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Subject: 000150.74392.1

From: K. Wons... Tuesday, September 25, 2007 1:38 PM Page 1 of 15

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## FLORIDA PROFIT/NON PROFIT CORPORATION

CARILLON HOTEL AND SPA MASTER ASSOCIATION, INC.

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION  
OF  
CARILLON HOTEL AND SPA MASTER ASSOCIATION, INC.**

The undersigned incorporator, desiring to form a corporation not for profit under Chapter 617, Florida Statutes, as amended, hereby adopts the following Articles of Incorporation:

**ARTICLE I  
NAME**

The name of the corporation shall be **CARILLON HOTEL AND SPA MASTER ASSOCIATION, INC.**, which is hereinafter referred to as the "Association".

**ARTICLE II  
OFFICE**

The principal office and mailing address of the Association shall be at 400 Arthur Godfrey Boulevard, Suite 200, Miami Beach, Florida 33140, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.

**ARTICLE III  
PURPOSES AND POWERS**

The objects and purposes of the Association are those objects and purposes as are authorized by the **Declaration of Covenants, Restrictions and Easements for Carillon Hotel and Spa** recorded (or to be recorded) in the Public Records of the County, as hereafter amended and/or supplemented from time to time (the "Declaration"). The further objects and purposes of the Association are to preserve the values and amenities in The Properties (as defined in the Declaration) and to maintain the Common Properties thereof for the benefit of the Members of the Association.

The Association is organized not for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm or corporation.

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The Association shall have the power to contract for the management of the Association and to delegate to the party with whom such contract has been entered into (which may be an affiliate of the Declarant) the powers and duties of the Association, except those which require specific approval of the Board of Directors or Members.

The Association shall have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles and the Declaration above identified. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Declaration and to provide for the general health and welfare of its membership. Notwithstanding anything contained in the Declaration, the By-Laws or these Articles to the contrary, before commencing litigation against any party in the name of the Association involving amounts in controversy in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00), the Association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Master Covenants, the By-Laws and applicable law, provided that in the event of conflict, the provisions of applicable law shall control over those of the Master Covenants and By-Laws.

Definitions set forth in the Declaration are incorporated herein by this reference.

#### **ARTICLE IV** **MEMBERS**

**Section 1. Membership.** The Owner of each Lot shall be a Member of the Association, provided that any such person or entity who holds an ownership interest merely as security for the performance of an obligation shall not be a Member. All votes permitted or required to be cast by Members shall be cast only by their respective Voting Members.

**Section 2. Voting Rights.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all those Owners as defined in Section 1 above with the exception of the Declarant (as long as the Class

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B Membership shall exist, and thereafter the Declarant shall be a Class A Member to the extent it would otherwise qualify). The Lot Owner shall be deemed the Voting Member, provided, however, that when the Lot Owner is a Neighborhood Association, the Voting Member shall be the President of the Neighborhood Association, and the Voting Member shall be entitled to cast the following number of votes, as applicable:

- The Voting Member for the Condominium South Lot - one (1) vote
- The Voting Member for the Condominium Central Lot - one (1) vote
- The Voting Member for the Condominium North Lot - one (1) vote
- The Voting Member for the Retail Lot - one (1) vote
- The Voting Member for the Hotel Lot - five (5) votes

Class B. The Class B Member shall be the Declarant (or the assignee of Declarant, which may include without limitation, Declarant's Mortgagee, as defined in the Declaration), or a representative thereof, who shall have and cast one (1) vote in all Association matters, plus two (2) votes for each vote which may be cast, in the aggregate, by the Class A Voting Members. Such Class B Voting Member may be removed and replaced only by the Declarant in its sole discretion. The Class B membership shall cease and terminate three (3) months after ninety percent (90%) of all Condominium Units (as to any Lot that has been submitted to the condominium form of ownership) and Lots (as to those which have not been submitted to the condominium form of ownership) within The Properties have been sold and conveyed by the Declarant (or its affiliates) to an Owner other than Declarant or a builder, contractor or other who purchases the Lot for the purpose of constructing improvements thereon for resale, or sooner at the election of the Declarant (the "Transition Date"), whereupon the Class A Members shall be obligated to appoint the Board in the manner herein provided and assume control of the Association.

Section 3. Meetings of Voting Members. The By-Laws of the Association shall provide for an annual meeting of Voting Members, and may make provisions for regular and special meetings of Voting Members other than the annual meeting. A quorum for the transaction of business at any meeting of the Voting Members

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shall exist if a majority of the votes which may be cast by Voting Members shall be present or represented at the meeting.

Section 4. General Matters. When reference is made herein, or in the Declaration, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members or Voting Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of the Members eligible to be cast by their respective Voting Members present at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which quorum exists) and not of the Members themselves (or their Lots) or of the individual Voting Members themselves.

#### **ARTICLE V** **CORPORATE EXISTENCE**

The Association shall have perpetual existence.

#### **ARTICLE VI** **BOARD OF DIRECTORS**

Section 1. Management by Directors. The property, business and affairs of the Association shall be managed by a Board of Directors, which shall consist of nine (9) persons. A majority of the directors in office shall constitute a quorum for the transaction of business. The By-Laws shall provide for meetings of directors, including an annual meeting.

Section 2. Appointment of Members of Board of Directors. The Owner of the Hotel Lot shall be entitled to appoint five (5) members of the Board; the Owner of the Condominium South Lot shall be entitled to appoint one (1) member of the Board; the Owner of the Condominium Central Lot shall be entitled to appoint one (1) member of the Board; the Owner of the Condominium North Lot shall be entitled to appoint one (1) member of the Board; and the Owner of the Retail Lot shall be entitled to appoint one (1) member of the Board. Directors may be removed only by the Lot Owner that appointed the Director and vacancies on the Board of Directors shall be filled by the appointment of another Director by the Lot Owner who originally appointed the Director being replaced.

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**Section 3. Original Board of Directors.** The names and addresses of the first Board of Directors of the Association, each of whom shall hold office until removed by the Member who appointed such Director, shall be as follows:

<u>Name</u>	<u>Address</u>	<u>Appointed by:</u>
<u>Eric Sheppard</u> ?	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Hotel
<u>Phil Wolman</u> ✓	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Hotel
<u>Mark Burgin</u>	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Hotel
<u>Jeff Graft</u>	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Hotel
<u>Adam Wolman</u>	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Hotel
<u>Eric Sheppard</u>	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Condominium South
<u>Phil Wolman</u>	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Condominium Central
<u>Mark Burgin</u> S	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Condominium North
<u>Eric Sheppard</u>	400 Arthur Godfrey Boulevard Suite 200, Miami Beach, Florida 33140	Retail

**Section 4. Duration of Office.** Except as provided herein or in the Bylaws to the contrary, the term of each Director's service shall extend until the next annual meeting of the Members and subsequently until his or her successor is duly appointed and has taken office, or until he or she is removed in the manner

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elsewhere provided. Notwithstanding the foregoing, any Director shall serve at the pleasure of the Member who appointed such Director and may be removed and replaced by such Member at any time.

Section 5. Vacancies and Removal. Vacancies in the Board of Directors shall be filled by the appointment of another Director by the Member who originally appointed the Director being replaced. Directors shall serve at the pleasure of the Member who appointed such Director and may be removed and replaced by such Member at any time.

## **ARTICLE VII OFFICERS**

Section 1. Officers Provided For. The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect.

Section 2. Election and Appointment of Officers. The officers of the Association, in accordance with any applicable provision of the By-Laws, shall be elected by the Board of Directors for terms of one (1) year and thereafter until qualified successors are duly elected and have taken office. The By-Laws may provide for the method of voting in the election, for the removal from office of officers, for filling vacancies and for the duties of the officers. The officers may or may not be directors of the Association. If the office of President shall become vacant for any reason, or if the President shall be unable or unavailable to act, the Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy.

Section 3. First Officers. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and thereafter until successors are duly elected and have taken office, shall be as follows:

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Name

Address

President:

Eric Sheppard

400 Arthur Godfrey Boulevard  
Suite 200  
Miami Beach, Florida 33140

Vice President:

Phil Wolman

400 Arthur Godfrey Boulevard  
Suite 200  
Miami Beach, Florida 33140

Secretary/Treasurer:

Mark Burgin

400 Arthur Godfrey Boulevard  
Suite 200  
Miami Beach, Florida 33140

**ARTICLE VIII**  
**BY-LAWS**

The Board of Directors shall adopt By-Laws consistent with these Articles of Incorporation. Such By-Laws may be altered, amended or repealed in the manner set forth in the By-Laws.

**ARTICLE IX**  
**AMENDMENTS AND PRIORITIES**

Section 1. Amendments to these Articles of Incorporation shall be proposed and approved by the Board of Directors and thereafter submitted to a meeting of the membership of the Association for adoption or rejection (by affirmative vote of 80% of the votes entitled to be cast by all Voting Members), all in the manner provided, and in accordance with the notice provisions of, Section 617.017, Florida Statutes.

Section 2. In case of any conflict between these Articles of Incorporation and the By-Laws, these Articles shall control; and in case of any conflict between these Articles of Incorporation and the Declaration, the Declaration shall control.

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**ARTICLE X**  
**INCORPORATOR**

The name and address of the incorporator of this Corporation is:

<u>Name</u>	<u>Address</u>
Eric Sheppard	400 Arthur Godfrey Boulevard Suite 200 Miami Beach, Florida 33140

**ARTICLE XI**  
**INDEMNIFICATION**

Section 1. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good

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faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 3. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in sections 1 or 2 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

Section 4. Any indemnification under sections 1 or 2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in sections 1 or 2. Such determination shall be made:

- (a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;
- (b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
- (c) By independent legal counsel:
  - (i) selected by the Board of Directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or

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- (ii) if a quorum of the Directors cannot be obtained for paragraph (a) and the Committee cannot be designated under paragraph (b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or
- (iii) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.

Section 5. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by section 4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

Section 6. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.

Section 7. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

- (a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;

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- (b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
- (c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the Association.

Section 8. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

Section 9. Notwithstanding the failure of a Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

- (a) The director, officer, employee, or agent is entitled to mandatory indemnification under section 3, in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to section 7; or
- (c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether

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such person met the standard of conduct set forth in section 1, section 2, or section 11.7. unless (i) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or acted in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 10. For purposes of this Article XI, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.

Section 11. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article XI shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

Section 12. The provisions of this Article XI shall not be amended.

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From: Katie Wonsch

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLE XII**  
**REGISTERED AGENT**

Until changed, Eric Sheppard shall be the registered agent of the Association and the registered office shall be at 400 Arthur Godfrey Boulevard, Suite 200, Miami Beach, Florida 33140.

IN WITNESS WHEREOF, the aforesaid incorporator has hereunto set his hand this 8<sup>th</sup> day of September, 2007.

  
\_\_\_\_\_  
Eric Sheppard, Incorporator

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**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR  
THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT  
UPON WHOM PROCESS MAY BE SERVED.**

In compliance with the laws of Florida, the following is submitted:

First -- That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing articles of incorporation, in the County of Miami-Dade, State of Florida, the Association named in the said articles has named Eric Sheppard, located at 400 Arthur Godfrey boulevard, Suite 200, Miami Beach, Florida 33140, as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position, and hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

  
Eric Sheppard, Registered Agent

DATED this 25<sup>th</sup> day of September,  
2007.

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