

Division of Corporations

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BASIC AMENDMENT

MH SOUTH, INC.

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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
MH SOUTH, INC.**

The Articles of Incorporation of MH South, Inc., a Florida corporation (the "Corporation"), are hereby amended and restated as follows:

1. Name. The name of the Corporation is:

MH South, Inc.
2. Principal Office and Mailing Address. The address of the principal office and the mailing address of the Corporation is:

1400 90th Avenue
Vero Beach, Florida 32961
3. Purpose. Notwithstanding any other provision of these Articles of Incorporation, the purpose of this Corporation is limited solely to (i) being a general partner of Cay of Heron, Ltd. (the "Partnership"), and (ii) causing the Partnership to enter into that certain Amended and Restated Mortgage and Security Agreement (the "Amended Mortgage") dated February 20, 2003, the First Amendment to Amended and Restated Mortgage and Security Agreement dated March 27th 2003 (the "First Amendment"; collectively, the Amended Mortgage and the First Amendment are defined as the "First Mortgage"); and related loan documents with Deutsche Bank Mortgage Capital, L.L.C. together with its successors and assigns (the "Lender"), and (iii) acting as, and exercising all of the authority of, a general partner of the Partnership, and actions incident, necessary and appropriate to accomplish the foregoing.
4. Authorized Shares. The Corporation is authorized to issue 7500 shares of common stock having a \$1.00 par value per share. No share shall be issued except upon payment to the Corporation of the par value of the share in cash or other consideration permitted by law as payment for shares.
5. Registered Agent and Office. The name of the current registered agent and the address of the registered office of the Corporation is:

James L. Turner

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200 South Orange Avenue
Sarasota, Florida 34236

6. Powers. The Corporation shall exercise all powers enumerated in the Florida Business Corporation Act necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth in Section 3. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall only cause the Partnership to incur indebtedness to the extent permitted by the Partnership's Limited Partnership Agreement as amended as of even date herewith. For so long as the First Mortgage is outstanding, the Corporation shall not and shall not cause the Partnership to dissolve, liquidate, merge or sell substantially all of its assets.

7. Bylaws. The initial bylaws of the Corporation shall be adopted by the incorporator or the board of directors. The power to alter, amend or repeal any bylaw shall be vested in the shareholders, except to the extent delegated by the shareholders to the board of directors.

8. Amendment. The Corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation, or any amendment hereto, and any right conferred upon the shareholder(s) is subject to this reservation. Notwithstanding the foregoing, for so long as the First Mortgage exists on any portion of the Property, no material amendment, including Articles 1. and 8. or amendments inconsistent with such Articles, to these Articles of Incorporation or to the Corporation's Bylaws may be made without first obtaining the prior written consent of the Lender holding the First Mortgage, or, after the securitization of the First Mortgage, only if the Partnership receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) the prior written consent of such amendment by the mortgagee holding the First Mortgage.

9. Restrictions on Transfer. No transfer of any direct or indirect ownership interest in the Corporation may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Corporation, more than a forty-nine percent (49%) interest in the Corporation unless: (i) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the mortgagee holding the First Mortgage and to any applicable rating agency concerning, as applicable, the Corporation, the new transferee and/or their respective owners and (ii) the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

10. Indemnification. The Corporation shall, to the fullest extent permitted by the provisions of Florida Statutes Section 607.0850, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provision from and against any and all of the expenses, liabilities or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of

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the shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of the heirs, executors and administrators of such a person. Notwithstanding any other provision of these Articles of Incorporation, any indemnification of the Corporation's directors and officers shall be fully subordinated to any obligations respecting the Partnership or the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Corporation or the Partnership in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

11. Separateness Covenant. Notwithstanding any other provision of these Articles of Incorporation, for so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in the certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

A. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of any affiliate or, if it shares office space with any affiliate, it shall allocate fairly and reasonably any overhead and expense for shared office space.

B. It will not engage, directly or indirectly, in any business other than to serve as the general partner of the Partnership and it will conduct and operate its business as presently conducted and operated.

C. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities.

D. It will not enter into any contract or agreement with any affiliate of the Corporation or any constituent party of the Corporation except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties.

E. Except as permitted by the First Mortgage, it has not incurred (except for previously incurred indebtedness that has since been satisfied in full) and will not incur any indebtedness except to the extent it is liable for the obligations of the Partnership due to its capacity as a general partner thereof and will not permit the Partnership to incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the First Mortgage and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the First Mortgage may be secured (subordinate or *pari passu*) by the Property.

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F. Except as permitted by the First Mortgage, it has not made and will not make any loans or advances to any third party including any affiliate of the Corporation or constituent party of the Corporation and shall not acquire obligations or securities of its affiliates.

G. It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

H. It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the Articles of Incorporation or Bylaws of the Corporation without the prior written consent of the holder of the First Mortgage or, after the securitization of the First Mortgage, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

I. It will maintain all of its books, records, financial statements and bank accounts separate from those of any other person or entity, its affiliates and any constituent party and the Corporation will file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.

J. It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of the Corporation or any constituent party of the Corporation), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

K. It will 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.

L. Neither the Corporation nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Corporation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

M. It will not commingle the funds and other assets of the Corporation with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person or entity.

N. It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

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O. Except as permitted by the First Mortgage, it shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person.

P. It shall pay any liabilities out of its own funds, including salaries of any employees.

Q. The Corporation shall maintain a sufficient number of employees in light of its contemplated business operations.

R. Except as permitted by the First Mortgage, the Corporation shall not guarantee or become obligated for the debts of any other entity or person except to the extent it is liable for the obligations of the Partnership due to its capacity as general partner thereof.

S. The Corporation shall not form, acquire or hold any subsidiary other than the Partnership.

T. The Corporation shall cause the Partnership to comply with the special purpose provisions of its Limited Partnership Agreement, as amended of even date hereof. The Corporation shall continue to serve in the capacity of a general partner of Partnership and to own at least a 0.5% interest in the Partnership so long as the First Mortgage is outstanding.

U. The Corporation shall not take any of the following actions without the prior unanimous written consent or vote of all duly elected and acting directors of the Corporation ("Board of Directors"), including at least one Independent Director (as defined below); and the Board of Directors shall not vote on, or authorize the taking of any of the following actions unless there is at least one Independent Director then serving in such capacity:

(i) File or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding on behalf of the Corporation or Partnership; 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 on behalf of the Corporation or the Partnership;

(ii) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or Partnership or a substantial portion of their properties;

(iii) Make any assignment for the benefit of creditors of the Corporation or for the Partnership; or

(iv) Take any action in furtherance of any of the foregoing, including but not limited to causing the Corporation or the Partnership to take any such actions.

As long as any amount owing in connection with the First Mortgage is outstanding, the Corporation shall at all times have at least one Independent Director. To the fullest extent permitted by law, the Independent Director shall consider only the interests of the Corporation or Partnership and their creditors in acting or otherwise voting on the matters referred to in Article 11. No resignation or removal of an Independent Director, and no appointment of a successor

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Independent Director, shall be effective until such successor shall have accepted his or her appointment as an Independent Director by a written instrument. In the event of a vacancy in the position of Independent Director, the Corporation shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. In exercising its rights and performing its duties under this Agreement, the Independent Director shall have a fiduciary duty of loyalty and care. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Corporation or the Partnership.

For purpose of this Article 11, the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Corporation, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from the Corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

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

A natural person who satisfies the foregoing definition other than subparagraph (b) shall not be disqualified from serving as an Independent Director of the Corporation if such individual is an independent director provided by a nationally-recognized company that provides professional independent directors and that also provides other corporate services in the ordinary course of its business.

A natural person who otherwise satisfies the foregoing definition except for being the independent director of a "special purpose entity" affiliated with the borrower that does not own a direct or indirect equity interest in the borrower or any co-borrower shall not be disqualified

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from serving as an Independent Director of the Corporation if such individual is at the time of initial appointment, or at any time while serving as a Independent Director of the Corporation, an Independent Director of a "special purpose entity" affiliated with the Partnership or the Corporation (other than any entity that owns a direct or indirect equity interest in borrower or any co-borrower) if such individual is an independent director provided by a nationally-recognized company that provides professional independent directors. For purposes of this paragraph, a "special purpose entity" is an entity whose organizational documents contain restrictions on its activities substantially similar to those set forth in Section 11 of the Corporation's organizational documents.

"person" means any individual, Corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

The amendments contained herein were approved and adopted by written consent of the shareholders and the directors of the Corporation on March 27th, 2003. The number of votes cast for the amendments contained herein by the shareholders and directors was sufficient for approval.

IN WITNESS WHEREOF, the president has executed these Amended and Restated Articles of Incorporation.


Owen Mark Sanderson
President

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