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# SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF CRYSTAL INN CO.

THESE SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION ("Second Amended and Restated Articles") amend and restate the Articles of Incorporation of CRYSTAL INN CO., a Florida corporation (the "Corporation"), filed with the Secretary of State of Florida on September 28, 1992, under Document Number V66887, as amended by Certificate of Amendment of Articles of Incorporation, filed with the Secretary of State of Florida on October 9, 1992, and further amended by Articles of Amendment filed on June 18, 1996, and as restated by Restated Articles of Incorporation filed with the Florida Secretary of State on March 31, 1999, and further amended by Articles of Amendment filed with the Secretary of State of Florida on October 25, 2000 (the Articles of Incorporation, as amended and restated, are collectively referred to as the "Original Articles"), and are done in accordance with the requirements of Sections 607.1003 and 607.1007, Florida Statutes.

#### Article I Definitions

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or common control with such Person or any Person who has a direct familial relationship, by blood, marriage or otherwise with the Corporation or any Affiliate of the Corporation

"Cause" means, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitutes willful disregard of, or bad faith or gross negligence with respect to, such independent Director's duties under these Articles, (ii) that such Independent Director has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) that such Independent Director due to death, disability or incapacity, or (iv) that such Independent Director no longer meets the definition of Independent Director.

"Independent Director" means an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate of the Corporation and that provides professional Independent Directors and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Director and is not, and has never been, and will not while serving as Independent Director be, any of the following:

- (a) a stockholder, director, manager, officer, trustee, employee, partner, member (with the exception of serving as a Special Member), employee, attorney or counsel of the Corporation or any of its stockholders or Affiliates (other than as an Independent Director of the Corporation or an Affiliate of the Corporation that is not in the direct chain of ownership of Corporation and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director is employed by a company that routinely provides professional Independent Directors or managers in the ordinary course of its business);
- (b) a creditor, supplier, or service provider (including provider of professional services) to the Corporation or any of its stockholders or Affiliates (other than a nationally-recognized company that routinely provides professional Independent Directors and other corporate services to the Corporation or any of its Affiliates in the ordinary course of its business);

- a family member of any such member, partner, stockholder, manager, director, officer, employee, creditor, supplier or service provider; or
- (d) a Person that controls (whether directly, indirectly or otherwise) any of (a), (b), or (c) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (a) by reason of being the Independent Director of a "special purpose entity" affiliated with the Corporation shall be qualified to serve as an Independent Director of the Corporation, provided that the fees that such individual earns from serving as an 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 and shall not exceed \$2,400.00 in any calendar year, subject to any annual increases required by CT Corporation Staffing, Inc.

For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve the Corporation's separateness that are substantially similar to the Special Purpose Provisions of these Second Amended and Restated Articles.

"Lender" means Bank of America, N.A., and each of its transferees, successors and assigns with respect to the Loan.

"Loan" means that certain Twenty Million Dollar (\$20,000,000.00) loan from the Lender to the Corporation under the terms and conditions of the Loan Agreement.

"Loan Agreement" means that certain agreement containing the terms and conditions of the Loan between the Londer and the Corporation as such agreement may be assigned, extended, modified, amended and/or restated from time to time.

"Loan Documents" has the meaning set forth in the Loan Agreement.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Property" means the parcel of real property located at 2020 Jefferson Davis Highway, Arlington, Virginia, together with the improvements located thereon known as the Radisson Hotel Reagan National Airport, and all personal property owned by the Corporation to be encumbered by the deed of trust ("Deed of Trust") to be given by the Corporation in favor of Lender in connection with the Loan, together with all rights pertaining to such property and improvements, as more particularly described in the granting clause of the Deed of Trust and referred to therein as the "Property").

"Satisfaction Date" means the date on which all amounts outstanding under the Loan Documents shall have been satisfied and the lien of the Loan Documents shall have been released from the Property.

#### ARTICLE II

#### The Corporation

SECTION 2.1 Name. The business of the Corporation shall be conducted under the name "Radisson Hotel Reagan National Airport".

SECTION 2.2 Term. The term of the Corporation shall be perpetual.

SECTION 2.3 Purpose. Subject to the limitations set forth elsewhere herein or in the Loan Documents, the purpose of the Corporation is to engage solely in the following activities: (i) to own, hold, lease, operate, manage, maintain, develop and improve the Property; (ii) to enter into and perform its

obligations under the Loan Documents; (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Property to the extent permitted under the Loan Documents; and (iv) 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.

- SECTION 2.4 Place of Business. The principal place of business of the Corporation is 270 NE Fourth Street, Miami, FL 33132.
- SECTION 2.5 Registered Agent. The Registered Agent of the Corporation is CT Corporation System and its address is 1200 S Pine Island Road, Plantation, FL 33324.
- SECTION 2.6 Authorized Shares. The Corporation shall have authority to issue 20,000 shares of common stock, par value zero dollars and one cent (\$0.01) per share.
- SECTION 2.7 Name of Incorporator. The name of the Incorporator is Roger Friedbauer, whose address is 701 Brickell Avenue, Suite 2050, Miami, FL 33131.
- SECTION 2.8 Election of Directors. Unless and to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.
- SECTION 2.9 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the General Corporation Law of the State of Florida, the Board of Directors of the Corporation shall be authorized to make, after or repeal the Bylaws of the Corporation as and to the extent permitted therein. In the event of an conflict between these Second Amended and Restated Articles and the Bylaws of the Corporation, these Second Amended and Restated Articles shall control.

## ARTICLE III

## Separateness Covenants

SECTION 3.1. Negative Covenants. Notwithstanding any other provision in these Articles or any provision of law that otherwise so empowers the Corporation, until the Satisfaction Date:

- A. The Corporation shall not do any of the following on behalf of the Corporation, without the ununimous affirmative vote of the Board of Directors of the Corporation, including the Independent Director:
  - 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;
  - (2) 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 the property of the Corporation;
  - (3) make any assignment for the benefit of the creditors of the Corporation; or
  - (4) take any action in furtherance of the foregoing subparagraphs (1) through (3).

- B. The Corporation shall not do any of the following:
  - (1) to the fullest extent permitted by law, dissolve;
  - (2) liquidate, consolidate, merge, terminate or sell all or substantially all of the assets of the Corporation;
  - (3) engage in any business activity beyond the scope of Section 2.3 hereof;
  - (4) own any assets other than the Property and incidental personal property necessary for the ownership or operation of the Property;
  - (5) take any action that is reasonably likely to cause the Corporation to become insolvent;
  - (6) commingle its assets with those of any other person or entity and hold all of its assets in its own name;
  - (7) guarantee or become obligated for the debts of any other earlity or person;
  - (8) hold out its credit as being available to satisfy the obligations of any other person or entity;
  - acquire the obligations or securities of its affiliates, members, shareholders or partners;
  - (10) 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);
  - (11) pledge its assets to secure the obligations of any other person or entity;
  - (12) identify itself as a division of any other person or entity;
  - (13) form, hold or acquire any subsidiaries;
  - (14) incur any indebtedness other than the debt permitted by the Loan Documents;
  - (15) transfer or consent to the transfer of any direct or indirect ownership interests in the Corporation except as expressly permitted under the Loan Documents; and
  - (16) amend, after or change these Articles without (a) the prior written consent of the Lender, its successors or assigns and (b) after securitization of the Loan, prior written confirmation from each rating agency that rates securities backed in whole or in part by such securities that such amendment, alteration or change shall not result in any qualification, withdrawal or downgrade of any such rating.

SECTION 3.2. Affirmative Covenants. Notwithstanding any other provision in these Articles or any provision of law that otherwise so empowers the Corporation, until the Satisfaction Date, the Corporation shall do each of the following:

- (1) maintain books and records separate from any other person or entity;
- (2) maintain its bank accounts separate from any other person or entity;

- (3) conduct its own business in its own name and strictly comply with all organizational formalities to maintain its separate existence;
- (4) except as permitted by 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 liated 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;
- pay its own liabilities and expenses only out of its own funds;
- (6) observe all necessary corporate formalities;
- (7) except for capital contributions or capital distributions permitted under the terms and conditions of these Second Amended and Restated Articles, not enter into any transaction with an affiliate of the Corporation except on commercially reasonable terms similar to those available to unaffiliated parties in an arm's-length transaction:
- (8) pay the salaries of its own employees, If any, from its own funds;
- maintain a sufficient number of employees, if any, in light of its contemplated business operations;
- (10) file its tax returns separate from those of any other entity and not file a consolidated tax return with any other entity, except that the Corporation may file a consolidated tax return with InterAmerican Hotels Corp., a Florida corporation ("IAHC"), so long as IAHC is the holder of 100% of the issued and outstanding shares of the Corporation and the Corporation is shown as a separate member of such consolidated group;
- (11) allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
- (12) use separate stationery, invoices and checks bearing its own name;
- (13) hold itself out as a separate legal entity;
- (14) promptly correct any known misunderstanding regarding its separate identity:
- (15) maintain adequate capital in light of its contemplated business operations; and
- (16) maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any Person.

#### Article IV Board of Directors

SECTION 4.1. Number. The number of directors constituting the Board of Directors have been established by the Corporation's Bylaws and shall be not fewer than three (3) directors nor more than nine (9) directors, including one Independent Director, and may be increased or decreased from time to time by amendment to the Bylaws.

SECTION 4.2. Indemnification. Any indemnification by the Corporation in favor of any director or officer or any other party entitled to indemnification pursuant to Section 6.2 shall be fully subordinate to the Loan and, to the fullest extent permitted by law, shall not constitute a claim against the Corporation in the event that insufficient funds exist to repay the Loan and all its obligations to creditors.

#### SECTION 4.3. Independent Directors.

- <u>Duties.</u> The Corporation's Board of Directors shall at all times have at least one member (a) who is an Independent Director. The Corporation shall not take any vote requiring the consent of the independent Director unless there is an Independent Director then serving. The Independent Director's power and authority shall be limited to its rights to vote on the matters listed in Section 3.1A. Notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interest of the Corporation, including its respective creditors, in acting or otherwise voting on the matters referred to in Section 3.1A. Except for duties to the Corporation as set forth in the immediately preceding sentence (including duties to the Corporation's creditors solely to the extent of their respective economic interests in the Corporation but excluding (i) the interests of other Affiliates of the Corporation and (ii) the interests of any group of Affiliates of which the Corporation is a part), the Independent Director shall not, to the fullest extent permitted by Florida law, have any fiduciary duties to any officer or any other Person bound by these Articles; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, an Independent Director shall not be liable to the Corporation or any other Person bound by these Articles for breach of contract or breach of duties (including fiduoistry duties), unless the Independent Director acted in bad faith or engaged in willful misconduct. All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in these Articles. Notwithstanding any other provision of these Articles to the contrary, each Independent Director, in its capacity as an Independent Director, may only act, vote or otherwise participate in those matters referred to in Section 3.1A or as otherwise specifically required by these Articles.
- (b) Removal. A Independent Director may be removed only for Cause. No resignation or removal of an Independent Director permitted by the preceding sentence shall be effective until (1) the Corporation has provided the Lander with two business days' prior written notice of such resignation or removal, and (2) a successor Independent Director is elected and such successor has taken office. In the event of the death, incapacity or resignation of an Independent Director, the Board of Directors promptly shall appoint a replacement Independent Director as soon as practicable.

## ARTICLE V

#### APPROVAL OF CERTAIN ACTIONS BY SHAREHOLDERS

SECTION 5.1. <u>Definitions</u>. For purposes of this Article V, certain capitalized terms shall have the meanings set forth below:

(a) "Related Party Transaction" means: (i) a purchase, sale, lease, agreement, transfer or other transaction between the Corporation or its Subsidiaries and any Shareholder or any of their Affiliates; (ii) the payment of any salary, consulting fees, commissions, rebates, management fees or other compensation of any kind by the Corporation or its Subsidiaries to any Shareholder or any of their Affiliates; and (iii) any purchase, sale, lease, agreement, transfer or other transaction between the Corporation or its Subsidiaries and

any other party in which the other party pays, directly or indirectly, any commission, rebute, finder's fee or other compensation of any kind to any Shareholder or any of their Affiliates.

- (b) "Affiliate(s)" means: (i) any officer, director, shareholder or representative of any Shareholder; (ii) any corporation, partnership, trust or other entity controlled by, controlling, or under common control with any Shareholder, and any officer, director, partner, trustee or shareholder thereof, or (iii) any member of the immediate families (including spouses, ancestors, siblings and lineal descendants) of any of the foregoing persons.
- (c) "Control" means the beneficial ownership, directly or indirectly, of fifty percent (50%) or more of the equity interest or voting power in any entity.
  - (d) "Subsidiary" means any corporation controlled by the Corporation.
  - (e) "Shareholder" means the owner of any of the common stock.
- SECTION 5.2. <u>Required Shareholder Approval</u>. In addition to the requirements of Article III and Section 4.3 hereof, and so long as Article III and Section 4.3 remain in full force and effect, the Corporation shall not be authorized to take any of the following actions without the prior approval of the holders of seventy-five percent (75%) or more of the issued and outstanding theres of the common stock of the Corporation:
  - (a) Carry out, enter into or approve any Related Party Transaction.
- (b) Enter into, approve, modify, amend or terminate any management agreement to which the Corporation or any Subsidiary is a party.
- (c) Sell, pledge, mortgage, lease or otherwise transfer any real property of the Corporation except in the ordinary course of business.
- (d) Sell, pledge, mortgage, lease or otherwise transfer any asset of the Corporation with a fair market value in excess of \$250,000.
- (e) Incur any obligation or indebtedness, borrower money, lend money, or make, execute or deliver any note, bond, mortgage, deed of trust, guarantee, indemnity bond, surety bond or accommodation paper or accommodation endorsement, except for trade or supplier payables incurred in the ordinary course of business.
- (f) Confess a judgment or settle or compromise any claim or suite against the Corporation, the amount of which exceeds \$250,000.
- (g) Purchase, lease or otherwise acquire any interest in any real or personal property, whether tangible or intangible, with a cost to the Corporation of more than \$250,000, other than the replacement of furniture, fixtures, equipment and furnishings, in the ordinary course of business, at any hotel owned by the Corporation.
- (b) Authorize or approve the issuance or sale of any capital stock of the Corporation, and any rights, options and warrants to purchase capital stock of the Corporation.
  - (i) Declare or pay any cash, stock or other dividend or distribution to the Shareholders.
- (i) Enter into any contract, lease, agreement or commitment outside the scope of the business of the Corporation (which is the ownership and operation of a botel).
  - (k) Amand those Second Amended and Restated Articles.

- (I) Merge or consolidate the Corporation, or exchange the shares of the Corporation for shares of any other entity.
  - (m) Create any Subsidiary of the Corporation.
- (n) Appoint or remove any officer of the Corporation, or change the title, duties, salary or other compensation of any such officer.
- (a) Authorize any action by the Corporation, in its capacity as a shareholder of its Subsidiaries (including any vote of any shares in any such Subsidiary with respect to any matter requiring shareholder approval).
- (p) Change the location of the Corporation's executive offices or the Corporation's accountants or legal counsel.
- SECTION 5.3. <u>Approval of Liquidation</u>. The affirmative vote of the holders of at least sixty percent (60%) or more of the issued and outstanding shares of common stock of the Corporation shall be required to voluntarily dissolve, litigate or windup the affairs of this Corporation.

#### ARTICLE VI

#### LIABILITY AND INDEMNIFICATION

Section 6.1. <u>Director Liability</u>. No director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability for acts described in Section 607.0831, Florida Statutes.

Section 6.2. Indemnification. Subject to the provisions of Section 4.2 hereof and so long as Article III remains in full force and effect, every person (and the heirs, executors and administrators of such person) who is or was a director, officer, employee or agent of the Corporation or of any other company, including any corporation, partnership, joint venture, trust or other enterprise on which such person serves or served at the request of the Corporation, shall be indemnified by the Corporation against all judgments, payments in settlement (whether or not approved by court), fines, penalties and reasonable costs and expenses (including attorneys' fees and costs) imposed upon or incurred by such person in connection with or resulting from any action, sait, proceeding, investigation or claim, civil, criminal, administrative, legislative or other (including any criminal action, suit or proceeding in which such person enters a plea of guilty or noto contender or its equivalent), or any appeal relating thereto which is brought or threatened either by or in the right of the Corporation or such other company (herein called a "Derivative Action") or by any other person, governmental authority or instrumentality (herein called a "Third Party action") and in which such person is made a party or is otherwise involved by reason of his being or having been such director, officer, employee or agent or by reason of any action or omission or alleged action or omission by such person in his capacity as such director, officer, employee or agent if either (i) such person is wholly successful, on the merits or otherwise, in defending such Derivative or Third Party Action, or (ii) in the judgment of a court of competent jurisdiction or, in the absence of such a determination, in the judgment of a majority of a quorum of the Board of Directors (which quorum shall not include any director who is a party to or is otherwise involved in such action), or, in the absence of such a disinterested quorum, in the opinion of independent legal counsel, or (iii) in the case of a Derivative Action, such person acted without gross negligence or intentional misconduct in the performance of his duty to the Corporation or such other company, or (iv) in the case of a Third Party Action, such party acted in good faith in what he reasonably believed to be in the best interests of the Curporation or such other company, and in addition, in any criminal action, had no reasonable cause to believe that his action was unlawful; provided that, in the case of a Derivative Action, such indemnification shall not be made in respect of any payment to the Corporation or such other company or shareholder thereof in satisfaction of judgment or in settlement unless either (x) a court of competent jurisdiction has approved such settlement, if any, and the reimbursement of such payment, or (y) if the court in which such action has been instituted lacks jurisdiction to grant such approval or such action is settled before the institution of judicial proceedings, in the opinion of independent legal counsel,

the applicable standard of conduct specified hereinbefore has been met, such action was without substantial merit, such settlement was in the best interests of the Corporation or such other company and the reimbursement of such payment is permissible under applicable law. In case such person is successful on the merits or otherwise in defending part of such action, or in the judgment of such a court or such quorum of the Board of Directors, or in the opinion of such counsel has met the applicable standards of conduct specified in the preceding sentence with respect to part of such action, he shall b indemnified by the Corporation against the judgments, settlements, payments, fines, penalties, and other costs and expenses attributable to such part of such action.

The foregoing rights of indemnification shall be in addition to any rights which any such director, officer, employee or agent may otherwise be entitled by any agreement or vote of Shareholder or at law or in equity or otherwise.

In any case in which in the judgment of a majority of such a disinterested quorum of the Board of Directors, any such director, officer or employee will be entitled to indemnification under the foregoing provisions of this Article VI, such amounts as they deem necessary to cover the reasonable costs and expenses incurred by such person in connection with the action, suit, proceeding, investigation or claim prior to final disposition thereof may be advanced to such person upon receipt of an undertaking by or on behalf of such person the repay such amounts if it is ultimately determined that he is not so entitled to indemnification.

#### ARTICLE VII

#### PREEMPTIVE RIGHTS

SECTION 7.1 Every Shareholder, upon the sale for cash of any new stock of the Corporation of the same kind, class or series as that which he already holds, shall have the right to purchase his pro rate share thereof (as nearly as may be done without issuance of fractional shares) at the price at which it is offered to others.

#### ARTICLE VIII

#### AMENDMENT OR REPEAL

SECTION 8.1 The Corporation reserves the right to amend, alter, or uppeal any other provision contained in these Second Amended and Restated Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights of stockholders herein are subject to this reservation; provided, however, that these Second Amended and Restated Articles of Incorporation may not be amended, altered or repealed without compliance with Article III.

#### ARTICLE IX

#### SECOND AMENDED AND RESTATED ARTICLES

SECTION 9.1 The Original Articles of the Corporation are hereby amended and restated in their entirety by these Second Amended and Restated Articles of Incorporation, and these Second Amended and Restated Articles of Incorporation are not in addition to but are in complete substitution for the Original Articles

#### ARTICLE X

## **EXPIRATION OF CERTAIN PROVISIONS**

The provisions of Article RI and Sections 4.2 and 4.3 hereof, shall expire and be of no further force and effect upon the occurrence of the Satisfaction Date.

## ARTICLE XI

## ADOPTION AND APPROVAL BY SHAREHOLDERS AND DIRECTORS

These Second Amended and Restated Articles of Incorporation were duly adopted and recommended to the sole Shareholder for approval by manimous written consent of the Directors of this Corporation dated July 22, 2010, and were approved by a written consent of the sole Shareholder of the Corporation dated July 22, 2010.

Roger Friedbauer, Incorporator

## ACCEPTANCE BY REGISTERED AGENT

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN SECTION 2.5 OF THESE SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION, THE UNDESIGNED CORPORATION HEREBY AGREES TO ACT IN THIS CAPACITY, AND FURTHER AGREES TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE DISCHARGE OF ITS DUTIES.

DATED this 23 day of July

7 ,2010

CT CORPORATION SYSTEM

By: Barlesa aburke

Barbara A. Burka Special Assistant Secretary