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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**SERVICO HOTELS IV, INC.**  
**THIRD AMENDED AND RESTATED**  
**ARTICLES OF INCORPORATION**

Pursuant to the Florida Business Corporation Act (the "FBCA"), Servico Hotels IV, Inc., a Florida corporation (the "Corporation"), hereby certifies that:

**FIRST:** The name of the Corporation is Servico Hotels IV, Inc.

**SECOND:** The Corporation was originally incorporated in the State of Florida on November 9, 1994, and these Third Amended and Restated Articles of Incorporation shall amend, restate and supersede in their entirety any and all prior Articles of Incorporation and any and all amendments and restatements thereto filed with the State of Florida from the date of the Corporation's original incorporation through the date hereof.

**THIRD:** These Third Amended and Restated Articles of Incorporation were adopted by the Board of Directors of the Corporation on June 17, 2010 in the manner and by the vote required by the FBCA. These Third Amended and Restated Articles of Incorporation were approved by the shareholders of the Corporation by written consent, dated as of June 17, 2010, in accordance with the FBCA, and the written consents received for these Third Amended and Restated Articles of Incorporation by the shareholders of the Corporation were sufficient for approval.

**FOURTH:** The Articles of Incorporation are hereby amended and restated in their entirety to read as follows:

**ARTICLE I**

**Name and Address**

The name of the Corporation is Servico Hotels IV, Inc. The address of the principal office and mailing address of the Corporation is 3445 Peachtree Road NE, Suite 700, Atlanta, Georgia 30326.

**ARTICLE II**

**Purpose**

The purpose of the Corporation shall be limited to: (a) owning, holding, leasing, developing, selling, mortgaging, assigning, transferring, pledging, managing, operating and otherwise dealing with that certain real property, together with all improvements thereon and all personal property owned in connection therewith, commonly known as the "Holiday Inn Santa Fe" located at 4048 Cerrillos Road, Santa Fe, New Mexico 87507 (the "Property"), (b) entering into and performing its obligations under the Loan Agreement (as same may be amended, restated or supplemented from time to time, the "Loan Agreement") with CapitalSource Bank

("Lender"), the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing creating a lien on the Property in favor of Lender, and any other Loan Documents (as such term is defined in the Loan Agreement) to which the Corporation is a party, and (c) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

### **ARTICLE III**

#### **Capital Stock**

The aggregate number of shares which the Corporation shall have authority to issue is One Thousand (1,000) shares of common stock, all of which are to have a par value of One Cent (\$0.01) per share. The Board of Directors shall fix the consideration to be received for each share. Such consideration shall consist of any tangible or intangible property or benefit to the Corporation, including cash, promissory notes, services performed or written promises to perform services and shall have a value, in the judgment of the directors, equivalent to or greater than full par value of the shares.

### **ARTICLE IV**

#### **Bylaws**

The power to alter, amend or repeal the Bylaws of the Corporation shall be vested in each of the Board of Directors and the Shareholders of the Corporation.

### **ARTICLE V**

#### **Indemnification**

The Corporation shall indemnify any incorporator, officer or director, or any former officer or director of the Corporation, to the fullest extent permitted by law. The foregoing right of indemnification shall not be exclusive of any other rights to which any Director, officer, employee or agent may be entitled as a matter of law or which he may be lawfully granted. Notwithstanding any provision hereof to the contrary, the foregoing indemnification and advancement of expenses shall be fully subordinated to the Corporation's obligations arising under the Loan Documents.

### **ARTICLE VI**

#### **Amendment**

The Corporation reserves to its shareholders the right to amend or repeal any provisions now or hereafter contained in these Third Amended and Restated Articles of Incorporation, subject to the limitations set forth in these Third Amended and Restated Articles of Incorporation, including, without limitation, Article VIII. Subject to the foregoing, any rights which the Third Amended and Restated Articles of Incorporation may confer upon the Corporation may be modified or cancelled by a vote of the holders of a majority of the

Corporation's stock entitled to vote thereon to amend or repeal said Third Amended and Restated Articles of Incorporation.

## **ARTICLE VII**

### **Registered Office and Agent**

The street address of the registered office in the State of Florida is 1200 South Pine Island Road, Plantation, Florida 33324. The name of the registered agent at such address is CT Corporation System. The Board of Directors may, from time to time, move the location of the registered office to any other address in Florida, and may from time to time, change the registered agent of the Corporation.

## **ARTICLE VIII**

### **Single-Purpose Entity**

Notwithstanding any provision hereof to the contrary and until such time as all obligations of the Corporation arising under the Loan Documents have been indefeasibly satisfied in full, the Corporation:

- (a) shall not engage in any business unrelated to the purpose described in Article II above;
- (b) shall not have any assets other than the Property, and personal property necessary or incidental to its ownership and operation of the Property;
- (c) shall have its own separate books, records, and accounts;
- (d) shall observe corporate formalities, independent of any other entity;
- (e) shall not (A) merge into or consolidate with any Person, (B) to the fullest extent permitted by law, seek the dissolution, termination, winding up or liquidation of the Corporation in whole or in part, (C) transfer or otherwise dispose of all or substantially all of its assets or (D) change its legal structure, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of its organizational documents (except, in each case, as may be expressly permitted by the Loan Documents);
- (f) shall not fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and its qualification to do business in the state where the Property is located;
- (g) shall not own, form or acquire any subsidiary or make any investment in any Person;
- (h) shall not commingle its funds or assets with those of any other Person (other than a Borrower SPE Party (as defined in the Loan Agreement));

(i) shall hold the Corporation's assets in its own name, other than in connection with a cash concentration account with a Borrower SPE Party;

(j) shall not have any debt other than the indebtedness and obligations arising under the Loan Documents and other than Permitted Debt (as defined in the Loan Agreement);

(k) shall not fail to maintain its records, books of account and bank accounts separate and apart from those of any other Person, or fail to maintain such books and records in the ordinary course of its business;

(l) shall not be a party to any transaction with any equitable or beneficial owner, principal or Affiliate (as defined in the Loan Agreement) of the Corporation, as the case may be, any Guarantor (as defined in the Loan Agreement), or any equitable or beneficial owner, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties;

(m) shall not fail to correct any known misunderstandings regarding the separate identity of the Corporation;

(n) shall not assume or guarantee or become obligated for the debts of any other Person, and shall not hold out its credit as being available to satisfy the obligations of any other Person (except for the obligations under the Loan Documents);

(o) shall not make any loans or advances to any Person (other than to a Borrower SPE Party), except for intercompany accounts or balances resulting from any cash concentration account with a Borrower SPE Party;

(p) shall (i) pay any taxes required to be paid by the Corporation under applicable law; or (ii) file its own tax returns or file a consolidated federal income tax return with its parent entities;

(q) shall conduct business only in its own name (except for services rendered under a hotel management agreement by a management entity and except for any tradenames or trademarks of the franchisor or licensor for the Property);

(r) shall 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 obligate its shareholder to make a capital contribution, loan or advance of funds to the Corporation;

(s) shall continue to hold itself out as being separate and apart from any other Person, and shall not hold itself out as or be considered as a department or division of any other Person;

(t) (A) shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) shall show, in its financial

statements, its assets and liabilities separate and apart from those of any other Person; and (C) shall not permit its assets to be listed as assets on the financial statement of any other Person (except that the Corporation may be included in consolidated financial statements of another Person where required by GAAP and, where so required, include a footnote to such financial statements noting the Corporation's ownership interest in the Property and any other material assets);

(u) shall pay its debts and liabilities (including, the salaries of its own employees (if any) and a fairly-allocated portion of any personnel and overhead expenses that it shares with any other Person) from its own funds and assets or through the use of a cash concentration account with a Borrower SPE Party;

(v) shall maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(w) shall allocate fairly and reasonably any overhead expenses that are shared with any other Person, including paying for office space and services performed by any employee of an Affiliate;

(x) shall not pledge its assets for the benefit of any other Person, other than pursuant to the Loan Documents and except for the Permitted Exceptions (as defined in the Loan Agreement);

(y) shall not acquire the obligations or securities of any equitable or beneficial owner, principal or Affiliate of the Corporation, as the case may be, any Guarantor or any equitable or beneficial owner, principal or Affiliate thereof;

(z) shall 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, except in connection with any cash concentration account with a Borrower Party;

(aa) shall not have any obligation to indemnify its equitable or beneficial owners, as the case may be, provided that the Corporation is authorized to indemnify its directors, officers and other persons identified in Article V above, subject to the indemnification and advancement of expenses being fully subordinated to the Corporation's obligations arising under the Loan Documents;

(bb) shall not have any of its obligations guaranteed by any equitable or beneficial owner, principal or Affiliate, except as provided by the Loan Documents and except for any franchise agreement or hotel management agreement that may be guaranteed by a Borrower Party, Lodgian, Inc., Servico, Inc. and LSREF Lodging Investments, LLC;

(cc) shall not take for itself any of the following actions without the prior unanimous written consent of its Board of Directors (and in all events including its Independent Director (defined below)): (i) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding involving any Borrower Party; institute any proceedings under any applicable insolvency law involving any Borrower Party; file

an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) seek, consent to or acquiesce to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for itself or any other Borrower Party, (iii) make an assignment of its assets for the benefit of its creditors, (iv) dissolve, merge, liquidate, consolidate with any Person; (v) sell all or substantially all of its assets; (vi) amend the provisions of this Article; or (vii) take any action in furtherance of the foregoing (the foregoing being referred to herein as "Material Actions");

(dd) shall have at least one (1) Independent Director, and the board of directors of the Corporation shall not take any Material Action, or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its Board of Directors, unless the Independent Director shall have participated in such vote and shall have voted in favor of such action.

As used herein, "Independent Director" means a natural person serving as a director of the Corporation who is not at the time of initial appointment, or at any time while serving in such capacity, and has not been at any time during the preceding five (5) years:

(i) a manager or director (other than in its capacity as an Independent Director of the Corporation or an Affiliate), officer, employee, trustee, trade creditor, customer, supplier, member (other than in its capacity as a special member of any Affiliate of the Corporation that is a special purpose limited liability company), attorney, counsel or shareholder (or spouse, parent, sibling or child of the foregoing) of (a) the Corporation, (b) a principal of the Corporation, (c) any equitable or beneficial owner, manager, principal or Affiliate of the Corporation or of a principal of the Corporation, or (d) any Affiliate of any equitable or beneficial owner, manager, or principal of the Corporation or of a principal of the Corporation; or

(ii) a creditor, customer, supplier or Person who derives any of its purchases or revenues from its activities with (a) the Corporation, (b) a principal of the Corporation, (c) any equitable or beneficial owner, manager, principal or Affiliate of the Corporation or of a principal of the Corporation, or (d) any Affiliate of any equitable or beneficial owner, manager, or principal of the Corporation or of a principal of the Corporation;

(iii) a Person or other entity Controlling (as defined in the Loan Agreement) or under common Control (as defined in the Loan Agreement) with any Person excluded from serving as Independent Director under subparagraph (i) or (ii); or

(iv) a member of the immediate family of any Person excluded from serving as Independent Director under subparagraph (i) or (ii).

A natural person who satisfies the foregoing definition other than subparagraph (ii) shall not be disqualified from serving as an Independent Director of the Corporation if such individual is an Independent Director provided by a nationally-recognized company that provides professional independent directors (a "Professional Independent Director") and other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the independent director or manager of a "special purpose entity" Affiliated (as defined in the Loan Agreement) with the Corporation shall not be disqualified from serving as an Independent Director if such individual is either (a) a Professional Independent Director or (b) the fees that such individual earns from serving as Independent Director of Affiliates of the Corporation in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

Notwithstanding any other provision hereof to the contrary, (i) no appointment of any successor Independent Director following the resignation, death or removal of any Independent Director shall be effective without the prior written consent of the Lender to such appointment, which consent shall not be unreasonably withheld, in the event that such Independent Director is a Professional Independent Director, and (ii) the Independent Director shall, to the fullest extent permitted by law, consider the interests of the Corporation's creditors in connection with all actions.

As used herein, "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

*[Reminder of page left intentionally blank.]*



IN WITNESS WHEREOF, the undersigned, for the purpose of amending and restating the Corporation's Articles of Incorporation pursuant to the Florida Business Corporation Act, executed these Third Amended and Restated Articles of Incorporation as of June 2<sup>nd</sup> 2010.

**SERVICO HOTELS IV, INC.**

By: Marc L. Lipshy  
Marc L. Lipshy, Vice President