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**ALBANY HOTEL, INC.**

**FIFTH AMENDED AND RESTATED ARTICLES OF INCORPORATION**

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

**FIRST:** The name of the Corporation is Albany Hotel, Inc.

**SECOND:** The Corporation was originally incorporated in the State of Florida on August 5, 1992, and these Fifth 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 Fifth 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 Fifth 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 Fifth 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**

The name of the corporation (the "Corporation") is Albany Hotel, Inc.

**ARTICLE II**

**PURPOSES**

The purpose of the Corporation will be limited to: (a) owning, holding, leasing, developing, selling, mortgaging, assigning, transferring, pledging, managing, operating and otherwise dealing, as a real estate investment trust under the Internal Revenue Code of 1986, as amended, or any successor statute (the "Code"), with that certain real property, together with all improvements thereon and all personal property owned in connection therewith, commonly known as the "Crowne Plaza Albany" located at State and Lodge Streets, Albany, New York 12207 (the "Property"), including without limitation entering into and performing an operating

lease of the Property with Albany Hotel TRS, LLC, a Delaware limited liability company ("Operating Lessee"), (b) owning a one hundred percent (100%) ownership interest in Operating Lessee, (c) 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 Mortgage and Security Agreement 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 (d) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing. As used herein, "REIT" means a real estate investment trust under Sections 856 through 860 of the Code.

### ARTICLE III

#### PRINCIPAL OFFICE AND RESIDENT AGENT

The address of the principal office and mailing address of the Corporation is 3445 Peachtree Road NE, Suite 700, Atlanta, Georgia 30326. The name of the registered agent of the Corporation is CT Corporation System. The Florida street address of the registered agent of the Corporation is 1200 South Pine Island Road, Plantation, FL 33324.

### ARTICLE IV

#### PROVISIONS FOR DEFINING, LIMITING AND REGULATING CERTAIN POWERS OF THE CORPORATION AND OF THE STOCKHOLDERS AND DIRECTORS

Section 4.01 Number of Directors. The number of directors shall be at least three (3). The names of the directors who shall act until the next annual meeting or until a successor(s) is (are) elected and qualified are (i) Deborah N. Ethridge, (ii) Daniel E. Ellis, and (iii) Clare McKenry (the "Independent Director" as defined below in Article VII). The directors may increase the number of directors and may fill any vacancy, whether resulting from an increase in the number of directors or otherwise, on the Board of Directors in the manner provided in the Bylaws.

Section 4.02 Extraordinary Actions. Notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of the holders of shares entitled to cast a greater number of votes, above, any such action shall be effective and valid if declared advisable by the Board of Directors and taken or approved by the affirmative vote of holders of shares entitled to cast a majority of all the votes entitled to be cast on the matter.

Section 4.03 Authorization by Board of Stock Issuance. The Board of Directors may authorize the issuance from time to time of shares of stock of the Corporation of any class or series, whether now or hereafter authorized, or securities or rights convertible into shares of its stock of any class or series, whether now or hereafter authorized, for such consideration as the Board of Directors may deem advisable (or without consideration in the case of a stock split or stock dividend), subject to such restrictions or limitations, if any, as may be set forth in the Florida Business Corporation Act (the "FBCA"), this charter of the Corporation (the "Charter") or the Bylaws.

Section 4.04 Preemptive Rights. Except as may be provided by the Board of Directors in setting the terms of designated or re-designated shares of stock pursuant to Section 5.04 or as may otherwise be provided by a contract approved by the Board of Directors, no holder of shares of stock of the Corporation shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of stock of the Corporation or any other security of the Corporation which it may issue or sell.

Section 4.05 Indemnification. The Corporation shall have the power, to the maximum extent permitted by Florida law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former director or officer of the Corporation and (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner, manager or trustee of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in such capacity. The Corporation shall have the power, with the approval of the Board of Directors, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. 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.

Section 4.06 Determinations by Board. The determination as to any of the following matters, made in good faith by or pursuant to the direction of the Board of Directors consistent with this Charter, shall be final and conclusive and shall be binding upon the Corporation and every holder of shares of its stock: the amount of the net income of the Corporation for any period and the amount of assets at any time legally available for the payment of dividends, redemption of its stock or the payment of other distributions on its stock; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, funds from operations, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of any class or series of stock of the Corporation; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Corporation or of any shares of stock of the Corporation; the number of shares of stock of any class of the Corporation; any matter relating to the acquisition, holding and disposition of any assets by the Corporation; or any other matter relating to the business and affairs of the Corporation or required or permitted by applicable law, this Charter or Bylaws or otherwise to be determined by the Board of Directors.

Section 4.07 REIT Qualification. If the Corporation elects to qualify for U.S. federal income tax treatment as a REIT, the Board of Directors shall use its commercially

reasonable efforts to take such actions as it determines necessary or appropriate to preserve the qualification of the Corporation as a REIT; however, if the Board of Directors determines that it is no longer in the best interests of the Corporation to continue to be qualified as a REIT, the Board of Directors may revoke or otherwise terminate the Corporation's REIT election pursuant to Section 856(g) of the Code. The Board of Directors also may determine that compliance with any restriction or limitation on stock ownership and transfers set forth in Article VII is no longer required for REIT qualification.

## ARTICLE V

### STOCK

Section 5.01 Authorized Shares. The Corporation has authority to issue 50,000 shares of stock, consisting of 40,000 shares of Common Stock, \$0.01 par value per share ("Common Stock"), and 10,000 shares of Preferred Stock, \$0.01 par value per share ("Preferred Stock"). If shares of one class of stock are designated or re-designated into shares of another class of stock pursuant to Sections 5.02, 5.03 or 5.04, the number of authorized shares of the former class shall be automatically decreased and the number of shares of the latter class shall be automatically increased, in each case by the number of shares so designated or re-designated, so that the aggregate number of shares of stock of all classes that the Corporation has authority to issue shall not be more than the total number of shares of stock set forth in the first sentence of this paragraph. The Board of Directors, with the approval of a majority of the entire Board and without any action by the stockholders of the Corporation, may amend this Charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that the Corporation has authority to issue.

Section 5.02 Common Stock. Subject to the provisions of Article VI and except as may otherwise be specified in the terms of any class or series of Common Stock, each share of Common Stock shall entitle the holder thereof to one vote. The Board of Directors may reclassify any unissued shares of Common Stock from time to time in one or more classes or series of stock. Notwithstanding any other provision on this Charter, but without otherwise limiting the right of the Board of Directors under Section 5.03 hereof, the Corporation shall not authorize or issue any class or series of Preferred Stock (i) that is convertible into any other class or series of capital stock of the Corporation, including Common Stock, or (ii) that has the right, either separately as a class or series or together with any other class or series of capital stock, including Common Stock, to vote upon the appointment or removal of any director of the Corporation, or to take any such action by written consent.

Section 5.03 Preferred Stock. The Board of Directors may classify any unissued shares of Preferred Stock and reclassify any previously designated but unissued shares of Preferred Stock of any series from time to time, in one or more classes or series of stock.

Section 5.04 Designated or re-designated Shares. Prior to issuance of designated or re-designated shares of any class or series, the Board of Directors by resolution shall: (a) designate that class or series to distinguish it from all other classes and series of stock of the Corporation; (b) specify the number of shares to be included in the class or series; (c) set or change, subject to the provisions of Article VI and subject to the express terms of any class or

series of stock of the Corporation outstanding at the time, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption for each class or series; and (d) cause the Corporation to file a certificate of designation with the Secretary of State of the State of Florida. Any of the terms of any class or series of stock set or changed pursuant to clause (c) of this Section 5.04 may be made dependent upon facts or events ascertainable outside this Charter (including determinations by the Board of Directors or other facts or events within the control of the Corporation) and may vary among holders thereof, provided that the manner in which such facts, events or variations shall operate upon the terms of such class or series of stock is clearly and expressly set forth in the designation filed with the Secretary of State of the State of Florida or other Charter document.

Section 5.05 Consent Dividends. If the Board of Directors determines that consent dividends within the meaning of Section 565 of the Code with respect to a taxable year are necessary or appropriate to insure or maintain the status of the Corporation as a REIT for federal income tax purposes or avoid the imposition of any federal income or excise tax, the Board of Directors may require the holders of Common Stock and any other Persons (as that term is defined in Article VI) to take any and all actions necessary or appropriate under the Code, any regulations promulgated thereunder, any court decision or any administrative positions of the United States Department of Treasury (including any United States Internal Revenue Service forms or other forms) to result in consent dividends sufficient to maintain REIT status and avoid federal income or excise tax for such taxable year.

Section 5.06 Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the stockholders may be taken without a meeting if a consent in writing or by electronic transmission of stockholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting of stockholders is delivered to the Corporation in accordance with the FBCA. The Corporation shall give notice of any action taken by less than unanimous consent to the applicable stockholders not later than ten (10) days after the effective time of such action.

Section 5.07 Charter and Bylaws. The rights of all stockholders and the terms of all shares of stock of the Corporation are subject to the provisions of this Charter and the Bylaws.

## ARTICLE VI

### RESTRICTIONS ON OWNERSHIP AND TRANSFER

Section 6.01 Certain Definitions. As used in this Charter, the following terms shall have the following meanings:

(a) "Beneficial Ownership" shall mean ownership of shares of Capital Stock by a Person who is or would be treated as an owner of such shares whether the interest in the shares of Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Sections 856(h)(1)(B) and 856(h)(3)(A) of the Code. The terms

"Beneficial Owner," "Beneficially Own," "Beneficially Owning" and "Beneficially Owned" shall have the correlative meanings.

(b) "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

(c) "Capital Stock" shall mean all classes or series of stock of the Corporation, including, without limitation, Common Stock and Preferred Stock.

(d) "Charitable Beneficiary" shall mean one or more beneficiaries of a Charitable Trust, as determined pursuant to Section 6.03(f), each of which shall be an organization described in Section 501(c)(3) of the Code and contributions to such organization must be eligible for deduction under each of Sections 170(h)(1)(A), 2055 and 2522 of the Code.

(e) "Charitable Trust" shall mean each of the trusts provided for in Section 6.03.

(f) "Charitable Trustee" shall mean any Person unaffiliated with the Charitable Trust or a Purported Beneficial Transferee or a Purported Record Transferee, that is appointed by the Corporation to serve as trustee of a Charitable Trust.

(g) "Constructive Ownership" shall mean ownership of shares of Capital Stock by a Person who is or would be treated as an owner of such shares of Capital Stock whether the shares are held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Own," "Constructively Owning" and "Constructively Owned" shall have the correlative meanings.

(h) "Market Price" shall mean the net asset value per share of Common Stock or Preferred Stock, as the case may be, as determined in good faith by the Corporation's Board of Directors.

(i) "Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or Section 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a "group" as that term is used for purposes of Rule 13d-5(h) or Section 13(d) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter, placement agent or initial purchaser acting in a capacity as such in a public offering, private placement, or immediate resale of shares of Capital Stock provided that the ownership of such shares of Capital Stock by such underwriter would not result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code.

(j) "Purported Beneficial Transferee" shall mean, with respect to any purported Transfer (or other event) that results in a transfer to a Charitable Trust, as provided in

Section 6.02(b), the Purported Record Transferee, unless the Purported Record Transferee would have acquired or owned shares of Capital Stock for another Person who is the beneficial transferee or Beneficial Owner of such shares of Capital Stock, in which case the Purported Beneficial Transferee shall be such Person.

(k) "Purported Record Transferee" shall mean, with respect to any purported Transfer (or other event) that results in a transfer to a Charitable Trust, as provided in Section 6.02(b), the record holder of the shares of Capital Stock if such Transfer or other event had been valid under Section 6.02.

(l) "REIT Provisions of the Code" shall mean Sections 856 through 860 of the Code and any successor or other provisions of the Code relating to real estate investment trusts (including provisions as to the attribution of ownership of beneficial interests therein) and the regulations promulgated thereunder.

(m) "Restriction Termination Date" shall mean the first day after the date hereof on which, in either case, in accordance with Section 4.07, (i) the Corporation's REIT election pursuant to Section 856(g) of the Code is terminated or (ii) the Board of Directors determines that compliance with the restrictions and limitations on stock ownership and transfers set forth in this Article VI are no longer required for REIT qualification.

(n) "Transfer" shall mean any sale, issuance, transfer, gift, assignment, devise or other disposition of shares of Capital Stock as well as any other event that causes any Person to Beneficially Own or Constructively Own shares of Capital Stock, including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of shares of Capital Stock or (ii) the sale, transfer, assignment or other disposition of any securities (or rights convertible into or exchangeable for shares of Capital Stock), whether voluntary or involuntary, whether such transfer has occurred of record or of beneficial ownership or Beneficial Ownership or Constructive Ownership (including but not limited to transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of shares of Capital Stock), and whether such transfer has occurred by operation of law or otherwise.

(o) "TRS" shall mean a taxable REIT subsidiary (as defined in Section 856(l) of the Code) of the Corporation.

#### Section 6.02 Restriction on Ownership and Transfers.

(a) Prior to the Restriction Termination Date, no Person shall Beneficially Own or Constructively Own shares of Capital Stock that would or would be reasonably likely to result in the Corporation (i) failing to be "domestically controlled" (as provided for in Section 6.12) or (ii) being "closely held" within the meaning of Section 856(h) of the Code, or (iii) otherwise failing to qualify as a REIT (including but not limited to Beneficial Ownership or Constructive Ownership that would result in (I) the Corporation owning (actually or Constructively) an interest in a tenant (other than a TRS) that is described in Section 856(d)(2)(B) of the Code if the income derived by the Corporation (either directly or indirectly through one or more subsidiaries) from such tenant would or would be reasonably likely to cause



the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code or comparable provisions of any applicable state law, or (2) any "eligible independent contractor" (as defined in Section 856(d)(9)(A) of the Code) that operates a "qualified lodging facility" (as defined in Section 856(d)(9)(D) of the Code) on behalf of a TRS failing to qualify as such.

(b) If, prior to the Restriction Termination Date, any Transfer or other event occurs that, if effective, would result in any Person Beneficially Owning or Constructively Owning shares of Capital Stock in violation of Section 6.02(a), (i) then that number of shares of Capital Stock that otherwise would cause such Person to violate Section 6.02(a) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 6.03, effective as of the close of business on the Business Day prior to the date of such Transfer or other event, and such Purported Beneficial Transferee shall thereafter have no rights in such shares, or (ii) if, for any reason, the transfer to the Charitable Trust described in clause (i) of this sentence is not automatically effective as provided therein to prevent any Person from Beneficially Owning or Constructively Owning shares of Capital Stock in violation of Section 6.02(a), then the Transfer of that number of shares that otherwise would cause any Person to violate Section 6.02(a) shall be void *ab initio*, and the Purported Beneficial Transferee shall have no rights in such shares.

(c) Notwithstanding any other provisions contained herein, (i) after the earlier to occur of (A) January 20, 2011, and (B) the first date on which shares of Capital Stock of the Corporation are Beneficially Owned by at least one hundred (100) persons (determined without reference to any rules of attribution) and (ii) prior to the Restriction Termination Date, any Transfer of shares of Capital Stock (whether or not such Transfer is the result of a transaction entered into through the facilities of any stock exchange or automatic quotation system) that, if effective, would or would be reasonably likely to result in the Capital Stock of the Corporation being Beneficially Owned by less than one hundred (100) Persons (determined without reference to any rules of attribution) shall be void *ab initio*, and the intended transferee shall acquire no rights in such shares.

#### Section 6.03 Transfers of Capital Stock in Trust.

(a) Upon any purported Transfer or other event described in Section 6.02(b), such shares of Capital Stock shall be automatically transferred to the Charitable Trustee in his capacity as trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in a transfer to the Charitable Trust pursuant to Section 6.02(b). Each Charitable Beneficiary shall be designated by the Corporation as provided in Section 6.03(f).

(b) Shares of Capital Stock held by the Charitable Trustee shall be issued and outstanding shares of Capital Stock of the Corporation. The Purported Beneficial Transferee or Purported Record Transferee shall have no rights in the shares of Capital Stock held by the Charitable Trustee. The Purported Beneficial Transferee or Purported Record Transferee shall not benefit economically from ownership of any shares held in trust by the

Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Charitable Trust.

(c) The Charitable Trustee shall have all voting rights and rights to dividends and other distributions with respect to shares of Capital Stock held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid to or on behalf of the Purported Record Transferee or Purported Beneficial Transferee prior to the discovery by the Corporation that shares of Capital Stock have been transferred to the Charitable Trustee shall be paid to the Charitable Trustee upon demand, and any dividend or other distribution with respect to such shares declared but unpaid shall be paid when due to the Charitable Trustee. Any dividends or other distributions so paid over to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Purported Record Transferee and Purported Beneficial Transferee shall have no voting rights with respect to the shares of Capital Stock held in the Charitable Trust and, subject to Florida law, effective as of the date that the shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole discretion) (i) to rescind as void any vote cast by a Purported Record Transferee with respect to such shares prior to the discovery by the Corporation that the shares have been transferred to the Charitable Trustee and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Charitable Trustee shall not have the authority to rescind and recast such vote. Notwithstanding any other provision of this Charter to the contrary, until the Corporation has received notification that the shares of Capital Stock have been transferred into a Charitable Trust, the Corporation shall be entitled to rely on its stock ledger and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

(d) Within twenty (20) days after receiving notice from the Corporation that shares of Capital Stock have been transferred to the Charitable Trust, the Charitable Trustee shall sell the shares held in the Charitable Trust to a Person, designated by the Charitable Trustee, whose ownership of the shares would not violate the ownership limitations set forth in Section 6.02(a). Upon such sale, the interest of the Charitable Beneficiary in the shares of Capital Stock sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and to the Charitable Beneficiary as provided in this Section 6.03(d). The Purported Record Transferee shall receive the lesser of (i) the price paid by the Purported Record Transferee for the shares in the transaction that resulted in such transfer to the Charitable Trust (or, if the event that resulted in the transfer to the Charitable Trust did not involve a purchase of such shares at Market Price, the Market Price of such shares on the day of the event that resulted in the transfer of such shares to the Charitable Trust) and (ii) the price per share received by the Charitable Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares held in the Charitable Trust. The Charitable Trustee may reduce the amount payable to the Purported Record Transferee by the amount of dividends and other distributions which have been paid to the Purported Record Transferee and are owed by the Purported Record Transferee to the Charitable Trustee pursuant to Section 6.03(c). Any net sales proceeds in excess of the amount payable to the Purported Record Transferee shall be immediately paid to the Charitable Beneficiary together with any

dividends or other distributions thereon. If, prior to the discovery by the Corporation that such shares have been transferred to the Charitable Trustee, such shares are sold by a Purported Record Transferee then (A) such shares shall be deemed to have been sold on behalf of the Charitable Trust and (B) to the extent that the Purported Record Transferee received an amount for such shares that exceeds the amount that such Purported Record Transferee was entitled to receive pursuant to this Section 6.03(d), such excess shall be paid to the Charitable Trustee upon demand.

(e) Shares of Capital Stock transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price paid by the Purported Record Transferee for the shares in the transaction that resulted in such transfer to the Charitable Trust (or, if the event that resulted in the transfer to the Charitable Trust did not involve a purchase of such shares at Market Price, the Market Price of such shares on the day of the event that resulted in the transfer of such shares to the Charitable Trust) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation may reduce the amount payable to the Charitable Trustee by the amount of dividends and other distributions which has been paid to the Purported Record Transferee and are owed by the Purported Record Transferee to the Trust pursuant to Section 6.03(c). The Corporation may pay the amount of such reduction to the Charitable Trustee for the benefit of the Charitable Beneficiary. The Corporation shall have the right to accept such offer until the Charitable Trustee has sold the shares of Capital Stock held in the Charitable Trust pursuant to Section 6.03(d). Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and any dividends or other distributions held by the Charitable Trustee with respect to such shares shall thereupon be paid to the Charitable Beneficiary.

(f) By written notice to the Charitable Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that the shares of Capital Stock held in the Charitable Trust would not violate the restrictions set forth in Section 6.02(a) in the hands of such Charitable Beneficiary. Neither the failure of the Corporation to make such designation nor the failure of the Corporation to appoint the Charitable Trustee before the automatic transfer provided for in Section 6.02(b) shall make such transfer ineffective, provided that the Corporation thereafter makes such designation and appointment.

**Section 6.04 Remedies for Breach.** If the Corporation's Board of Directors or a committee thereof or other designees if permitted by Florida law shall at any time determine in good faith that a Transfer or other event has taken place in violation of Section 6.02(a) or that a Person intends to acquire, has attempted to acquire or may acquire beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of Capital Stock in violation of Section 6.02(c), the Corporation's Board of Directors or a committee thereof or other designees if permitted by Florida law shall take such action as it deems advisable to refuse to give effect or to prevent such Transfer, including, but not limited to, causing the Corporation to redeem shares of Capital Stock, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers (or, in the case of events other than a

Transfer, ownership or Constructive Ownership or Beneficial Ownership) in violation of Section 6.02(a) shall automatically result in the transfer to a Charitable Trust as described in Section 6.02(b) and any Transfer in violation of Section 6.02(c) shall automatically be void *ab initio* irrespective of any action (or non-action) by the Corporation's Board of Directors.

Section 6.05 Notice of Restricted Transfer. Any Person who acquires or attempts to acquire shares of Capital Stock in violation of Section 6.02, or any Person who is a Purported Beneficial Transferee such that an automatic transfer to a Charitable Trust results under Section 6.02(b), shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation's status as a REIT.

Section 6.06 Owners Required to Provide Information.

(a) Every owner of more than five percent (5%) (or such lower percentage as required by the Code or the Treasury regulations promulgated thereunder) in value of the outstanding shares of Capital Stock, within thirty (30) days after the end of each taxable year, shall give written notice to the Corporation stating the name and address of such owner, the number of shares of Capital Stock Beneficially Owned and a description of the manner in which such shares are held. Each such owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT and to ensure compliance with Section 6.02; and

(b) Prior to the Restriction Termination Date, each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of shares of Capital Stock and each Person (including the stockholder of record) who is holding shares of Capital Stock for a beneficial owner or Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT and to comply with the requirements of any taxing authority or governmental authority.

Section 6.07 Remedies Not Limited. Nothing contained in this Charter shall limit the authority of the Corporation's Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preservation of the Corporation's status as a REIT.

Section 6.08 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article VI, including any definition contained in Section 6.01, the Corporation's Board of Directors shall have the power to determine the application of the provisions of this Article VI with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 6.10). If Article VI requires an action by the Corporation's Board of Directors and this Charter fails to provide specific guidance with respect to such action, the Corporation's Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Article VI. Absent a decision to the contrary by the Corporation's Board of Directors (which the Corporation's Board of Directors

may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 6.02(b)) acquired Beneficial Ownership or Constructive Ownership of shares of Capital Stock in violation of Section 6.02(a), such remedies (as applicable) shall apply first to the shares that, but for such remedies, would have been actually owned by such Person, and second to shares that, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata, among the Persons who actually own such shares based upon the relative number of shares of Capital Stock held by each such Person.

Section 6.09 Legend. Each certificate representing shares of Capital Stock, if any, shall bear substantially the following legend:

#### RESTRICTIONS ON OWNERSHIP AND TRANSFER

The securities evidenced by this certificate are subject to restrictions on transfer and ownership for the purpose of the Corporation's maintenance of its status as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions, no Person may Beneficially Own or Constructively Own interests in the Corporation if, as a result of such acquisition or Beneficial Ownership or Constructive Ownership, or as a result in a change in the residence of such Person, (i) the Corporation would be "closely held" within the meaning of section 856(h) of the Code or otherwise fail to qualify as a REIT, (ii) all of the interests in the Corporation would be held by fewer than 100 Persons or (iii) the Corporation would fail to be or thereafter remain a "domestically-controlled" REIT within the meaning of section 897(h)(4)(b) of the Code. Any Person who acquires, or attempts to acquire interests in the Corporation in excess of the above limitations must immediately notify the Corporation; any interests in the Corporation so held may be subject to mandatory sale in certain events, certain purported acquisitions of interests in the Corporation in excess of such limitations shall be void ab initio, and any interests in the Corporation purported to be acquired or Beneficially Owned or Constructively Owned in violation of such limitations may be automatically transferred to a trust for the benefit of a charitable beneficiary. All capitalized terms in this legend have the meanings defined in the Corporation's charter, a copy of which will be sent without charge to each stockholder who so requests it.

Section 6.10 Settlement on Exchanges. If shares of Capital Stock are publicly traded, nothing in this Article VI shall preclude the settlement of any transaction with respect to the shares of Capital Stock entered into through the facilities of any stock exchange or automatic quotation system. Any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article VI.

Section 6.11 Severability. If any provision of this Article VI or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other

applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

Section 6.12 Domestically-Controlled REIT. No Person shall Beneficially Own shares of Capital Stock or change the jurisdiction of its residence to the extent that such Beneficial Ownership or change of residence (in light of the then current Beneficial Ownership of shares of Capital Stock) would result in the Corporation failing to be a "domestically-controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code, and at the written request of a non-U.S. Person who is a Beneficial Owner of the Common Stock to the Board of Directors, the Corporation at its expense shall implement such additional procedures, including amendments to this Charter and the Bylaws, as are necessary to cause the Corporation to remain "domestically controlled." The Corporation and, by becoming a record holder and/or Beneficial Owner of any shares of Capital Stock, any such record holder or Beneficial Owner (at their respective expense) are deemed to have agreed (to the maximum extent permitted under applicable law) and will take all reasonable actions necessary to effect such amendment, unless it is reasonably determined that such amendment would have a material adverse effect on such record holder or Beneficial Owner. Any Transfer that results in the Corporation's failing to qualify as a "domestically-controlled" REIT shall be deemed to be a violation of Section 6.02 and shall result in the consequences of such violation set forth in this Article VI.

## ARTICLE VII

### 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, the ownership interest in Operating Lessee, the operating lease of the Property and personal property necessary or incidental to its ownership, lease 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, other than Operating Lessee;

(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, subject to the rights of Operating Lessee to use and hold those assets that Operating Lessee leases from the Corporation or in connection with any 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 the operating lease by the Operating Lessee or 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 (other than its ownership interest in the Operating Lessee) 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 SPE 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 Section 4.05 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 or Operating Lessee; institute any proceedings under any applicable insolvency law involving any Borrower Party or Operating Lessee; 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 or Operating Lessee, (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.

## **ARTICLE VIII**

### **AMENDMENTS**

Subject to Article VII, the Corporation reserves the right from time to time to make any amendment to its Charter, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in this Charter, of any shares of outstanding stock. Notwithstanding any other provision of this Charter, any purported amendment or modification to (i) this Charter that is inconsistent with the last sentence of Section 5.02 hereof or (ii) this Article VIII shall be null and void and of no effect unless the Lender (or its successor under the Loan Agreement) has consented in writing to such amendment or modification. All rights and powers conferred by this Charter on stockholders, directors and officers are granted subject to this reservation.

## **ARTICLE IX**

### **LIMITATION OF LIABILITY**

To the maximum extent that Florida law in effect from time to time permits limitation of the liability of directors and officers of a corporation, no present or former director or officer of the Corporation shall be liable to the Corporation or its stockholders for money damages. Neither the amendment nor repeal of this Article IX, nor the adoption or amendment of any other provision of this Charter or Bylaws inconsistent with this Article IX, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

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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 Fifth Amended and Restated Articles of Incorporation as of this 21<sup>st</sup> day of June, 2010.

ALBANY HOTEL, INC.

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