

PO2000057201

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

FILING COVER SHEET
ACCT. #FCA-14

FILED
2002 MAY 31 PM 2:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CONTACT:

Pam

DATE:

5/31/02

REF. #:

0457.6964

CORP. NAME:

Wm Fountains, Inc

☐ ARTICLES OF INCORPORATION

☐ ANNUAL REPORT

☐ FOREIGN QUALIFICATION

☐ REINSTATEMENT

☐ CERTIFICATE OF CANCELLATION

☐ OTHER:

☒ ARTICLES OF AMENDMENT

☐ TRADEMARK/SERVICE MARK

☐ LIMITED PARTNERSHIP

☐ MERGER

☐ UCC-1

☐ ARTICLES OF DISSOLUTION

☐ FICTITIOUS NAME

☐ LIMITED LIABILITY

☐ WITHDRAWAL

☐ UCC-3

RECEIVED
02 MAY 31 AM 10:42
TALLAHASSEE, FLORIDA

STATE FEES PREPAID WITH CHECK# 502434 FOR \$ 43.75

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

300005662243--1
-05/31/02--01014--018
*****43.75 *****43.75

COST LIMIT: \$

PLEASE RETURN:

☒ CERTIFIED COPY

☐ CERTIFICATE OF GOOD STANDING

☐ CERTIFICATE OF STATUS

C. Coulllette MAY 31 2002

☐ PLAIN STAMPED COPY

Examiner's Initials



FLORIDA DEPARTMENT OF STATE

Katherine Harris
Secretary of State

May 31, 2002

CORPDIRECT AGENTS, INC.

TALLAHASSEE, FL

SUBJECT: WM FOUNTAINS, INC.
Ref. Number: P02000057201

PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE.

We have received your document for WM FOUNTAINS, INC. and check(s) totaling \$43.75. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The amendment must be adopted in one of the following manners:

(1) If an amendment was approved by the shareholders, one of the following statements must be contained in the document.

(a) A statement that the number of votes cast for the amendment by the shareholders was sufficient for approval, -or-

(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.

(2) If an amendment was adopted by the incorporators or board of directors without shareholder action.

(a) A statement that the amendment was adopted by either the incorporators or board of directors and that shareholder action was not required.

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: 302A00035344

PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE.

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
WM FOUNTAINS, INC.

FILED
2002 MAY 31 PM 2:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FIRST: The date of filing of the articles of organization was May 23, 2002.

SECOND: The following amendment to the articles of organization was adopted by the corporation to include the following language; and the number of votes cast for the amendment by the shareholders was sufficient for approval.

Single-Purpose Entity Covenants. The Corporation 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 Corporation has been, and is will be, to act as the Managing Member, together with such other activities as may be necessary or advisable in connection with such purpose. The Corporation has not engaged, and does not and shall not engage, in any business, and it has and shall have no purpose, unrelated to acting as the Managing Member of Bay Hill Fountains, L.L.C. (the Company).

(b) The Corporation shall have the authority to perform any act in respect of The Corporation in violation of any (a) applicable laws or regulations or (b) any agreement between The Corporation and Lender (including, without limitation, the Loan Documents).

(c) The Corporation shall not:

(1) make any loans to the holder (directly or indirectly) of any equity interest in the Corporation (collectively the "Equity Holders"), any Affiliate (as defined below) of the Corporation 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 Corporation (a sale or disposition will be deemed to be "all or substantially all of properties of the Corporation" 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 Corporation's total assets as of the end of the most recently completed fiscal year of the Corporation);

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

(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 Corporation;

(6) except as permitted by the Lender in writing, amend, modify or otherwise change the Organizational Documents (as defined below) of the Corporation (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 Corporation shall not, and no Equity Holder or other person or entity on behalf of the Corporation shall, without the prior written affirmative vote of one hundred percent (100%) of the stockholders of the Corporation: (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 Corporation 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 Corporation shall have no indebtedness;

(f) The Corporation shall at all times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Equity Holders or Affiliates of the Corporation or of any Equity Holder, including, without limitation, as follows:

(1) The Corporation shall either (a) maintain its principal effective office and telephone and facsimile numbers separate from that of any Affiliate of the Corporation 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 Corporation shall use its own separate stationery, invoices and checks which reflect its name, address, telephone number and facsimile number.

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

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

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

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

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

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

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

(9) Except as required by Lender, the Corporation 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 Corporation nor shall it make any loan, except as permitted in the Loan Documents.

(10) The Corporation is and will be solvent.

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

(12) The Corporation 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 Corporation or of any Equity Holder.

(13) The Corporation 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 Corporation shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.

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

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

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

(18) The Corporation 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 Corporation than is obtainable in the market from a person or entity that is not an Affiliate of the Corporation or of any Equity Holder.

(19) The Corporation shall correct any misunderstanding that is known by the Corporation regarding its name or separate identity.

(h) Any indemnification obligation of the Corporation to the holder of any equity interest in the Corporation shall (1) be fully subordinated to the Loan and (2) not constitute a claim against the Corporation 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 Corporation fail to perform as required under this Section, the Corporation hereby agrees as follows:

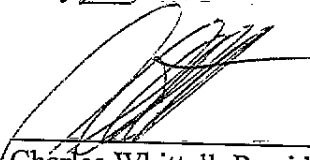
(a) For as long as the Obligations are outstanding, the Corporation shall have a director who is "Independent" (as defined below).

(b) The Corporation 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 Corporation 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 Corporation's action. In the event of the death, incapacity, resignation or removal of a Fiduciary Representative, the Corporation 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 any 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