

PO2000039450



ACCOUNT NO. : 072100000032

REFERENCE : 504823-85036A

AUTHORIZATION : *Patricia Pignato*

COST LIMIT : \$ 78.75

FILED

2002 APR - 1 PM 12:49

SECRETARY OF STATE
TALLAHASSEE FLORIDA

ORDER DATE : April 1, 2002

ORDER TIME : 12:50 PM

ORDER NO. : 504823-005

CUSTOMER NO: 85036A

CUSTOMER: Robert A. Forlizzo, Esq
Forlizzo Law Group, P.a.

2903 Rigsby Lane

Safety Harbor, FL 34695

RECEIVED

02 APR - 1 PM 2:53

DEPARTMENT OF STATE
DIVISION OF CORPORATE AFFAIRS
TALLAHASSEE, FLORIDA

DOMESTIC FILING

NAME: ~~PD 1, INC.~~

EFFECTIVE DATE:

100005180841--7

XX ARTICLES OF INCORPORATION
____ CERTIFICATE OF LIMITED PARTNERSHIP
____ ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
____ PLAIN STAMPED COPY
____ CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Sara Lea - EXT. 1114

EXAMINER'S INITIALS:

2544
W02-9053

JS
4/11/02



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

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2002 APR -1 PM 12:49

SECRETARY OF STATE
TALLAHASSEE FLORIDA

April 1, 2002

CSC NETWORKS
1201 HAYS STREET
TALLAHASSEE, FL 32301

SUBJECT: PD I, INC.
Ref. Number: W02000009053

RESUBMIT

Please give original
submission date as file date.

We have received your document for PD I, INC. and the authorization to debit your account in the amount of \$78.75. However, the document has not been filed and is being returned for the following:

The name designated in your document is unavailable since it is the same as, or it is not distinguishable from the name of an existing entity.

Please select a new name and make the correction in all appropriate places. One or more major words may be added to make the name distinguishable from the one presently on file.

Adding "of Florida" or "Florida" to the end of a name is not acceptable.

Please return the original and one copy of 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) 245-6973.

Claretha Golden
Document Specialist
New Filings Section

Letter Number: 202A00019138

RESUBMIT

Please give original
submission date as file date.

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02 APR 11 AM 11:32
DIVISION OF CORPORATIONS

ARTICLES OF INCORPORATION
OF

PD I (DESTIN), INC.

FILED

2002 APR -1 PM 12:49

SECRETARY OF STATE
TALLAHASSEE FLORIDA

The undersigned, as incorporator, forms a corporation within the meaning of the applicable provisions of Florida Statutes, Chapter 607.

ARTICLE I.
NAME

The name of this Corporation is PD I (DESTIN), INC.

ARTICLE II.
PRINCIPAL OFFICE AND MAILING ADDRESS

The initial principal address and mailing address of this Corporation is:

2901 Rigsby Lane
Safety Harbor, FL 34695

ARTICLE III.
REGISTERED OFFICE AND REGISTERED AGENT

The name of the initial Registered Agent of this Corporation and the street address of the Registered Office is as follows:

Name: ROBERT A. FORLIZZO

Address: 2903 Rigsby Lane
Safety Harbor, FL 34695

ARTICLE IV.
INCORPORATOR

The name and address of the Incorporator of this Corporation is:

Name: ROBERT A. FORLIZZO

Address: 2903 Rigsby Lane
Safety Harbor, FL 34695

ARTICLE V.
CAPITAL STOCK

This Corporation is authorized to issue 9,000 shares of \$.01 par value common stock.

ARTICLE VI.
PURPOSE

The Corporation's business and purpose shall consist solely of the following:

(a) To acquire a general partnership interest in and act as the general partner of Paradise Destin, Ltd. (the "Partnership"), which is engaged solely in the ownership, operation and management of the real estate project known as The Shoppes at Paradise Key located in Destin, Florida (the "Property"), pursuant to and in accordance with these Articles of Incorporation and the Limited Partnership Agreement ("Partnership Agreement"); and

(b) to engage in such other lawful activities permitted to corporations by the Business Corporation Act of the State of Florida as are incidental, necessary or appropriate to the foregoing.

ARTICLE VII.
INDEPENDENT DIRECTOR.

(a) At all times at which the directors of the Corporation shall take, or shall be required to take, any action in such capacity and until such time as all obligations of the Partnership secured by the Property pursuant to the terms of the first lien Mortgage (the "Mortgage") have been paid in full, there shall be at least one Independent Director. An "Independent Director" shall be an individual who, except in his or her capacity as an Independent Director of the Corporation is not, and has not been during the two years immediately before such individual's appointment as an Independent Director, (i) a stockholder, partner, director, officer or employee of the Corporation, the Partnership or their Affiliates; (ii) affiliated with a significant customer or supplier of the Corporation, the Partnership or their Affiliates; (iii) a spouse, parent, sibling or child of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the Corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation's stock or any partnership interest in the Partnership, or (ii) which controls or is under common control with the Corporation or the Partnership. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of

the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

(b) With the consent of the initial stockholder of the Corporation, which consent the initial stockholder believes to be in the best interest of the initial stockholder and the Corporation, no Independent Director shall, with regard to any action to be taken under or in connection with this ARTICLE, owe a fiduciary duty or other obligation to the initial stockholder nor to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every stockholder, including each successor stockholder, shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, no further act or deed of any stockholder being required to evidence such consent. Instead, such director's fiduciary duty and other obligations with regard to such action under or in connection with this ARTICLE shall be owed to the Corporation (including its creditors). In addition, no Independent Director may be removed unless his or her successor has been elected.

(c) Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Corporation, the Corporation shall not, without the unanimous consent of the Board of Directors, including the Independent Director, do any of the following:

- (i) engage in any business or activity other than those set forth in Article VI or cause or allow the Partnership to engage in any business or activity other than as set forth in its Partnership Agreement;
- (ii) incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than the Mortgage and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business;
- (iii) cause the Partnership to incur any indebtedness or to assume or guaranty any indebtedness of any other entity, other than the Mortgage and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business;
- (iv) dissolve or liquidate, in whole or in part;
- (v) cause or consent to the dissolution or liquidation, in whole or in part, of the Partnership;
- (vi) consolidate or merge with or into any other entity or convey or transfer or lease its property and assets substantially as an entirety to any entity;

- (vii) cause the Partnership to consolidate or merge with or into any other entity or to convey or transfer or lease its Property and assets substantially as an entirety to any entity;
- (viii) with respect to the Corporation or the Partnership, institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution or bankruptcy or insolvency proceedings against it, or file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Partnership or a substantial part of property of the Corporation or the Partnership, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take corporate action in furtherance of any such action;
- (ix) amend Articles VI, VII or IX of these Articles of Incorporation of the Corporation or approve an amendment to Articles II, VII, IX, XVI or XVII of the Limited Partnership Agreement governing the Partnership; or
- (x) withdraw as general partner of the Partnership.

So long as any obligations secured by the Mortgage remain outstanding and not paid in full, the Corporation shall have no authority to take any action in items (i) through (vii) and (ix) and (x) above without the written consent of the holder of the Mortgage.

ARTICLE VIII. **PROHIBITED ACTIVITIES**

Notwithstanding anything contained herein to the contrary, until the Indebtedness is paid in full, the corporation: (i) will not materially amend this certificate of incorporation or the corporation's bylaws without first obtaining approval of the Lender; (ii) will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation or merger, and, except as otherwise expressly permitted by the Loan Documents, will not engage in, seek or consent to any asset sale or transfer of shareholder interests; (iii) without the unanimous consent of all of the directors will not with respect to itself or, if applicable, to any other corporation, limited partnership, general partnership, limited liability company, or trust (each, an "Entity") in which it has a direct or indirect legal or beneficial ownership interest (a) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any 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 such Entity or

all or any portion of such Entity's properties; (c) make any assignment for the benefit of such Entity's creditors; or (d) take any action that might cause such Entity to become insolvent, (iv) will have no indebtedness other than the Indebtedness and commercially reasonable unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Premises which are paid within sixty (60) days of the date incurred, (v) will not assume or guarantee or become obligated for the debts of any other person or Entity or hold out its credit as being available to satisfy the obligations of any other person or Entity, except for the Indebtedness, (vi) will not pledge its assets for the benefit of any other person or Entity, and (vii) will not make loans to any person or Entity.

ARTICLE IX. **INDEMNIFICATION**

Notwithstanding anything contained herein to the contrary, any indemnification of the corporation's directors and officers shall be fully subordinated to any obligations respecting the Premises (including, without limitation, the mortgage securing the Indebtedness) and such indemnification shall not constitute a claim against the corporation in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

ARTICLES X. **SEPARATENESS COVENANTS AND OPERATIONS MATTERS**

The Corporation shall:

- (a) maintain books and records and bank accounts separate from those of any other person;
- (b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (c) hold regular Board of Director and stockholder meetings, as appropriate, to conduct the business of the Corporation, and observe all other corporate formalities;
- (d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (e) prepare separate tax returns financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;
- (f) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates;

(g) transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements;

(h) conduct business in its own name, and use separate stationery, invoices and checks;

(i) not commingle its assets or funds with those of any other person; and

(j) not assume, guarantee or pay the debts or obligations of any other person.

IN WITNESS WHEREOF, the undersigned, as incorporator, has hereunto set the undersigned's hand and seal this 28th day of March, 2002, for the purpose of organizing this Corporation under the laws of the State of Florida.



ROBERT A. FORLIZZO

ACKNOWLEDGMENT:

Having been named to accept service of process for the above-stated Corporation, at the place designated in this certificate, I hereby accept to act in this capacity, and agree to comply with the provision of said Act relative to keeping open said office.

Date: March 28, 2002


ROBERT A. FORLIZZO

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2002 APR - 1 PM 12:49
SECRETARY OF STATE
TALLAHASSEE FLORIDA