

P97000078996

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.

(((H02000229811 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 : UCC FILING & SEARCH SERVICES, INC.
Account Number : I19980000054
Phone : (850) 681-6528
Fax Number : (850) 681-6011

FILED
02 NOV 25 AM 11:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

BASIC AMENDMENT

SERVICO WINDSOR, INC.

RECEIVED
02 NOV 25 AM 7:40
DIVISION OF CORPORATIONS

Certificate of Status	0
Certified Copy	1
Page Count	09
Estimated Charge	\$43.75

AM + Best
11/25

FILED
02 NOV 25 AM 11:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FOURTH AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

SERVICO WINDSOR, INC.

SERVICO WINDSOR, INC., (hereinafter called the "Corporation"), a corporation organized and existing under and by virtue of the Business Corporation Act of the State of Florida, does hereby certify:

FIRST: The present name of the Corporation is SERVICO WINDSOR, INC., which is the name under which the Corporation was originally incorporated. The filing date of the original Articles of Incorporation of the Corporation with the Secretary of State of the State of Florida is September 11, 1997.

SECOND: Pursuant to Sections 607.1007 and 607.1008 of the Business Corporation Act of the State of Florida, a plan of reorganization of the Corporation entitled Joint Plan of Reorganization of Lodgian, Inc., *et al.* Together With the Official Committee of Unsecured Creditors (Other than the CCA Debtors) Under Chapter 11 of the Bankruptcy Code (the "Plan") having been filed pursuant to Chapter 11 of Title 11 of the United States Code in a proceeding under the United States Bankruptcy Code entitled In re: Lodgian, Inc., *et al.*, Case No. 01-16345 (the "Proceeding") and confirmed by an order dated November 5, 2002 by the United States Bankruptcy Court for the Southern District of New York, a court having jurisdiction over the Proceeding (the "Order"), and such Order providing for the making and filing of these Third Amended and Restated Articles of Incorporation, these Third Amended and Restated Articles of Incorporation restate and integrate and further amend the provisions of the articles of incorporation of the Corporation.

THIRD: The articles of incorporation of the Corporation are hereby amended and restated in their entirety to read as set forth in the Fourth Amended and Restated Articles of Incorporation hereinafter provided for.

FOURTH: The provisions of the articles of incorporation of the Corporation as heretofore amended and/or supplemented, and-as herein amended, are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled Fourth Amended and Restated Articles of Incorporation of Servico Windsor, Inc. without any further amendments other than the amendments herein certified and without any discrepancy between the provisions of the articles of incorporation as heretofore amended and supplemented and the provisions of the said single instrument hereinafter set forth.

FIFTH: The amendments and the restatement of the Fourth Amended and Restated Articles of Incorporation herein certified have been duly adopted and executed in accordance with the provisions of Sections 607.1007 and 607.1008 of the Business Corporation

CWTRNYLIB1639172.2

Act of the State of Florida, as authorized by the Order, it being necessary to put into effect and carry out the Plan by amending the Corporation's Articles of Incorporation as set forth herein.

SIXTH: The articles of incorporation of the Corporation, as amended and restated herein, shall at the effective time of these Fourth Amended and Restated Articles of Incorporation read as follows:

ARTICLE I

The name of the Corporation is **SERVICO WINDSOR, INC.**

ARTICLE II

The address of the principal office and the mailing address of the Corporation is 3445 Peachtree Road, N.E., Two Live Oak Center, Suite 700, Atlanta, GA 30326. The name and address of the registered agent is CT Corporation System, 1200 S. Pine Island Road, Suite 250, Plantation, Florida 33324.

ARTICLE III

A. Notwithstanding anything to the contrary in this document or in any other document governing the formation, management or operation of the Corporation, until the Loan (as defined herein) is repaid in full, the sole purpose to be conducted or promoted by the Corporation is to engage exclusively in the following activities:

- (i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve, the real property described in the mortgage, deed of trust or deed to secure debt executed by the Corporation in favor of the Lender (as defined herein) (the "Property");
- (ii) to enter into and perform its obligations under the applicable Loan Documents (as defined herein);
- (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance or otherwise deal with the Property to the extent permitted under the applicable Loan Documents;
- (iv) to refinance the Property in connection with a permitted repayment of the Loan; and
- (v) to engage in any lawful act or activity and to exercise any powers permitted to corporations organized under the laws of the State of Florida that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

B. Notwithstanding any other provision in these Fourth Amended and Restated

Articles of Incorporation (these "Articles") and any provision of law that otherwise so empowers the Corporation, until such time as all obligations of the Corporation represented by that certain loan (the "Loan") from Computershare Trust Company of Canada (the "Lender," which term includes its transferees, successors and assigns) secured by, among other things, a mortgage, deed of trust, or deed to secure debt (collectively, the "Instruments") on the Property and by other related loan documents, in each case in favor of Lender (collectively with the Instruments, the "Loan Documents"), shall be discharged or the lien of the Instruments and the other Loan Documents shall be released from the Property:

1. The Corporation shall not do any of the following, without (i) the affirmative vote of 100% of the members of its Board of Directors, which Board of Directors (always containing two Independent Directors (as defined herein)) is required to consider the interests of creditors of the Corporation when conducting such vote, and, (ii) except with respect to subparagraph (a), the consent of the Lender:
 - (a) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;
 - (b) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or a substantial portion of its Property;
 - (c) make any assignment for the benefit of the creditors of the Corporation;
 - (d) admit in writing its inability to pay its debts generally as they become due; or
 - (e) take any action in furtherance of the foregoing subparagraphs (a) through (d).
2. The Corporation shall not do any of the following:
 - (a) dissolve, liquidate, consolidate, merge or sell all or substantially all of the assets of the Corporation;
 - (b) engage in any business activity unrelated to the Property;
 - (c) own any assets other than those related to, or derived from, the Property;
 - (d) engage in transactions with affiliates except on a commercially reasonable basis;
 - (e) take any action that is reasonably likely to cause the Corporation to

become insolvent;

- (f) incur any indebtedness other than the debt secured by the Instruments and Permitted Indebtedness (as defined in the Loan Documents); or
- (g) transfer, or consent to the transfer of, more than 49% of any direct or indirect ownership interest in the Corporation such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members, more than a 49% interest in the Corporation unless (a) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the Loan and to any applicable Rating Agency (as defined in the Loan Documents) concerning, as applicable, the Corporation, the new transferee and/or their respective owners and (b) the applicable Rating Agencies, if any, confirm the transfer will not result in a qualification, withdrawal or downgrade of the rating of any securities that are backed in whole or in part by the Loan.

C. The Corporation's Board of Directors shall at all times have at least two members who are each an "Independent Director."

An "Independent Director" shall mean a natural person who is not at the time of initial appointment, or at any time while serving as a director of the Corporation, and has not been at any time during the preceding five (5) years: (i) a stockholder, director (with the exception of serving as the Independent Director of the Corporation), officer, employee, partner, member, attorney or counsel of the Corporation or any affiliate; (ii) a creditor, customer, supplier or other person who derives any of its purchases or revenues from its activities with the Corporation or any affiliate; (iii) a person or other entity controlling or under common control with any such stockholder, partner, member, creditor, customer, supplier or other person; or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other person. (As used herein, the term "affiliate" means any person controlling, under common control with, or controlled by the person in question; and the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.)

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 and that also provides other corporate services in the ordinary course of its business.

A natural person who otherwise satisfies the foregoing definition except for being the independent director of a "special purpose entity" affiliated with the Corporation that does not own a direct or indirect equity interest in the Corporation or any co-borrower shall not be disqualified from serving as an Independent Director of the Corporation if such individual is at the

time of initial appointment, or at any time while serving as an Independent Director of the Corporation, an Independent Director of a "special purpose entity" affiliated with the Corporation (other than any entity that owns a direct or indirect equity interest in the Corporation or any co-borrower) if such individual is an independent director provided by a nationally-recognized company that provides professional independent directors. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities substantially similar to those set forth in the Corporation's organizational documents.

In the event of the death, incapacity, resignation or removal of an Independent Director, the Corporation's Board of Directors shall promptly appoint a replacement Independent Director.

D. Notwithstanding any other provision of these Articles or any provision of law to the contrary, no obligation of the Corporation to indemnify its directors and/or officers shall constitute a claim against the Corporation until such time as all obligations of the Corporation under the Loan are discharged or any lien of the Instruments and the other Loan Documents are released from the Property.

E. Notwithstanding any other provision in these Articles and any provision of law that otherwise so empowers the Corporation, until such time as all obligations of the Corporation under the Loan Documents shall be discharged or the lien of the Instruments and the other Loan Documents shall be released from the Property, the Corporation shall at all times:

- (i) maintain books and records separate from any other person or entity;
- (ii) except as permitted in the Loan Documents, maintain its bank accounts and other accounts separate from any other person or entity;
- (iii) except as permitted in the Loan Documents, not commingle its assets with those of any other person or entity and hold all of its assets in its own name;
- (iv) conduct its own business in its own name;
- (v) except as permitted in the Loan Documents, maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity and shall not have its assets listed on the financial statement of any other entity; provided, however, that the Corporation's assets may be included in a consolidated financial statement of its Affiliate provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Corporation from such Affiliate and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the Corporation's own separate balance sheet;
- (vi) pay its own liabilities and expenses only out of its own funds;

- (vii) observe all corporate and other organizational formalities;
- (viii) maintain an arm's length relationship with its affiliates and enter into transactions with affiliates only on a commercially reasonable basis;
- (ix) pay the salaries of its own employees, if any, from its own funds;
- (x) maintain a sufficient number of employees, if any, in light of its contemplated business operations;
- (xi) not guarantee or become obligated for the debts of any other entity or person;
- (xii) except as permitted in the Loan Documents, file its tax returns separate from those of any other entity and not file a consolidated federal income tax return with any other entity;
- (xiii) except as permitted in the Loan Documents, not hold out its credit as being available to satisfy the obligations of any other person or entity;
- (xiv) except as permitted in the Loan Documents, not acquire the obligations or securities of its affiliates, shareholders or partners;
- (xv) not make loans to any other person or entity or buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities);
- (xvi) allocate fairly and reasonably any overhead expenses that are shared with an affiliate or any other person or entity, including paying for office space and services performed by any employee of an affiliate or any other person or entity;
- (xvii) use stationery, invoices and checks bearing its own name;
- (xviii) not pledge its assets for the benefit of any other person or entity;
- (xix) hold itself out as a separate entity;
- (xx) promptly correct any known misunderstanding regarding its separate identity;
- (xxi) not identify itself as a division of any other person or entity;
- (xxii) maintain adequate capital in light of its contemplated business operations; and
- (xxiii) not form, hold or acquire any subsidiaries.

ARTICLE IV

A. The total number of shares of stock which the Corporation shall have authority to issue is One Thousand (1,000) shares of common stock, One Cent (\$0.01) par value per share.

B. Notwithstanding anything herein to the contrary, the Corporation shall not be authorized to issue non-voting equity securities of any class, series or other designation to the extent prohibited by Section 1123(a)(6) of Title 11 of the United States Code (the "Bankruptcy Code"); provided, however, that the foregoing restriction shall (i) have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (ii) only have such force and effect for so long as such Section 1123(a)(6) is in effect and applies to the Corporation and (iii) be deemed void or eliminated if required by applicable law.

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation subject to the limitations set forth in these Articles. Election of directors need not be by written ballot unless and to the extent provided in the Bylaws of the Corporation.

ARTICLE VI

No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not on good faith or which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the director derived an improper personal benefit. If the Florida Business Corporation Act is amended after the date of these Articles to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Florida Business Corporation Act, as so amended.

The rights and authority conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of these Articles or Bylaws of the Corporation, agreement, vote of stockholders or disinterested directors, or otherwise.

ARTICLE VII

The Corporation shall indemnify any 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. The Corporation's obligation to indemnify its officers and directors pursuant to this Article shall be subordinate in all respects to the obligations of the Corporation arising out of the Loan Documents and shall not constitute a

claim against the Corporation to the extent that the Corporation is unable to pay any amounts it is obligated to pay under the Loan Documents.

ARTICLE VIII

When the Loan has been paid in full and all obligations of the Corporation under the Instruments have been satisfied, the Corporation may amend these Articles without notice to or consent from the Lender or any rating agency.

ARTICLE IX

Notwithstanding anything to the contrary in these Articles, until the Corporation's payment obligations under the Loan have been paid in full and all other obligations of the Corporation under the Loan Documents have been satisfied in full or the lien of the Instruments and the other Loan Documents shall be released from the Property, the Corporation shall not amend the provisions specified in Articles III, VIII or IX of this document without the consent of the Lender, its successors or assigns, or, after the securitization of the Loan only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the Lender, its successor or assigns.

NOV-22-2002 17:31

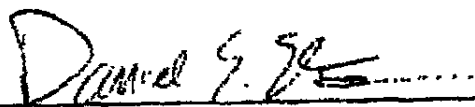
FROM-CONTINENTALCORP

T-713 P.002/002 F-053

IN WITNESS WHEREOF, the Corporation has caused these restated articles of incorporation to be executed as of the 22 day of November, 2002.

SERVICO WINDSOR, INC.

By:



Daniel E. Ellis

Vice President and Secretary