

FROM : FLORIDA FILING

FAX NO : 850 668 3398

Feb. 01 2004 04:28 PM P1

Division of Corporations

Page 1 of 1

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H06000028855 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850) 205-0380

From:

Account Name : FLORIDA FILING & SEARCH SERVICES
Account Number : I20000000189
Phone : (850) 668-4318
Fax Number : (850) 668-3398

COR AMND/RESTATE/CORRECT OR O/D RESIGN

SERVICO HOTELS III, INC.

Certificate of Status	0
Certified Copy	1
Page Count	06
Estimated Charge	\$43.75

Electronic Filing Menu

Corporate Filing Menu

Help

Amnd/Restated/cc
(10, 2, 2, 0, 4)

RECEIVED

06 FEB -2 AM 8:00

FILED

06 FEB -2 AM 10:00

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H 0 6 0 0 0 0 2 8 8 5 5

FILED
06 FEB -2 AM 10:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SERVICO HOTELS III, INC.
SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION

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

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

SECOND: The Corporation was originally incorporated in the State of Florida on November 10, 1994, the Corporation filed Amended and Restated Articles of Incorporation of the Corporation on January 26, 1995 with the Secretary of State of the State of Florida, the Corporation filed Articles of Amendment to Amended and Restated Articles of Incorporation of the Corporation on February 20, 2002 with the Secretary of State of the State of Florida, and the Corporation filed Articles of Amendment to the Amended and Restated Articles of Incorporation of the Corporation on November 22, 2002 with the Secretary of State of the State of Florida, and these Second Amended and Restated Articles of Incorporation shall amend, restate and supersede in their entirety any and all prior Articles of Incorporation, as amended, including, without limitation, any Articles of Amendment or Certificates of Designation thereto, filed with the State of Florida from the date of the Corporation's original incorporation through the date hereof.

THIRD: These Second Amended and Restated Articles of Incorporation were approved by the Board of Directors of the Corporation on January 31, 2006 in the manner and by the vote required by the FBCA. The amendments were approved by the shareholders by written consent, dated as of January 31, 2006, in accordance with Section 607.0704 of the FBCA, and the written consents received for the amendment by the shareholders 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 III, Inc. The address of the principal office and mailing address of the Corporation is 3445 Peachtree Road NE, Suite 700, Atlanta, GA 30326.

H 0 6 0 0 0 0 2 8 8 5 5

H 6 0 0 0 0 2 8 8 5 5

ARTICLE II**Purpose**

Notwithstanding any provision hereof to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the following activities:

(i) To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with that certain parcel of real property, together with all improvements located thereon, in the City of Palm Desert, State of California, commonly known as 74675 Highway 111, Palm Desert, California 92260 (the "Property").

(ii) To exercise all powers enumerated in the FBCA necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

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 following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Property, including,

H 6 0 0 0 0 2 8 8 5 5

H 6 0 0 0 0 2 8 8 5 5

without limitation the first mortgage on the Property, and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations

ARTICLE VI

Amendment

The Corporation reserves to its shareholders the right to amend or repeal any provisions now or hereafter contained in these Second Amended and Restated Articles of Incorporation, subject to the limitations set forth in these Second Amended and Restated Articles of Incorporation. Subject to the foregoing, any rights which the Second 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 Second 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

A. Notwithstanding any provision hereof to the contrary and until such time as the Debt is paid in full, the Corporation is and shall remain a Single-Purpose Entity.

B. For the purposes of this Article VIII, the following terms shall have the meanings set forth below:

1. "Debt" has the meaning set forth in that certain Deed of Trust, Security Agreement and Fixture Filing by and between the Corporation and Chicago Title Company, as trustee for the benefit of Wachovia Bank, National Association, as beneficiary.

2. "Note" means that certain Promissory Note, together with any and all renewals, amendments, modifications, consolidations and extensions thereof, made by the Corporation payable to the order of Wachovia Bank, National Association in the principal face amount of \$6,074,000, together with interest as therein provided.

3. "Property" has the meaning set forth in Article II hereof.

H 6 0 0 0 0 2 8 8 5 5

H 0 6 0 0 0 2 8 8 5 5

4. "Single-Purpose Entity" means a corporation that:

- (a) will not, nor will any shareholder thereof, amend, modify or otherwise change its articles of incorporation or by-laws in any material term or manner, or in a manner which adversely affects Corporation's existence as a Single-Purpose Entity;
- (b) will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity;
- (c) will not, nor will any shareholder thereof, violate the terms of its articles of incorporation or by-laws;
- (d) will not guarantee, pledge its assets for the benefit of, or otherwise become liable on or in connection with, any obligation of any other person or entity;
- (e) does not own and will not own any asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;
- (f) is not engaged and will not engage, either directly or indirectly, in any business other than the ownership, management and operation of the Property;
- (g) will not enter into any contract or agreement with any affiliate of the Corporation, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;
- (h) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Debt, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property customarily satisfied within thirty (30) days not evidenced by a note and in an aggregate amount not to exceed five percent (5.0%) of the existing principal balance of the Note, and no other debt will be secured (senior, subordinate or pari passu) by the Property;
- (i) will not make any loans or advances to any third party (including any affiliate);
- (j) is solvent and reasonably expects to be able to pay its debts from its assets as the same shall become due;

H 0 6 0 0 0 2 8 8 5 5

H 0 6 0 0 0 0 2 8 8 5 5

- (k) will do all things necessary to preserve its existence, and will observe all formalities applicable to it;
- (l) will conduct and operate its business in its own name and as presently conducted and operated;
- (m) will maintain its own financial statements, books and records and local deposit bank accounts;
- (n) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including, without limitation, any affiliate of the Corporation) and will correct any known misunderstanding concerning its separate identity;
- (o) has adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (p) will establish and maintain an office through which its business will be conducted separate and apart from those of its affiliates or shall allocate fairly and reasonably any overhead and expense for shared office space;
- (q) to the extent funds from its local deposit bank accounts are subsequently swept to accounts of affiliates, will maintain records of payments made on behalf of the Corporation from any such subsequently commingled funds;
- (r) will 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 or any other person;
- (s) does not and will not hold itself out to be responsible for the debts or obligations of any other person; and
- (t) will pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

[Reminder of page left intentionally blank.]

H 0 6 0 0 0 0 2 8 8 5 5

FROM-FLORIDA FILING

FAX NO. : 8506683398

Feb. 01 2004 04:30PM P7

H 0 6 0 0 0 0 2 8 8 5 5

IN WITNESS WHEREOF, the Corporation has caused these Second Amended and Restated Articles of Incorporation to be executed as of February 1, 2006.

SERVICO HOTELS III, INC.

By: Daniel E. Ellis
Daniel E. Ellis, Vice President and Secretary

H 0 6 0 0 0 0 2 8 8 5 5