

P07000021412

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

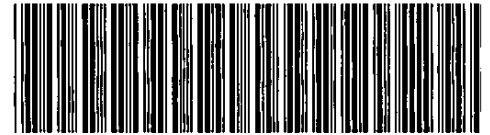
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



900250547779

13 OCT 4 PM 4:30  
DIVISION OF CORPORATIONS

13 OCT -4 PM 5:00  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

*Amend*  
*10-7-13*  
*DC*

**FLORIDA FILING & SEARCH SERVICES, INC. ♦♦**

**P.O. BOX 10662 TALLAHASSEE, FL 32302  
155 Office Plaza Dr Ste A Tallahassee FL 32301  
PHONE: (800) 435-9371; FAX: (866) 860-8395**

---

**DATE:** 10/4/13

**NAME:** TBS HOTEL MANAGEMENT CORP

**TYPE OF FILING:** AMENDMENT

**COST:** ~~43.75~~ 35.00

**RETURN:** <sup>Plain</sup>  
~~CERTIFIED~~ COPY PLEASE

---

**ACCOUNT:** FCA000000015

**AUTHORIZATION:** ABBIE/PAUL HODGE

*Abbie Hodge*

---

*Please expedite*

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
TBS HOTEL MANAGEMENT CORP.  
(Name of corporation as currently filed with the Florida Dept. of State)  
P07000021412  
(Document number of corporation)

Pursuant to the provisions of section 607.1006, Florida Statutes, this **Florida Profit Corporation** adopts the following amendments to its Articles of Incorporation:

ARTICLES VII, VIII, IX, X and XI of the Corporation's Articles of Incorporation (initially added by Articles of Amendment to the Corporation's Articles of Incorporation filed with the Florida Dept. of State on March 15, 2007) are hereby deleted in their entireties and the following new Articles VII, VIII and IX are hereby added to the Corporation's Articles of Incorporation, reading as follows:

ARTICLE VII  
PURPOSES

The nature of the business or purpose to be conducted or promoted by the Corporation is to engage in the following activities:

- (i) to own and hold a membership interest in TBS Realty LLC, a Florida limited liability company (the "Company" or the "Borrower") and, in connection with the ownership of such interest, to act as the manager of the Company, to exercise all of its rights and perform all of its obligations as the manager of the Company, including, without limitation, entering into the following agreements on behalf of the Company: (a) Loan Agreement (as such agreement may be amended, supplemented, modified or restated from time to time, the "Loan Agreement") between the Company and Natixis Real Estate Capital LLC (together with its successors and assigns, "Lender"); and (b) the Loan Documents, as defined in the Loan Agreement (the documents referred to in (a) and (b), together with the articles of organization of the Company, the operating agreement of the Company, these articles of incorporation and the by-laws of the Corporation being collectively referred to as the "Basic Documents"), and to take the actions contemplated under the Basic Documents on behalf of the Company; and
- (ii) to engage in any activity and to exercise any powers permitted to corporations under the laws of the State of Florida that are related and incidental to the foregoing and necessary, convenient or advisable to accomplish the foregoing.

ARTICLE VIII  
SPE/BANKRUPTCY REMOTE PROVISIONS

Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers TBS Hotel Management Corp. (the "Corporation"), the following provisions shall be operative and controlling so long as the loan (the "Loan") by Lender to the Company pursuant to the terms of the Loan Agreement is outstanding:

A. The Corporation shall have no authority to perform any act in violation of any (a) applicable laws or regulations or (b) any agreement between the Company and the Lender or the Corporation and the Lender.

B. The Corporation shall not:

(1) make any loans to any person or entity;

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

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

(4) merge, consolidate or sell or transfer the Company's assets or limited liability company interests;

(5) change the nature of the business of the Corporation; or

(6) except as permitted by the Lender in writing, amend, modify or otherwise change these Articles of Incorporation (or, after securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment, modification or change would not result in the qualification withdrawal, reduction or downgrade of any securities rating and (ii) permission of the Lender in writing).

C. The Corporation shall not, and no person or entity on behalf of the Corporation shall, either with respect to itself or the Company, without the prior written affirmative vote of one hundred percent (100%) of the Board of Directors, including the affirmative vote of the Independent Director (as defined below): with respect to the Corporation or the Company, (1) file a voluntary petition under the United States Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (2) file an involuntary petition against the Corporation or the Company under the United States Bankruptcy Code or

any other Federal or state bankruptcy or insolvency law, in which the Corporation or the Company colludes with, or otherwise assists, or causes to be solicited petitioning creditors for any involuntary petition against the Corporation or the Company; (3) the Corporation or the Company files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against the Corporation or the Company, by any other person or entity under the United States Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicit or cause to be solicited petitioning creditors for any such involuntary petition from any person or entity; (4) the Corporation or the Company seek, consent to or acquiesce in or join in an application for the appointment of a custodian, receiver, trustee, or examiner (or similar official) for the Corporation or the Company or any portion of their respective property, including with respect to the Company, the Property; (5) the Corporation or the Company makes an assignment for the benefit of creditors, or admits in writing or in any legal proceeding, the Corporation's or the Company's insolvency or inability to pay their respective debts as they become due, (6) the Corporation or the Company declares or effectuates a moratorium in the payment of any of their respective obligations, or (7) the Corporation or the Company takes any action in furtherance of any of the foregoing ((1 through (7) immediately above, collectively, a "Bankruptcy Action"); provided, however that the Corporation may not vote on, or authorize the taking of any a Bankruptcy Action, unless there is at least one Independent Director then serving in such capacity and such Independent Director has consented to such action.

D. The Corporation shall have no indebtedness or incur any liability other than unsecured debts and liabilities for trade payables incurred in the ordinary course of its business relating to acting as a member of the Company, provided, however, that such unsecured indebtedness or liabilities (1) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed \$10,000 and (2) are not evidenced by a note and are paid when due, but in no event for more than thirty (30) days from the date that such indebtedness or liabilities are incurred. No indebtedness of the Corporation shall be secured.

E. The Corporation shall at all times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Affiliates of same including, without limitation, as follows:

- (a) One (1) of the directors of the Corporation shall be an Independent Director. In the event of the death, incapacity, resignation or removal of an Independent Director, the Board of Directors of the Corporation shall promptly appoint a replacement Independent Director and no action requiring the consent of the Independent Director shall be taken until a replacement Independent Director has been appointed and has consented to such action. Notwithstanding anything to the contrary contained in this Agreement, no Independent Director shall be removed or replaced unless the Company provides the Lender with no less than fifteen (15) business days' prior written notice of (a) any proposed removal of such Independent Director and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the

requirements for an Independent Director set forth in this Agreement. As long as any portion of the Obligations remain outstanding:

- (i) the Board of Directors of the Corporation shall not take any action which under the terms of its certificate of incorporation or by-laws requires unanimous vote of the board of directors of the Corporation unless, at the time of such action, there shall be at least one (1) Independent Director of the Corporation then serving in such capacity and each Independent Director has participated in such vote;
- (ii) no resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor shall have executed a counterpart to these Articles of Incorporation; provided, however, that no Independent Director shall resign or be removed, and no successor Independent Director shall be appointed unless the Corporation provides Lender with at least fifteen (15) days prior written notice of any such proposed resignation or removal and the identity of any such successor Independent Director, together with certification that such successor satisfies the requirements for an Independent Director set forth in these Articles of Incorporation;
- (iii) in the event of a vacancy in the position of Independent Director, the shareholders of the Corporation shall, subject to the preceding clause (ii), appoint a successor Independent Director as soon as practicable;
- (iv) to the fullest extent permitted by law and notwithstanding any duty existing at law or equity, the Independent Directors shall consider only the interests of the Corporation and the Company, including Lender and the other creditors, in acting or otherwise voting on taking any Bankruptcy Action;
- (v) except for duties to the Corporation as set forth in the immediate preceding clause (iv) (including duties to the Corporation's and the Corporation's creditors solely to the extent of their respective economic interests in the Corporation but excluding (A) all other interests of the Corporation, (B) the interests of other Affiliates of the Corporation, and (C) the interests of any group of Affiliates of which the Corporation is a part), the Independent Director shall not have any fiduciary duties to the Company, the Corporation or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing;
- (vi) in exercising their rights and performing their duties under this Agreement, the Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware;

(b) At all times since its formation and at all times thereafter, the Corporation:

- (i) was and will be organized solely for the purpose of acting as a member of the limited liability company that owns the Property;

(ii) has not engaged and will not engage in any business unrelated to acting as a member of the limited liability company that owns the Property;

(iii) has not had and will not have any assets other than those related to its member interest in the limited liability company that owns the Property;

(iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by the Loan Agreement), transfer of membership interests or the like, or amendment of its articles of incorporation;

(v) has and will have one Independent Director, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless all of the directors (including any Independent Directors) shall have participated in such vote;

(vi) has not, and without the unanimous consent of all of its directors (including any Independent Director), will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest, take any Bankruptcy Action;

(vii) has maintained and will intend to maintain adequate capital in light of its contemplated business operations, provided, however, the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower;

(viii) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(ix) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns separate from any other Person

(x) has maintained and will maintain its books, records, resolutions and agreements as official records separate from any other Person;

(xi) has not commingled and will not commingle its funds or assets with those of any other Person;

(xii) has held and will hold its assets in its own name;

(xiii) has conducted and will conduct its business in its name only, and has not and will not use any trade name,

(xiv) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(xv) has paid and intends to continue to pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(xvi) has observed and will observe all corporate or formalities;

(xvii) has maintained and will maintain an arm's-length relationship with Affiliates;

(xviii) has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Property which (1) do not exceed, at any time, \$10,000 and (2) are paid within thirty (30) days of the date incurred;

(xix) has not and will not assume or guarantee or become obligated for the debts or obligations of any other Person or hold out its credit or assets as being available to satisfy the debts or obligations of any other Person except for the Loan;

(xx) has not and will not acquire obligations or securities of its partner members or shareholders;

(xxi) has allocated and will allocate fairly and reasonably shared expenses including shared office space, and uses separate stationery, invoices and checks bearing its own name;

(xxii) except in connection with the Loan, has not pledged and will not pledge assets for the benefit of any other Person;

(xxiii) has held itself out and identified itself and 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;

(xxiv) has maintained and 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;

(xxv) has not made and will not make loans to any Person;

(xxvi) has not identified and will not identify its shareholders, or any Affiliate or any of them, as a division or part of it;

(xxvii) has not entered into or been a party to, and will not enter into or be a party to, any transaction, contract or agreement with its shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are not less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(xxviii) has and will have no obligation to indemnify its officers or, directors, or to assume such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation; and



(xxix) will consider the interests of its creditors in connection with all corporate actions.

Failure of the Corporation to comply with the foregoing covenants or other covenants contained in these Articles of Incorporation shall not affect the status of the Corporation as a separate legal entity.

For purposes of these Articles of Incorporation, (1) "Affiliate" means any person or entity, including, but not limited to, the Company, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity, (2) "control", "controlled", or "controlling" means with respect to a specified person or entity, (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 beneficial interests, of any such person or entity, as the case may be, directly, indirectly, or acting through one or more persons or entities, (ii) the control in a manner over the shareholder(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 and (3) "Independent Director" means a natural person who, for the five-year period prior to his or her appointment as Independent Director has not been, and during the continuation of his or her service as Independent Director is not, directly or indirectly: (i) an employee, manager, stockholder, director, member, partner, officer, attorney or counsel of the Corporation or any of its Affiliates (other than his or her service as an Independent Director of the Corporation), (ii) a creditor, customer of, supplier or other Person who derives any of its purchases or revenues from its activities with the Corporation or any of its shareholders or Affiliates (other than his or her service as an Independent Director if such Person has been provided by an Approved Provider), (iii) a Person controlling or under common Control with any such employee, manager, stockholder, director, member, partner, officer, attorney, counsel, customer, supplier or other Person, or (iv) any member of the immediate family (including grandchild or sibling) of a person described in clauses (i), (ii) or (iii) immediately above. A natural person who otherwise satisfies the foregoing definition shall not be disqualified from serving as an Independent Director of the Corporation because such person is an independent director of a "Special Purpose Entity" affiliated with the Corporation if it does not own a direct or indirect equity interest in the Corporation or any entity that is a co-borrower with the Corporation if such individual is an independent director provided by an Approved ID Provider.

F. Any indemnification obligation of 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.

G. Except as may be otherwise provided in the Loan Agreement, no transfer of a direct or indirect ownership in the Corporation may be made such that the transferee owns, in the aggregate with the ownership interests in the Corporation of transferees and Affiliates, more than a forty-nine percent (49%) interest in the Corporation unless such

transfer is conditioned upon the delivery of an acceptable nonconsolidation opinion of the Lender and any applicable rating agency.

H. The Lender is a third-party beneficiary of the terms of these Articles of Incorporation and may enforce the terms of this Article VIII.

I. Any term not otherwise defined herein shall have the meaning ascribed to that term in the Loan Agreement.

Article IX  
BOARD OF DIRECTORS

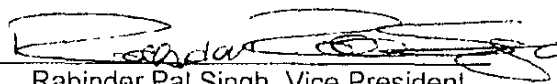
The number of Directors constituting the Board of Directors shall be established in the Corporation's by-laws, or in the absence of a by-law establishing the number of Directors, the number of Directors shall be two, including at least one Independent Director.

The date of each amendment(s) adoption: **October 4, 2013.**

Adoption of Amendment(s): The amendment(s) was/were approved by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

Dated: October 4, 2013

TBS HOTEL MANAGEMENT CORP.,  
a Florida corporation

By:   
Rabinder Pal Singh, Vice President