

N14000000303

Florida Department of State
Division of Corporations
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BROADWAY TIMES SQUARE, INC.

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April 18, 2014

FLORIDA DEPARTMENT OF STATE
Division of Corporations

BROADWAY TIMES SQUARE, INC.
1801 HERMITAGE BOULEVARD, SUITE 100
TALLAHASSEE, FL 32308

SUBJECT: BROADWAY TIMES SQUARE, INC.
REF: N14000000303

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The document you submitted has been prepared pursuant to profit statutes (chapter 607, Florida Statutes). As the entity was originally filed as a nonprofit corporation, this document should be filed pursuant to chapter 617, Florida Statutes.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Annette Ramsey
Regulatory Specialist II

FAX Aud. #: H14000088857
Letter Number: 714A00008360

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DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA 32314

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DEPT. OF STATE
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
FOR
BROADWAY TIMES SQUARE, INC.
(a Florida Corporation)**

Pursuant to Section 617.1007 of the Florida Business Corporation Act (the "Act"), the undersigned, being all of the Directors of Broadway Times Square, Inc. (the "Corporation") do hereby certify that:

The original Articles of Incorporation of the Corporation were filed on January 10, 2014 with the Secretary of State of the State of Florida; and

On April 9, 2014, the Board of Directors of the Corporation voted to recommend to the members of the Corporation that the Articles of Incorporation be amended and restated; and

On April 9, 2014, the members of the Corporation resolved to amend and restate the Articles of Incorporation by unanimous written consent as permitted by Section 617.0704 of the Act; and

These Amended and Restated Articles of Incorporation, which supersede the original Articles of Incorporation and all amendments to them, have been adopted pursuant to Section 617.1007(4) of the Act and shall become effective upon the filing of these Amended and Restated Articles of Incorporation with the Secretary of State of the State of Florida.

NOW, THEREFORE, it is resolved that the Articles of Incorporation of the Corporation are hereby amended and restated in their entirety as follows:

I.
Name

The name of the corporation is "Broadway Times Square, Inc."

II.
Enabling Law

The corporation is organized pursuant to the provisions of the Florida Business Corporation Act (the "Act"). Pursuant to section 617.0203 of the Act, the corporation's existence shall begin on the date these articles are filed.

III.
Duration; Authorized Shares

The corporation shall have perpetual duration, shall have no more than 35 shareholders and shall have only one class of stock. The corporation is authorized to issue a maximum of One Thousand (1,000) shares of common stock having a par value of one dollar (\$1.00) per share. The corporation may only issue shares of common stock to one or more organizations described in section 501(c)(25)(C) of the Internal Revenue Code of 1986, as

amended (the "Code"), each of which is either a "governmental unit" or an "affiliate of a governmental unit" as defined in section 4 of Revenue Procedure 95-48 ("Qualifying Shareholders").

IV.
Purpose

The corporation is organized for the exclusive purposes of (1) acquiring the Premises and holding title to, and collecting income from, the Premises, and (2) remitting the entire amount of income from the Premises (less expenses) to one or more organizations described in section 501(c)(25)(C) of the Code, which are shareholders of the corporation. It is intended that the corporation will qualify at all times as an organization exempt from federal income taxation under sections 501(a) and 501(c)(25) of the Code; therefore, notwithstanding any other provision in these Articles, the corporation shall never be authorized to engage in any activity except in furtherance of the purposes for which the corporation is organized.

V.
Powers

Unless otherwise provided in these Articles or in the Bylaws of the corporation, the corporation shall have all of the powers conferred upon corporations under the Act to be exercised solely in furtherance of the purposes described in Article IV hereof.

Notwithstanding the foregoing or anything contained herein to the contrary, until the Indebtedness is paid in full, the corporation:

- (A) is and will be organized solely for the purpose stated in Article IV;
- (B) does not and will not engage in any business unrelated to the matters listed in paragraph (A) above;
- (C) does not and will not own any assets other than (i) the Premises and (ii) incidental personal property necessary for the ownership, management and operation of the Premises, and now holds and will hold the Premises and such assets in its own name;
- (D) does and will do all things necessary to observe its organizational formalities and preserve its existence, and does not and will not engage in, seek or consent to nor will it allow any constituent party to engage in, seek or consent to, any dissolution, winding up, liquidation, consolidation or merger, and, except as otherwise expressly permitted by the Loan Documents, does not and will not engage in, seek or consent to any asset sale, transfer of shareholder interests, or amendment of its articles of incorporation and bylaws without first obtaining approval of Lender;
- (E) has at all times been, is and intends to remain solvent and pay its debts and liabilities from its own funds and assets as the same shall become due (and to the extent there is sufficient cash flow from the operation of the

Premises to do so), and does maintain and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require its members, partners or shareholders to make additional capital contributions to such entity;

- (F) does and will maintain its accounts, books, financial statements and records, as well as its organizational documents and other corporate documents, as official records, separate from those of any other Person(s) (including not listing the corporation's assets as assets on the financial statement of any other Person(s); provided, however, that the corporation's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the corporation and such Affiliates and to indicate that the corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (ii) such assets shall be listed on the corporation's own separate balance sheet). The corporation will file its own tax returns (to the extent the corporation is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person(s) unless the corporation is a disregarded entity for federal tax purposes;
- (G) does not commingle and will not commingle its funds or assets with those of any other Person;
- (H) does and will conduct its business in its own name;
- (I) does and will pay the salaries of its employees from its own funds;
- (J) does not have and will not have or incur any indebtedness other than (i) the Indebtedness, (ii) commercially reasonable unsecured trade payables (not to exceed two percent (2%) of the principal amount of the Indebtedness) in the ordinary course of business relating to the ownership, management and operation of the Premises which are not evidenced by a note, which are paid no later than the due date thereof, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are expressly permitted pursuant to the Loan Documents;
- (K) does not have and will not acquire, assume, guarantee or become obligated for the debts, obligations or securities of any other Person or hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person, except for the Indebtedness;

- (L) does, will be, will at all times hold itself out to the public to be, and does identify and will identify itself as, a separate and distinct Entity under its own name and not as a division or part of any other Person(s);
- (M) does not have and will not make loans or advances to any Person(s);
- (N) does not and will not identify itself as a division or part of any of its partners, members, shareholders, trustees, beneficiaries or any of their Affiliates, and does not and will not allow any of its partners, members, shareholders, trustees, beneficiaries, or any of their Affiliates to identify themselves as part of it; and
- (O) does and will maintain an arms-length relationship with its Affiliates.

VI.
Shareholder Voting

Notwithstanding anything contained herein to the contrary, when acting on matters subject to the vote of the shareholders, notwithstanding that the corporation is not then insolvent, the shareholders shall take into account the interest of the corporation's creditors, as well as those of the shareholders.

The shareholders of the corporation shall have the right to dismiss the corporation's investment advisor(s), following reasonable notice, upon a vote of the shareholders holding a majority of the capital stock of the corporation.

VII.
Termination of Shareholder Interest

A shareholder shall have the right to terminate its interest in the corporation by either, or both, of the following alternatives, as determined by the corporation:

- (A) by selling or exchanging its stock in the corporation (subject to any Federal or State securities law) to any Qualifying Shareholder so long as the sale or exchange does not increase the number of shareholders of the corporation above 35; or
- (B) by having its stock redeemed by the corporation after the shareholder has provided 90 days notice to the corporation.

VIII.
Management

The affairs of the corporation shall be managed by a Board of Directors consisting of at least three individuals (the "Directors"). The exact number and the method of election of the Directors as well as any qualifications for being a Director shall be as provided from time to time by or pursuant to the Bylaws of the corporation. The Board of Directors also shall be authorized to appoint officers and agents to act on behalf of the corporation and/or to delegate

daily management powers and responsibilities, including but not limited to the power to borrow funds on behalf of the corporation, the power to transfer or encumber assets on behalf of the corporation, and the power to purchase property on behalf of the corporation, to one or more individuals or entities which the Board of Directors reasonably believes to be reliable and competent as to such matters.

IX.

Indemnification

No Director of the corporation shall be personally liable to the corporation or any other person for monetary damages for breach of his duty of care or other duty as a Director; provided, that this provision shall eliminate or limit the liability of a Director only to the extent permitted from time to time by the Act or any successor laws. The Board of Directors also shall have the power to hold harmless and indemnify any individual or entity which is appointed as an officer, employee or agent and to which management responsibilities are delegated in accordance with Article VIII of these Articles; provided, that this provision shall eliminate or limit the liability of an officer, employee or agent only to the extent permitted from time to time by the Act or any successor laws.

Notwithstanding the foregoing or anything contained herein to the contrary, any indemnification of the corporation's Directors, officers, employees or agents 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. For the purposes of this Article IX, the term "mortgage" shall be construed to mean "mortgage" or "deed of trust" or "deed to secure debt" or "trust deed" as the context so requires.

X.

Dissolution

Notwithstanding anything contained herein to the contrary, the corporation shall continue and not dissolve whether as a consequence of the bankruptcy or insolvency of one or more of the shareholders of the corporation, or otherwise, but the corporation shall continue as long as there remains a solvent shareholder of the corporation.

Notwithstanding anything contained herein to the contrary, subject to applicable law, dissolution of the corporation shall not occur so long as the corporation remains owner of the Premises subject to the mortgage.

Upon dissolution or winding up of the corporation, claims or known obligations of the corporation shall be paid in full, and any such provision for payments shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the corporation's shareholders.

XI.

Principal Office: Registered Agent

The address of the initial principal office of the corporation is 1801 Hermitage Boulevard, Suite 100, Tallahassee Florida 32308. The address of the corporation's initial registered office is 1200 South Pine Island Road, Plantation, Florida 33324, and the name of the corporation's initial registered agent at that office is CT Corporation System. A written acceptance of appointment as a registered agent as required by section 617.0501 of the Act is attached as "Exhibit A" to these Articles of Incorporation.

XII.

Defined Terms

"Affiliate(s)" means any Person(s) directly or indirectly Controlling, Controlled by, or under common Control with the corporation or any Person(s) owning a material interest in the corporation, either directly or indirectly.

"Control" (and terms correlative thereto) when used with respect to any specified Person(s) means the power to direct or cause the direction of the management, policies or activities of such Person(s), directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise.

"Entity(ies)" means a (a) corporation, (b) limited partnership, limited liability partnership or general partnership, (c) limited liability company, or (d) trust.

"Indebtedness" means the loan amount outstanding from time to time together with all other obligations and liabilities due or to become due to Lender pursuant to the Loan Documents.

"Lender" means that certain lender of record with respect to any first lien on the Premises.

"Loan Documents" means the instruments or agreements which evidence or secure the Indebtedness, as the same may be modified, supplemented or amended.

"Person(s)" means any individual, corporation, limited liability company, limited partnership, general partnership, limited liability limited partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

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"Premises" means those certain parcel(s) of real property, together with all improvements located at 1370 Broadway, New York, New York.

**XIII.
Amendment**

The Articles of Incorporation of the corporation may be amended by the affirmative vote of a majority of the Directors then in office as permitted by the Act (or the corresponding provision of any future Florida corporation law); provided, however, that no amendment may be made which would cause the corporation no longer to be qualified as an exempt organization described in section 501(c)(25) of the Code.

IN WITNESS WHEREOF, the undersigned Directors have executed these Amended and Restated Articles of Incorporation as of April 9, 2014.



Stephen A. Spook, Director



Maureen Hazen, Director



E. Lamar Taylor, Director

EXHIBIT "A"

**CERTIFICATE OF DESIGNATION AND ACCEPTANCE OF
REGISTERED AGENT AND REGISTERED OFFICE**

1. The name of the corporation is Broadway Times Square, Inc.
2. The name and address of the registered agent and registered office is:

C T Corporation System
1200 South Pine Island Road
Plantation, Florida 33324

The undersigned, having been named the Registered Agent of Broadway Times Square, Inc., hereby accepts such designation and is familiar with, and accepts the obligations of such position, as provided in Florida Statutes Sections 617.0501.

C T Corporation System

By: Connie Bryan Connie Bryan
Its: Assistant Secretary

Registered Agent

Dated: April 18, 2014