# P01000064487

Office Use Only



200009950822

DIVISION OF THE BUILDING BOX

O3 JAN 15 PH 3: 38

Amend

T BROWN JAN 15 2003



ACCOUNT NO. : 072100000032

REFERENCE: 893874 11645A

AUTHORIZATION : Patricia Munto

COST LIMIT : \$ 35.00

ORDER DATE: January 15, 2003

ORDER TIME : 10:36 AM

ORDER NO. : 893874-010

CUSTOMER NO: 11645A

CUSTOMER: Kathleen M. Pratt

Law Offices Of Allan M.

2888 East Oakland Park Blvd.

Fort Lauderdale, FL 33306

#### DOMESTIC AMENDMENT FILING

NAME: MONDE HOMES, INC.

EFFECTIVE DATE:

XX \_\_ ARTICLES OF AMENDMENT

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX PLAIN STAMPED COPY

CONTACT PERSON: Norma Hull -- EXT# 1115

EXAMINER'S INITIALS:

## ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION

OF

MONDE HOMES, INC.

AND

CERTIFICATE OF DESIGNATIONS,

PREFERENCES AND RIGHTS OF CLASS A 9.5% REDEEMABLE CONVERTIBLE PREFERRED STOCK OF MONDE HOMES, INC.

PURSUANT TO STATUTES 607.0602 OF

THE FLORIDA BUSINESS CORPORATION ACT

The undersigned, being the President of Monde Homes, Inc. a corporation organized and existing under and by virtue of the laws of the State of Florida (hereinafter the "Corporation"), DO HEREBY CERTIFY AND AMEND THE CORPORATION'S ARTICLES OF INCORPORATION AS FOLLOWS:

FIRST: That pursuant to authority expressly granted and vested in the Board of Directors of said Corporation by the provisions of the Corporation's Articles of Incorporation, a majority of the Board of Directors adopted the following resolution on January 13, 2003 determining the designations, preferences and rights of its Convertible Preferred Stock:

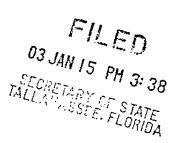
**RESOLVED**: That pursuant to the authority vested in the Board of Directors of the Corporation by the Corporation's Articles of Incorporation (the "Articles of Incorporation"), a series of Preferred Stock of the Corporation be, and it hereby is, created out of the authorized but unissued shares of the capital stock of the Corporation, such series to be designated Class A 9.5% Redeemable Convertible Preferred Stock (the "Convertible Preferred Stock"), to consist of 1,000,000 shares, \$.001 par value per share, of which the preferences and relative and other rights, and the qualifications, limitations or restrictions thereof, shall be as set forth in the Certificate of Designations annexed hereto:

[Shareholder Approval Was Not Necessary For This Amendment]

#### ARTICLE IV CAPITAL STOCK

### CERTIFICATE OF DESIGNATIONS OF PRÉFERENCES, RIGHTS AND LIMITATIONS OF CONVERTIBLE PREFERRED STOCK

1. Number of Shares of Convertible Preferred Stock. Of the 10,000,000 shares of authorized but undesignated Preferred Stock ("Preferred Stock") of the Corporation, one million (1,000,000) shares shall be designated and known as Class A 9.5% Redeemable



Convertible Preferred Stock, \$.001 par value ("Class A Redeemable Convertible Preferred Stock").

#### 2. Voting.

- (a) Unless required by law, no holder of any shares of Class A Redeemable Convertible Preferred Stock shall be entitled to vote at any meeting of stockholders of the Corporation (or any written actions of stockholders in lieu of meetings) with respect to any matters presented to the stockholders of the Corporation for their action or consideration. Notwithstanding the foregoing, the Corporation shall provide each holder of record of Class A Redeemable Convertible Preferred Stock with timely notice of every meeting of stockholders of the Corporation and shall provide each holder with copies of all proxy materials distributed in connection therewith.
- (b) So long as any shares of Class A Redeemable Convertible Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by the Florida Business Corporation Act) of the holders of at least 85% in interest of the then outstanding shares of Class A Redeemable Convertible Preferred Stock:
  - (i) alter or change the rights, preferences or privileges of the Class A Redeemable Convertible Preferred Stock;
  - (ii) create any new class or series of capital stock having parity with or a preference over the Class A Redeemable Convertible Preferred Stock as to payment of dividends or distribution of assets upon liquidation, dissolution or winding up of the Corporation ("Senior Securities"), or alter or change the rights, preferences or privileges of any Senior Securities so as to affect adversely the Class A Redeemable Convertible Preferred Stock, or issue (or authorize the issuance of) any additional shares of any existing class or series of Senior Securities;
  - (iii) increase the authorized number of shares of Class A Redeemable Convertible Preferred Stock; or do any act or thing not authorized or contemplated by this Certificate of Designations which would result in taxation of the holders of shares of the Class A Redeemable Convertible Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

#### 3. Dividends.

(a) The holders of shares of Class A Redeemable Convertible Preferred Stock shall be entitled to receive, at the discretion of the Board of Directors, before any cash dividend shall be declared and paid upon or set aside for the Common Stock or any

other securities which are not Senior Securities, in any fiscal year of the Corporation, out of funds legally available for that purpose, non-cumulative dividends payable in cash, an amount per share for such fiscal year equal to 9.5%.

- (b) Dividends shall be payable semi-annually on June 30 and December 31 of each calendar year (each, "Dividend Date").
- (c) Dividends shall be payable, at the option of the Company, in cash. There shall be no accrual or cumulation of dividends in the event a payment is not made on the due date.

#### 4. Liquidation.

If the Corporation shall commence a voluntary case under the Federal bankruptcy (a) laws or any other applicable Federal or state bankruptcy, insolvency or similar law, or consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws or any other applicable Federal or state bankruptcy, insolvency or similar law resulting in the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order shall be unstayed and in effect for a period of thirty (30) consecutive days and, on account of any such event, the Corporation shall liquidate, dissolve or wind up, or if the Corporation shall otherwise liquidate, dissolve or wind up (each such event being considered a "Liquidating Event"), no distribution shall be made to the holders of any shares of capital stock of the Corporation until the holders of Senior Securities (as defined above) have been paid and the preferential amount has been satisfied. If upon the occurrence of a Liquidation Event, the assets and funds available for distribution among the holders of the Class A Redeemable Convertible Preferred Stock and holders of other senior securities ranking pari passu as to preference upon liquidation with the Class A Redeemable Convertible Preferred Stock, shall be insufficient to permit the payment to such holders of the preferential amounts payable thereon, then the entire assets and funds of the Corporation legally available for distribution to the Class A Redeemable Convertible Preferred Stock and such pari passu securities shall be distributed ratably among such shares in proportion to the ratio that Liquidation Preference payable on each such share bears to the aggregate Liquidation Preference payable on all such shares.

- (b) In the case of any sale, conveyance of disposition of all or substantially all of the assets of the Corporation, the effectuation by the Corporation of a transaction or series or related transactions in which more than 50% of the voting power of the Corporation is disposed of, or the consolidation, merger or other business combination of the Corporation with or into any other person or persons when the Corporation is not the survivor, each Holder shall have the right thereafter to (A) convert its shares of Class A Redeemable Convertible Preferred Stock into the shares of stock and other securities, cash and property receivable upon or deemed to be held by holders of Common Stock following such merger, consolidation or sale, and such holder shall be entitled upon such event or series of related events to receive such amounts of securities, cash and property as the Shares of Common Stock into which such shares of Class A Redeemable Convertible Preferred Stock could have been converted immediately prior to such merger, consolidation or sales would have been entitled, or (B) in the case of merger or consolidation, require the surviving entity to issue shares of convertible preferred stock or convertible debentures with such aggregate stated value or in such face amount, as the case may be, equal to the Stated Value of the shares of Class A Redeemable Convertible Preferred Stock then held by such Holder, which newly issued shares of preferred stock or debentures shall have the terms identical (including with respect to conversion) to the terms of the Class A Redeemable Convertible Preferred Stock (except, in the case of debentures, as may be required to reflect the difference between debt and equity) and shall be entitled to all of the rights and privileges of a Holder of Class A Redeemable Convertible Preferred Stock set forth herein and the agreements pursuant to which the Class A Redeemable Convertible Preferred was issued (including, without limitation, as such rights relate to the acquisition, transferability, registration and listing of such shares of stock other securities issuable upon conversion thereof), and simultaneously with the issuance of such convertible preferred stock or convertible debentures, shall have the right to convert such instrument only into shares of stock and other securities, cash and property receivable upon or deemed to be held by holders of Common Stock following such merger or consolidation.
- (c) The Liquidation Preference shall be \$ 5.00 per share of Class A Redeemable Convertible Preferred Stock.
- 5. <u>Optional Conversion</u>. The holders of shares of Class A Redeemable Convertible Preferred Stock shall have the following conversion rights:
  - (a) Right to Convert; Conversion Price. Subject to the terms, conditions, and restrictions of this Section 4, the holder of any shares of Class A Redeemable Convertible Preferred Stock shall have the right to convert each such share of Class A Redeemable Convertible Preferred Stock (except that upon any Liquidating Event, the right of conversion shall terminate at the close of business on the business day fixed for payment of the amount distributable on the Class A Redeemable Convertible Preferred Stock) into two (2) shares of Common Stock.

#### (b) Conversion Date.

- (i) The holder of any shares of Class A Redeemable Convertible Preferred Stock may convert the shares of Class A Redeemable Convertible Preferred Stock purchased by such holder from the Company anytime from the date on which payment for the sale of the first share of Class A Redeemable Convertible Preferred Stock is received by the Corporation (the "Original Issuance Date"), upon delivery of a Notice to Convert to the Company, provided that if the Company shall exercise its option under Section 6 to redeem any shares of Class A Redeemable Convertible Preferred Stock, the Company shall permit, during the period between the Redemption Notice and the Redemption Date, the holders of the Class A Redeemable Convertible Preferred Stock to convert all of such shares originally issued to the holders.
- (ii) In no event other than pursuant to Section 4 (b) and 6 (a) shall a holder be permitted to convert any shares of Class A Redeemable Convertible Preferred Stock
- Notice of Conversion. The right of conversion shall be exercised by the holder (c) thereof by giving written notice (the "Conversion Notice") to the Corporation, by facsimile or by registered mail or overnight delivery service, with a copy by facsimile to the Corporation's then transfer agent for its Common Stock, as designated by the Corporation from time to time, that the holder elects to convert a specified number of shares of Class A Redeemable Convertible Preferred Stock into Common Stock and, if such conversion will result in the conversion of all of such holder's shares of Class A Redeemable Convertible Preferred Stock, by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Class A Redeemable Convertible Preferred Stock) at any time during its usual business hours on the date set forth in the Conversion Notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. The Conversion Notice shall include therein the number of shares of Common Stock to be issued in connection with such conversion.
- (d) Issuance of Certificates; Time Conversion Effected. Promptly, but in no event more than ten (10) Days, after the receipt of the Conversion Notice referred to in Section 5(c) and surrender of the certificate or certificates for the share or shares of Class A Redeemable Convertible Preferred Stock to be converted (if required), the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock into which such shares of Class A Convertible Preferred Stock have been converted. Such conversion shall be deemed to have been effected on the date on which such Conversion Notice shall have been telecopied to the Corporation and at the time specifically stated in such

Conversion Notice, which must be during the calendar day of such notice, and at such time the rights of the holder of such share or shares of Class A Redeemable Convertible Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

The holder shall be entitled to exercise its conversion privilege notwithstanding the commencement of any case under 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"). In the event the Corporation is a debtor under the Bankruptcy Code, the Corporation hereby waives to the fullest extent permitted any rights to relief it may have under 11 U.S.C. § 362 in respect of the holder's conversion privilege. The Corporation agrees, without cost or expense the holder, to take or consent to any and all action necessary to effectuate relief under 11 U.S.C. § 362.

- (e) Fractional Shares. No fractional shares shall be issued upon conversion of Class A Redeemable Convertible Preferred Stock into Common Stock. All fractional shares shall be rounded up to the nearest whole share.
- Reorganization or Reclassification. If any capital reorganization or reclassification (f) of the capital stock of the Corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, or, in the case of any consolidation, merger or mandatory share exchange of the Corporation with any other company or entity in which such other company or entity is the surviving entity then, as a condition of such reorganization, reclassification or exchange, lawful and adequate provisions shall be made whereby each holder of a share or shares of Class A Redeemable Convertible Preferred Stock shall thereupon have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Class A Redeemable Convertible Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization, reclassification or exchange not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the conversion rights and the fixing of the Conversion Price and the Maximum Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights. For clarity, it is the intention of the Corporation that the conversion rights of the holders of the Class A Redeemable Convertible Preferred Stock shall survive any consolidation, merger or mandatory share exchange and that the conversion rights granted hereunder shall be

- exercisable against any successor company or entity, and shall not be terminated or fixed as to amount upon the consummation of any such transaction.
- (g) Adjustments for Splits, Combinations, etc. The Conversion Price and the number of shares of Common Stock into which the Class A Redeemable Convertible Preferred Stock shall be convertible shall be adjusted for stock splits, stock dividends, combinations or other similar events. No adjustment to the Conversion Price will be made for dividends (other than stock dividends), if any, paid on the Common Stock or for securities issued pursuant to exercise for fair value of options or warrants.

#### 6. Company's Redemption of Class A Convertible Preferred Stock.

- (a) Company's Right to Redeem Class A Convertible Preferred Stock. At any time after six months from the Termination Date, July 14, 2003 (or if extended, the Extended Termination Date, September 12, 2003) as set forth in the Private Offering Memorandum, dated January 15, 2003, of the Company's Private Placement Offering of the Class A Redeemable Convertible Preferred Stock, the Corporation may, in its sole discretion, but shall not be obligated to, redeem, in whole or in part, the then issued and outstanding shares of Class A Redeemable Convertible Preferred Stock, at a price of \$4.00 per share. All partial redemptions shall be made pro rata among the Holders. All of the holders, in the aggregate, shall have thirty (30) Days after receipt of the Redemption Notice to elect instead to convert such shares originally issued to all such holders, in the aggregate, pursuant to Section 5 hereof.
- (b) Notice of Redemption. The Corporation shall provide each holder of record of the Class A Redeemable Convertible Preferred Stock being redeemed with written notice of redemption (the "Redemption Notice") not less than 30 Days prior to any date stipulated by the Corporation for the redemption of the Class A Redeemable Convertible Preferred Stock (the "Redemption Date"). The Redemption Notice shall contain (i) the Redemption Date, (ii) the number of shares of Class A Redeemable Convertible Preferred Stock to be redeemed from the holders to whom the Redemption Notice is delivered, and (iii) instructions for surrender to the Corporation of the certificate or certificates representing the shares of Class A Redeemable Convertible Preferred Stock to be redeemed.
- (c) Surrender of Certificates; Payment of Redemption Price. On or before the Redemption Date, each holder of the shares of Class A Redeemable Convertible Preferred Stock to be redeemed shall (unless the Class A Redeemable Convertible Preferred Stock are timely converted) surrender the required certificate or certificates representing such shares to the Corporation (or an affidavit of lost certificate in form and content reasonably satisfactory to the Corporation, but which shall not require the posting of any bond), in the manner and at the place designated in the

Redemption Notice, and upon payment to the holder of the Redemption Price, each such surrendered certificate shall be cancelled and retired. If payment of such Redemption Price is not made in full by the Redemption Date the holder shall again have the right to convert the Class A Redeemable Convertible Preferred Stock as provided in Section 5 hereof, and the Company shall thereafter be precluded from exercising its rights under this Section 6. If a certificate is surrendered and all the shares evidenced thereby are not being redeemed with the consent of the holder, the Corporation shall issue new certificates to be registered in the names of the person(s) whose name(s) appear(s) as the owners on the respective surrendered certificates and deliver such certificate to such person(s).

- 7. Stock to be Reserved. The Corporation, upon the effective date of this Certificate of Designations, has a sufficient number of shares of Common Stock available to reserve for issuance upon the conversion of all outstanding shares of Class A Redeemable Convertible Preferred Stock, assuming immediate conversion. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Class A Redeemable Convertible Preferred Stock as herein provided. such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Class A Redeemable Convertible Preferred. The Corporation covenants and represents that all shares of Common Stock which shall be so issued shall be duly and validly issued, fully paid and non-assessable. The Corporation will take all such action as may be so taken without violation of any applicable law or regulation to have a sufficient number of authorized but unissued shares of Common Stock to issue upon conversion of the Class A Redeemable Convertible Preferred Stock. The Corporation will not take any action which results in any adjustment of the conversion rights if the total number of unissued and unreserved shares of Common Stock issued and issuable after such action upon conversion of the Class A Redeemable Convertible Preferred Stock would exceed the total number of shares of unissued and unreserved Common Stock then authorized by the Corporation's Articles of Incorporation.
- No Reissuance of Class A Convertible Preferred Stock. Shares of Class A Redeemable Convertible Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.
- 9. <u>Issue Tax.</u> The issuance of certificates for shares of Common Stock upon conversion of Class A Redeemable Convertible Preferred Stock shall be made without charge to the holder for any United States issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Class A Redeemable Convertible Preferred Stock which is being converted.
- 10. <u>Closing of Books</u>. The Corporation will at no time close its transfer books against the transfer of any Class A Redeemable Convertible Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Class A Redeemable

Convertible Preferred Stock in any manner which interferes with the timely conversion of such Class A Redeemable Convertible Preferred Stock, except as may otherwise be required to comply with applicable securities laws.

- 11. **Definitions.** As used in this Certificate of Designations, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, \$.0001 par value, as constituted on the date of filing of this Certificate of Designations, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall neither be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends nor entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Class A Redeemable Convertible Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization, reclassification, or stock split of the outstanding shares thereof, the stock, securities or assets provided for in Subparagraph 5(f) and (g).
- Loss, Theft, Destruction of Preferred Stock. Upon receipt of evidence satisfactory to the 12. Corporation of the loss, theft, destruction or mutilation of certificates representing shares of Class A Redeemable Convertible Preferred Stock and, in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (which shall not include the posting of any bond), or, in the case of any such mutilation, upon surrender and cancellation of the Class A Redeemable Convertible Preferred Stock certificate, the Corporation shall make, issue and deliver, in lieu of such lost, stolen, destroyed or mutilated certificates for Class A Redeemable Convertible Preferred Stock, new certificates for Class A Redeemable Convertible Preferred Stock of like tenor. The Class A Redeemable Convertible Preferred Stock shall be held and owned upon the express condition that the provisions of this Section 15 are exclusive with respect to the replacement of mutilated, destroyed, lost or stolen shares of Class A Redeemable Convertible Preferred Stock and shall preclude any and all other rights and remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement of negotiable instruments or other securities without the surrender thereof.
- 13. Who Deemed Absolute Owner. The Corporation may deem the person in whose name the Class A Redeemable Convertible Preferred Stock shall be registered upon the registry books of the Corporation to be, and may treat it as, the absolute owner of the Class A Redeemable Convertible Preferred Stock for the purpose of conversion of the Class A Redeemable Convertible Preferred Stock and for all other purposes, and the Corporation shall not be affected by any notice to the contrary. All such payments and such conversion shall be valid and effectual to satisfy and discharge the liability upon the Class A Redeemable Convertible Preferred Stock to the extent of the sum or sums so paid or the conversion so made.
- 14. Register. The Corporation shall maintain a transfer agent, which may be the transfer agent for the Common Stock or the Corporation itself, for the registration of the Class A

Redeemable Convertible Preferred Stock. Upon any transfer of the Class A Convertible Redeemable Preferred Stock in accordance with the provisions hereof, the Corporation shall register or cause the transfer agent to register such transfer on the Class A Redeemable Convertible Preferred Stock register.

- 15. <u>Withholding</u>. To the extent required by applicable law, the Corporation may withhold amounts for or on account of any taxes imposed or levied by or on behalf of any taxing authority in the United States having jurisdiction over the Corporation from any payments made pursuant to the Class A Redeemable Convertible Preferred Stock.
- 16. <u>Headings</u>. The headings of the Sections of this Certificate of Designations are inserted for convenience only and do not constitute a part of this Certificate of Designations.
- 17. <u>Shareholder Approval.</u> By written consent, the votes cast were sufficient for approval of these amendments.

IN WITNESS WHEREOF, Jim Monde, President of the Corporation, under penalties of perjury, does hereby declare and certify that this is the act and deed of the Corporation and the facts stated herein are true and accordingly has signed this Certificate of Designations as of this \_\_\_\_ day of January, 2003.

ATTEST:	Monde Homes, Inc.	
	By: At Lanu	 
	James Monde	
	Dated: /-/3-03	 rat

STATE OF FLORIDA ) SS: COUNTY OF BROWARD )

Before me, a notary public, authorized to take acknowledgments in the State and County set forth above personally appeared Jim Monde, to me personally known, who executed the foregoing Amendment to the Articles of Incorporation and that he acknowledged before me that he executed this Amendment, and who did not take an oath.

In witness where of I have hereunto set my hand and affixed my official seal in the State and County aforesaid on January 13, 2003.

Notary Public

Type/Printed Name of Notary Public: Norma Johnstont

My Commission Expires: June 29, 200 4

Norma Johnston Perez Commission # CC 952109 Expires June 29, 2004 Bonded Thru Atlantic Bonding Co., Inc.