

P170000049887

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

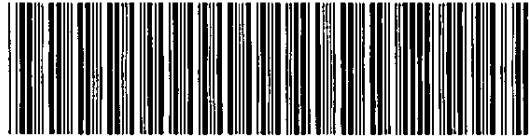
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



000299692500

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
2017 JUN 14 PM 3:35

2017 JUN 14 PM 1:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

JUN 15 2017
C McNAIR

CORPORATION SERVICE COMPANY
1201 Hays Street
Tallahassee, FL 32301
Phone: 850-558-1500

FILED
DIVISION OF CORPORATIONS
JUN 14 PM 3:35

ACCOUNT NO. : I20000000195

REFERENCE : 681960 10463A

AUTHORIZATION

COST LIMIT : \$ 35.00

ORDER DATE : June 14, 2017

ORDER TIME : 12:21 PM

ORDER NO. : 681960-005

CUSTOMER NO: 10463A

DOMESTIC AMENDMENT FILING

NAME: DCS V-A, INC.

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Melissa Zender -- EXT# 62956

EXAMINER'S INITIALS: _____

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
DCS V-A, INC.**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
2017 JUN 14 PM 3:35

Pursuant to Section 807.1007 of the Florida Statutes, DCS V-A, Inc., a Florida corporation (the "Corporation"), certifies that:

1. The original Articles of Incorporation of the Corporation were filed by the Department of State on June 8, 2017.
2. These Amended and Restated Articles of Incorporation were adopted by the majority of the Corporation's Board of Directors on June 13, 2017.
3. These Amended and Restated Articles of Incorporation were duly adopted by the Shareholders owning a majority of the outstanding and issued stock on the Corporation on June 13, 2017 and approved by the Lender referenced herein.

The entire text of the Articles of Incorporation is amended and restated effective as of the date of filing with the Department of State, to read as follows:

ARTICLE I - Name and Address

The name of this Corporation is: **DCS V-A, INC.** (this "Corporation") and the principal place of business and mailing address of this Corporation shall be 505 S. Flagler Drive, Ste. 900, West Palm Beach, FL 33401.

ARTICLE II - Commencement and Duration

This Corporation shall **COMMENCE ON THE DATE OF SIGNING** of these Articles and the duration of this Corporation is perpetual.

ARTICLE III - Purpose

The purpose for which this Corporation is organized, subject to the provisions to article 607.0301 of the Florida Business Corporation Act, is solely to manage **DCS REAL ESTATE INVESTMENTS V-A, LLC**, a Florida limited liability company (the "Company") with all of the rights, powers, obligations and liabilities of the manager under the operating agreement of such Company (the "Operating Agreement") and to take any and all actions and do any and all things necessary or appropriate to the accomplishment of same. This Corporation shall not engage in any business and it shall have no purpose, unrelated to the management of the Company and shall not acquire any assets or own assets otherwise other than related to the management of the Company.

ARTICLE IV - Special Provisions

1. So long as the loan (the "Loan") from Bonnet Creek Hotel Lender, LLC, a Delaware limited liability company (and its successors and assigns, "Lender"), acting through its agent FCS ADVISORS, LLC D/B/A BREVET CAPITAL ADVISORS, a Delaware limited liability company (and its successors and assigns, "Agent") to the Company is outstanding, notwithstanding any provisions set forth herein to the contrary, this Corporation shall at all times observe the applicable legal requirements for the recognition of this Corporation as a legal entity separate from any member of the Company ("Members") and Affiliates (as defined below). Capitalized terms used in this Article IV and not otherwise defined shall have the meaning set forth in that certain Mezzanine Loan Agreement, by and among the Company, as borrower, Agent, as agent and Lender, as lender. At all times on and after the date hereof so long as the Loan remains outstanding:

(a) At least one (1) of the directors of this Corporation shall be an Independent Director. "Independent Director" means a person who (i) is not a member of the Company, (ii) is not a stockholder of this Corporation, (iii) except in the capacity as a director of this Corporation, is not a current or former employee, officer, consultant, counsel, agent, director, stockholder, partner, member, creditor or manager of the Company, this Corporation or any Affiliate of those entities, or any entity under common control with the Company or this Corporation, (iv) is not a spouse, child, grandchild or sibling (including by marriage) of any of (i) to (iii) above, (v) is not (and is not affiliated with an entity that is) a significant advisor or consultant to the Company or this Corporation, (vi) is not affiliated with a business of which the Company or this Corporation is a customer or supplier and (vii) has not yet received, and was not a member or an employee of an entity that received, in any year within the five years immediately preceding or any years during such person's incumbency as a director, fees or other income from the Company or this Corporation or any Affiliate of those entities in the aggregate in excess of 1% of the gross income, for any applicable year, of such person, firm or business. For purposes of this definition, "significant," with respect to any relationship between two Persons shall mean any transaction, services of transactions or relationship involving more than the lesser of (a) \$25,000.00 per calendar year or (b) 1% of either Person's annual income. In the event of the death, incapacity, resignation or removal of an Independent Director, the Board of Directors shall promptly appoint a replacement Independent Director, and may take no action requiring approval of the Board of Directors until having done so. Subject to the rights of Lenders, the Shareholders of this Corporation shall have the right to remove and replace the Independent Director at will, with or without cause so long as his or her successor has been elected simultaneously therewith and is an Independent Director as well.

(b) This Corporation shall be formed solely for the purpose of managing the Company and transacting all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

(c) This Corporation has not been, is not, and will not be engaged, in any business unrelated to the management of the Company.

(d) This Corporation will not have any assets other than those related to its interest in the Company.

(e) This Corporation will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by the Senior Loan Agreement), transfer of membership interests, or amendment of these Articles of Incorporation.

(f) This Corporation will not, without the unanimous consent of the Board of Directors, take any Bankruptcy Action.

(g) This Corporation will remain solvent and will maintain adequate capital in light of its contemplated business operations.

(h) This Corporation will not fail to correct any known misunderstanding regarding its separate identity.

(i) This Corporation will maintain its accounts, books and records separate from any other Person and will file its own tax returns.

(j) This Corporation will maintain its books, records, resolutions and agreements as official records.

(k) This Corporation will not commingle its funds or assets with those of any other Person.

(l) This Corporation will hold its assets in its own name.

(m) This Corporation will conduct its business in its name only, and will not use any trade name.

(n) This Corporation will maintain its financial statements, accounting records and other entity documents separate from any other Person.

(o) This Corporation will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets.

(p) This Corporation will observe all corporate.

(q) This Corporation will maintain an arm's-length relationship with its Affiliates.

(r) This Corporation will have no indebtedness other than the Permitted Indebtedness.

(s) This Corporation will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any Person.

(t) This Corporation will not acquire obligations or securities of its shareholders.

(u) This Corporation will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks.

(v) This Corporation will not pledge its assets for the benefit of any other Person.

(w) This Corporation will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person.

(x) This Corporation will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

(y) This Corporation will not make loans to any Person.

(z) This Corporation will not identify its shareholders or any Affiliate of any of them, as a division or part of it.

(aa) This Corporation will not enter into or be a party to, any transaction with its shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party.

(bb) This Corporation will have no obligation to indemnify its officers, directors or shareholders, as the case may be, or has such an obligation that is fully subordinated to the Loans and will not constitute a claim against it if cash flow in excess of the amount required to pay the Loans is insufficient to pay such obligation.

(cc) This Corporation will consider the interests of its creditors (and the Company's creditors) in connection with all corporate actions.

"Affiliate" means any person or entity other than the Corporation (i) which owns beneficially, directly or indirectly, more than 50 percent of the outstanding shares of the common stock or which is otherwise in control of the Corporation, (ii) of which more than 50 percent of the outstanding voting securities are owned beneficially, directly or indirectly, by any person or entity described in clause (i) above, or (iii) which is controlled by any person or entity described in clause (i) above; provided that for the purposes of this definition the term "control" and "controlled by" shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933, as amended.

2. This Corporation shall not, without the affirmative vote of 100 percent of the Board of Directors, including the affirmative vote of 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 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 this Corporation or a substantial part of its property; 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 any corporate action in furtherance of any such action.

3. Additionally, this Corporation shall not, so long as the Loan remain outstanding to the Lender, (a) liquidate or dissolve this Corporation in whole or in part, (b) except as permitted by the Lender in writing, consolidate, merge or enter into any form of consolidation with or into any other entity, nor convey, transfer or lease its assets substantially as an entirety to any person or entity nor permit any entity to consolidate, merge or enter into any form of consolidation with or into this Corporation, nor convey, transfer or lease its assets substantially as an entirety to any person or entity and (c) except as permitted by the Lender in writing, amend or modify these Articles of Incorporation.

ARTICLE V - Stock

The aggregate number of shares which this Corporation shall have authority to issue is 100 shares of common voting stock at \$1.00 par value per share. Fully-paid stock of this Corporation shall not be liable to any further call or assessment. The sum of the par value of all shares of capital stock of this Corporation that have been issued shall be the stated capital of this Corporation at any particular time. To the extent consideration in excess of the par value of such shares, if any, is received for such shares, such excess consideration shall constitute capital surplus.

ARTICLE VI - Amendment

These Articles of Incorporation may not be amended, modified or repealed without the affirmative vote of a majority of the stock issued and outstanding, at a Shareholders meeting called for that purpose and the written approval of the Lenders.

ARTICLE VII - Shareholder Rights

Shareholders of this Corporation shall have pre-emptive rights to acquire their pro rata share of stock of this Corporation for all issues of any class of stock of this Corporation, no matter when authorized, and for whatever consideration is contemplated to be received by this Corporation, including but not limited to cash, other property, services, the acquisition of other corporations' shares or property through merger or the extinguishment of debts. Pre-emptive rights shall also apply to the reissuance of all redeemed or otherwise acquired shares, including the reissuance of treasury shares.

This Article VII pertaining to pre-emptive rights may not be amended or deleted without the unanimous vote of the Shareholders of each affected class, and no issuance of stock of this Corporation shall take place unless the price at which the stock is to be issued shall be approved by a majority of the Shareholders of this Corporation.

ARTICLE VIII - Initial Office and Agent

The street address of this Corporation's initial registered office in Florida is 505 S. Flagler Drive, Ste. 900, West Palm Beach, FL 33401, and the name of its initial registered agent at that address Paul E. Simonson at 505 S. Flagler Drive, Ste. 900, West Palm Beach, FL 33401.

ARTICLE IX - Incorporators

The names and address of the incorporators are:

Name

Address

Paul E. Simonson

505 S. Flagler Drive, Ste. 900
West Palm Beach, FL 33401

ARTICLE X
Common Directors - Transactions Between Corporations

No contract or other transaction between this Corporation and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its Directors are directors or officers or are financially interested, shall either be void or voidable because of such relationship or interest, if: (a) the fact such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contractor transaction by vote or consent sufficient for the purpose without counting the votes or consents of such interested Director; or (b) the fact of such relationship or interest is disclosed or known to the Shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or (c) the contract is fair and reasonable to this Corporation .

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies such contract or transaction.

ARTICLE XI- By-Laws

The By-Laws of this Corporation shall be initially adopted by the Board of Directors, and may be changed or repealed by the affirmative vote of a majority of the Shareholders at any meeting thereof and with the written approval of Lender.

ARTICLE XII- Indemnification

Subject to the qualifications contained in Section 607.0850, Florida Statutes, this Corporation shall indemnify its officers and directors and former officers and directors against expenses (including attorney's fees), judgments, fines and amounts paid in settlement arising out of his or her services as an officer or director of this Corporation.

I submit this document and affirm that the facts stated herein are true. I am aware that the false information submitted in a document to the Department of State constitutes a third degree felony as provided for in S.817.155, F.S.

The undersigned has executed, subscribed and acknowledged these Amended and Restated Articles of Incorporation on June 13, 2017.


Paul E. Stronson, President

**CERTIFICATE DESIGNATING PLACE OF
BUSINESS OR DOMICILE FOR THE SERVICE
OF PROCESS WITHIN THIS STATE NAMING
AGENT UPON WHOM PROCESS MAY BE SERVED**

The following is submitted pursuant to 48.091(1) and 607.0501, Florida Statutes:

DCS V-A, Inc., desiring to organize under the laws of the State of Florida, being in the County of Palm Beach at 505 S. Flagler Drive, Ste. 900, West Palm Beach, FL 33401, has named Paul E. Simonson located at 505 S. Flagler Drive, Ste. 900, West Palm Beach, FL 33401 as its initial Registered Agent to accept service of process within this State.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above stated Corporation, at the initial registered office of this Corporation in this State, I hereby accept to act in this capacity and agree to comply with the provisions of said statute relative to keeping the registered office of this Corporation open from 10:00 a.m. to noon each day, except Saturdays, Sundays and legal holidays, and to post therein a sign designating the name of this Corporation and the name of its Registered Agent.

DATED this 13 day of June, 2017.



Paul E. Simonson