (directly or indirectly) of any equity interest in the Limited Liability Company (collectively the "Equity Holders"), any Affiliate (as defined below) of the Limited Liability Company or of any Equity Holders;

(2) except as expressly permitted by the Lender in writing, sell, encumber (except with respect to the Lender) or otherwise transfer or dispose of all or substantially all of the properties of the Limited Liability Company (a sale or disposition will be deemed to be "all or substantially all of properties of the Limited Liability Company" if the sale or disposition includes the Property of it 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 Limited Liability Company's total assets as of the end of the most recently completed fiscal year of the Limited Liability Company);

(3) to the fullest extent permitted by law, dissolve, wind-up, or liquidate the Limited Liability Company;

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

(5) change the nature of the business conducted by the Limited Liability Company;

(6) except as permitted by the Lender in writing, amend, modify or otherwise change the Organizational Documents (as defined below) of the Limited Liability Company (which approval, after a Secondary Market Transaction with respect to the Loan, may be conditioned upon Lender's receipt of 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).

(d) The Limited Liability Company shall not, and no Equity Holder or other person or entity on behalf of the Limited Liability Company shall, without the prior written affirmative vote of one hundred percent (100%) of the stockholders of the Limited Liability Company: (1) institute proceedings to be adjudicated bankrupt or insolvent; (2) consent to the institution of bankruptcy or insolvency proceedings against it; (3) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (4) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of The Limited Liability Company or a substantial part of its property; (5) make any assignment for the benefit of creditors; (6) admit in writing its inability to pay its debts generally as they become due or declare or effect a moratorium on its debts; or (7) take any action in furtherance of any such action ((1) through (7) above, with respect to any individual or entity, collectively, a "Bankruptcy Action").

(e) The Limited Liability Company shall have no indebtedness or incur any liability other than (1) 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 (y) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed three percent (3%) of the original principal amount of the Loan and (z) 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 (2) the Obligations. No indebtedness other than the Loan shall be secured (senior, subordinated or pari passu) by the Property.;

(f) The Limited Liability Company shall at all times observe the applicable legal requirements for the recognition of the Limited Liability Company as a legal entity separate from

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any Equity Holders or Affiliates of the Limited Liability Company or of any Equity Holder, including, without limitation, as follows:

(1) The Limited Liability Company shall either (a) maintain its principal effective office and telephone and facsimile numbers separate from that of any Affiliate of the Limited Liability Company or of any Equity Holder and shall conspicuously identify such office and numbers as its own, or (b) shall allocate by written agreement fairly and reasonably any rent, overhead and expenses for shared office space. Additionally, the Limited Liability Company shall use its own separate stationery, invoices and checks which reflect its name, address, telephone number and facsimile number.

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

(3) The Limited Liability Company shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.

(4) The Limited Liability Company shall file or cause to be filed its own separate tax returns.

(5) The Limited Liability Company shall hold itself out to the public (including any of its Affiliates' creditors) under the Limited Liability Company's own name and as a separate and distinct entity and not as a department, division or otherwise of any Affiliate of the Limited Liability Company or of any Equity Holder.

(6) The Limited Liability Company shall observe all customary formalities regarding the existence of the Limited Liability Company, including holding meetings and maintaining current and accurate minute book separate from those of any Affiliate of the Limited Liability Company or of any Equity Holder.

(7) The Limited Liability Company 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 the Limited Liability Company or of any Equity Holder shall be appointed or act as agent of the Limited Liability Company or of any Equity Holder.

(8) Investments shall be made in the name of the Limited Liability Company directly by the Limited Liability Company or on its behalf by brokers engaged and paid by The Limited Liability Company.

(9) Except as required by Lender, the Limited Liability Company shall not guarantee, pledge, assume or hold itself out or permit itself to be held out as having guaranteed, pledged or assumed any liabilities or obligations of any Equity Holder or any Affiliate of the

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Limited Liability Company nor shall it make any loan, except as permitted in the Loan Documents.

(10) The Limited Liability Company is and will be solvent.

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

(12) The Limited Liability Company 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 the Limited Liability Company or of any Equity Holder.

(13) The Limited Liability Company 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.

(14) The Limited Liability Company shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.

(15) The Limited Liability Company shall not do any act which would make it impossible to carry on the ordinary business of The Limited Liability Company.

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

(17) No funds of the Limited Liability Company shall be invested in securities issued by, nor shall the Limited Liability Company acquire the indebtedness or obligation of, an Affiliate of The Limited Liability Company or of an Equity Holder.

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

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(19) The Limited Liability Company shall correct any misunderstanding that is known by The Limited Liability Company regarding its name or separate identity.

(h) Any indemnification obligation of The Limited Liability Company to the holder of any equity interest in The Limited Liability Company shall (1) be fully subordinated to the Loan and (2) not constitute a claim against The Limited Liability Company or its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged (or has been defeased in accordance with the Note).

(i) As used in this Mortgage:

(1) "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 of the definition of "Affiliate", 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 general partner(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.

(2) "Constituent Entity" shall mean, with respect to any entity, (i) with respect to any limited partnership, (x) any general partner of such limited partnership and (y) any limited partner of such partnership which owns (or is owned by any person or entity owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of such partnership; (ii) with respect to any general partnership or joint venture, any partner or venturer in such general partnership or joint venturer; (iii) with respect to any corporation, (x) any officer or director of such corporation, and (y) any person or entity which owns or controls 50% or more of any class of stock of such corporation; (iv) with respect to any limited liability company, (x) any manager of such limited liability company, (y) any managing member of such limited liability company, or the sole member of any limited liability company having only one (1) member, and (z) any non-managing member of such limited liability company which owns (or is owned by any person or entity owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of such limited liability company; (v) any person or entity which controls any entity described in any of clauses (i) through (iv) of this definition; and (vi) any entity which is a "Constituent Entity" with respect to an entity which is a "Constituent Entity" of the subject entity. For all purposes of this Mortgage unless expressly noted, "control" and "controlled by" shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933, as amended. For the purposes of clause (vi) of the definition of Constituent Entity, if entity "B" is a Constituent Entity of entity "A", then any Constituent Entity of "B" shall be deemed to be a Constituent Entity of any entity of which "A" is a Constituent Entity.

(3) "Organizational Documents" shall mean, with respect to any entity, the documents customarily used to form an entity and provide for its governance, as the same may be amended from time to time, including, without limitation, (a) with respect to a corporation, the articles of incorporation or certificate of incorporation or charter, and the by-laws; (b) with respect to a limited liability company, the articles of organization and the operating agreement; (c) with respect to a limited partnership, the certificate of limited partnership and the limited partnership agreement; and (d) with respect to a general partnership, the agreement of partnership.

Bankruptcy-Remote Entities. As a material inducement to Lender to make the Obligation, and recognizing that Lender will suffer immeasurable damage should the Limited Liability Company fail to perform as required under this Section, the Limited Liability Company hereby agrees as follows:

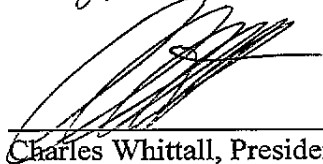
(a) For as long as the Obligations are outstanding, the Limited Liability Company shall have a director who is "Independent" (as defined below).

(b) The Limited Liability Company may not undertake, or request Lender's approval for, any of the events described in Paragraphs (c) and (d) of Section 1.27 without first receiving the affirmative consent of the Fiduciary Representative (as defined below) of the Limited Liability Company or, if applicable, without the Controlling Entity (as defined below) receiving the affirmative consent of the Fiduciary Representative prior to the Controlling Entity giving its consent to the Limited Liability Company's action. In the event of the death, incapacity, resignation or removal of a Fiduciary Representative, the Limited Liability Company or the Controlling Entity, as the case may be, shall promptly appoint a replacement Fiduciary Representative, and no action requiring the consent of the Fiduciary Representative shall be taken until a replacement Fiduciary Representative has been appointed. In addition, no Fiduciary Representative may be removed unless his or her successor satisfying the definition hereunder has been appointed.

(c) "Independent" means a natural person who has not been, and during the continuation of his or her services as manager or director ("Fiduciary Representative") of the Corporation (a "Controlling Entity"), (i) except in the capacity as the Fiduciary Representative of the Corporation or the Corporation's Controlling Entity, is not an employee, officer, director, shareholder, partner, manager, member, counsel, advisor, accountant or agent of the Corporation, any Constituent Entity of the Corporation, or any Affiliate of the Corporation or of any Constituent Entity of the Corporation; (ii) is not a present or former customer or supplier of the Corporation, any Constituent Entity of the Corporation or any Affiliate of the Corporation or of any Constituent Entity of the Corporation, 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 person as compensation for such person to serve as Fiduciary Representative) from the Corporation, any Constituent Entity of the Corporation, or any Affiliate of the Corporation or of any Constituent Entity of the Corporation; (iii) is not (and is not affiliated with an entity that is) a present or former accountant, advisor, attorney, consultant or counsel to the Corporation, any Constituent

Entity of the Corporation, or any Affiliate of the Corporation or of any Constituent Entity of the Corporation; (iv) is not a spouse, parent, child, grandchild or sibling of, or otherwise related to (by blood or by law), any of (i), (ii) or (iii) above; and (v) is not affiliated with a person or entity of which the Corporation, any Constituent Entity of the Corporation, or any Affiliate of the Corporation or of any Constituent Entity of the Corporation is a present or former customer or supplier; *provided, however*, that an entity that provides a Fiduciary Representative as a service for a fee is not prohibited under this paragraph from providing one or more Fiduciary Representatives to the Corporation, any Constituent Entity of the Corporation, or any Affiliate of the Corporation or of any Constituent Entity of the Corporation.

Dated: May 22, 2002



Charles Whittall, President

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