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BASIC AMENDMENT

MMS & D, INC.

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SECRETARY OF STATE
ALLAHASSEE, FLORIDA

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF

M M S & D, INC.

Pursuant to the requirements of Sections 607.1005 and 607.1007 of the Florida Business Corporation Act, the undersigned does hereby make, swear to, adopt and file these Amended and Restated Articles of Incorporation of M M S & D, INC. (the "Corporation"), which Corporation was incorporated in the State of Florida on October 28, 2004, under Document No. P04000148741.

1. The Corporation has not yet issued shares. The sole incorporator has voted to adopt these Amended and Restated Articles of Incorporation. Therefore, Articles I through XI of the Corporation's Articles of Incorporation are deleted in their entirety and are amended and restated as follows:

ARTICLE I

Name and Duration

The name of the Corporation is M M S & D, Inc. The duration of the Corporation is perpetual. The effective date upon which this Corporation shall come into existence shall be the date these Articles are filed by the Secretary of State.

ARTICLE II

Principal Office

The street and mailing address of the principal office of the Corporation is 13451 McGregor Blvd., Ft. Myers, Florida 33919.

ARTICLE III

Registered Office and Agent

The street address of the registered office in the State of Florida is 200 South Orange Avenue, SunTrust Center, Suite 2300, in the City of Orlando, County of Orange. The name of the registered agent at such address is A.G.C. Co.

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ARTICLE IV

Corporate Purposes, Powers and Rights

1. The nature of the business to be conducted or promoted and the purposes of the Corporation are limited to the following activities:

(a) acquiring and owning a membership interest (the "Interest") in Mariner Marketing Services & Development Company, LLC, a Florida limited liability company (the "LLC"), which is engaged solely in the acquisition, development, maintenance, management, leasing, operating and disposition of certain condominium units (the "Condominium Units") in the seven-story "Jacaranda" building located on the real property at 5500 Gulf Blvd., St. Pete Beach, Florida 33706, together with such rights as shall be appurtenant to such units pursuant to the Declaration of Condominium of Jacaranda Beach Villas Condominium, the obtainment of purchase financing for the acquisition of the Condominium Units and performance of the obligations of borrower thereunder (the "Purchase Financing"), and the engagement of activities incidental, necessary or appropriate to accomplish the foregoing;

(b) pledging the Interest to secure the Purchase Financing and performing the obligations of pledgor thereunder; and

(c) engaging in any lawful acts or activities permitted under the Florida Business Corporation Act that are incidental, necessary or appropriate to accomplish the foregoing.

The Corporation shall not engage in any activities other than as permitted by this Article IV.

2. Solely in furtherance of its corporate purposes set forth above, the Corporation shall have all of the general and specific powers and rights granted to and conferred on a corporation by the Florida Business Corporation Act.

ARTICLE V

Capital Stock

The total number of shares of capital stock which the Corporation has the authority to issue is 1,000 shares of Common Stock ("Common Stock"), \$0.10 par value per share.

ARTICLE VI

Incorporator

The name and mailing address of the incorporator of this Corporation is as follows:

Name

A.G.C. Co.

Address

200 South Orange Avenue
SunTrust Center, Suite 2300
Post Office Box 112
Orlando, Florida 32802

ARTICLE VII

Board of Directors

1. The number of members of the Board of Directors may be increased or diminished from time to time as provided by the Bylaws; provided, however, there shall never be less than one. Each director shall serve until the next annual meeting of shareholders.

2. If any vacancy occurs in the Board of Directors during a term, the remaining directors, by affirmative vote of a majority thereof, may elect a director to fill the vacancy until the next annual meeting of shareholders.

3. Notwithstanding any other provision of these Articles and so long as the LLC owns or holds an option to acquire any Condominium Units which are subject to a mortgage thereon or the Purchase Financing is outstanding and not discharged in full:

(a) Without the unanimous written consent of the Board of Directors, including the Independent Director (as defined below), the Corporation shall have no authority to:

(i) file a voluntary petition or otherwise initiate proceedings to have the Corporation adjudicated bankrupt or insolvent or consent to the institution of bankruptcy or insolvency proceedings against the Corporation;

(ii) file a petition seeking or consenting to reorganization or relief of the Corporation as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Corporation;

(iii) seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or of all or any substantial part of the properties and assets of the Corporation;

(iv) make any general assignment for the benefit of creditors of the Corporation;

(v) take any action that might cause the Corporation to become insolvent; or

(vi) liquidate or dissolve, in whole or in part;

(vii) admit in writing its inability to pay its debts generally as they become due;

(viii) consolidate, merge or enter into any form of consolidation with or into any other person or entity, nor convey, transfer or lease the Corporation's assets substantially as an entirety to any person or entity nor permit any person or entity to consolidate, merge or enter into any form of consolidation with or into the Corporation, nor convey, transfer or lease the Corporation's assets substantially as an entirety to any Person; or

(ix) amend any provisions of Articles IV, VII and VIII of these Articles.

(b) Without the unanimous written consent of the Board of Directors, including the Independent Director (as defined below), the Corporation shall have no authority to approve, vote for or consent to allow the LLC to:

(i) file a voluntary petition or otherwise initiate proceedings to have the LLC on adjudicated bankrupt or insolvent or consent to the institution of bankruptcy or insolvency proceedings against the LLC;

(ii) file a petition seeking or consenting to reorganization or relief of the LLC as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the LLC;

(iii) seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the LLC or of all or any substantial part of the properties and assets of the LLC;

(iv) make any general assignment for the benefit of creditors of the LLC;

(v) take any action that might cause the LLC to become insolvent; or

(vi) liquidate or dissolve, in whole or in part;

(vii) admit in writing its inability to pay its debts generally as they become due;

(viii) consolidate, merge or enter into any form of consolidation with or into any other person or entity, nor convey, transfer or lease the LLC's assets substantially as an entirety to any person or entity nor permit any person or entity to consolidate, merge or enter into any form of consolidation with or into the LLC, nor convey, transfer or lease the LLC's assets substantially as an entirety to any Person; or

(ix) amend any provisions of Section 2.3, 7.3(a) and Article XI of the Operating Agreement of the LLC.

(b) There shall be at least one Independent Director. An "Independent Director" shall be an individual who shall be selected by the shareholders, and shall not have been at the time of such individual's appointment as Independent Director, and shall not have been at any time during the preceding five years, and shall not be thereafter at any time which any portion of the Purchase Financing is outstanding (other than in his/her capacity as Independent Director after his/her appointment as such in accordance herewith): (i) a shareholder of, or an officer, director, partner or employee of, the Corporation or any of the Corporation's shareholders, members, subsidiaries or Affiliates, (ii) a customer of, or supplier to, the Corporation or any of the Corporation's shareholders, members, subsidiaries or affiliates, (iii) a person controlling or under common control with any such shareholder, director, partner, member, supplier or customer, or (iv) a member of the immediate family of any such shareholder, member, officer, director, partner, employee, supplier or customer. Notwithstanding the foregoing, an Independent Director may serve in similar capacities for other "special purpose" corporations, partnerships, limited liability companies and other entities formed by any affiliate of the Corporation.

ARTICLE VIII

Corporate Governance

1. Notwithstanding any other provision of these Articles and so long as the LLC owns or holds an option to acquire any Condominium Units which are subject to a mortgage thereon or the Purchase Financing is outstanding and not discharged in full, the Corporation shall not, and shall not vote for, approve or consent to allow the LLC, to:

(a) acquire or own any assets other than (i) the Condominium Units, in the case of the LLC, and the Interest, in the case of the Corporation, and (ii) cash and such incidental real and personal property as may be necessary for the operation thereof and proceeds therefrom;

(b) engage in any business, directly or indirectly, other than, in the case of the LLC, as set forth in the Operating Agreement of the LLC, and, in the case of the Corporation, as set forth in Article IV;

(c) enter into any contract or agreement with any partner, member, shareholder, trustee, beneficiary, principal or affiliate of the Corporation or the LLC, except upon terms and conditions that intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than such affiliate;

(d) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Purchase Financing, in the case of the LLC, and the Pledge, in the case of the Corporation, and (ii) trade payables or accrued expenses incurred in the ordinary course of its business;

(e) make any loan or advances to any person or entity (including any of its affiliates);

(f) fail to correct any known misunderstanding regarding its separate identity;

(g) seek, acquiesce in, or suffer or permit its liquidation, dissolution or winding up, in whole or in part;

(h) commingle or permit to be commingled its funds or other assets with those of any other person or entity;

(i) except as set forth in the documents entered into in connection with the Pledge, guarantee or otherwise become liable on or in connection with any obligation of any other person or entity, or hold itself out to be responsible for the debts or obligations of any other person or entity;

(j) except, in the case of the LLC, for the sale of Condominium Units and as permitted under the documents entered into in connection with the Purchase Financing, and except, in the case of the Corporation, as permitted under the documents entered into in connection with the Pledge, cause or suffer to occur any sale, transfer, pledge or encumbrance of (i) all or any part of the assets of the Corporation or the LLC or (ii) any securities of the Corporation or the LLC;

(k) do any act which would make it impossible to carry on its ordinary business;

(l) possess or assign the Condominium Units or any of its other assets, in the case of the LLC, or any of the Corporation's assets for other than a business or company purpose;

(m) enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any Person;

(n) acquire obligations or securities of the Corporation's shareholders or the LLC's members;

(o) hold title to its assets other than in its own name.

2. Notwithstanding any other provision of these Articles and so long as the LLC owns or holds an option to acquire any Condominium Units which are subject to a mortgage thereon or the Purchase Financing is outstanding and not discharged in full, the Corporation shall, and shall vote for, approve and consent to allow the LLC, to:

(a) remain solvent and 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;

(b) pay its own liabilities, indebtedness, and obligations of any kind from its own separate assets as the same shall become due;

(c) do all things necessary to preserve its existence;

(d) maintain its existence and be qualified to do business in all states necessary to carry on its business, specifically including the state where the Condominium Units are located in the case of the LLC;

(e) observe or cause to be observed all limited liability company formalities, in the case of the LLC, and all corporate formalities, in the case of the Corporation;

(f) maintain books and records and bank accounts separate from those of its shareholders, affiliates and any other person or entity;

(g) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity and not have its assets listed on the financial statements of any other person or entity, except as required or permitted by generally accepted accounting principals (provided that any such consolidated financial statements shall contain a note indicating that the separate assets and liabilities of the Corporation or the LLC, as applicable, and the other person or entity have been consolidated therein and that the Corporation and the LLC have separate financial statements;

(h) hold itself out to the public as a legal entity separate and distinct from any other person or entity, and not as a department or division of any person or entity;

(i) conduct business in its own name, enter into contracts and transactions and otherwise act in its own name in a manner designed to inform third parties of the identity of the entity with which they are dealing;

(j) allocate fairly and reasonably any overhead for any shared office space;

- (k) use separate stationary, invoices and checks bearing its own name;
- (l) file its own separate tax returns (except that the Corporation and the LLC shall have the right to file consolidated returns which shall provide that the Corporation and the LLC are separate legal entities and pay their respective proportionate share of the taxes shown on such returns); and
- (m) 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 other person or entity.

ARTICLE IX

Amendment

Subject to the provisions of Article VII, the Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation.

ARTICLE X

Bylaws

The power to adopt, amend or repeal bylaws for the management of this Corporation shall be vested in the Board of Directors or the shareholders, but the Board of Directors may not amend or repeal any bylaw adopted by the shareholders if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the Board of Directors.

ARTICLE XI

Indemnification

The Corporation shall indemnify any incorporator, officer or director, or any former incorporator, officer or director, to the full extent permitted by law.

ARTICLE XII

Transfer of Shares

If, from time to time, a shareholders' agreement among all of the shareholders of the Corporation is in effect regarding the Subchapter S status of the Corporation pursuant to the Internal Revenue Code of the United States in effect from time to time, then transfers of the Corporation's Common Stock made not in accordance with such agreement, whether by operation of law or otherwise, are null and void ab initio.

2. The foregoing Amended and Restated Articles of Incorporation of M M S & D, Inc. was adopted by the sole incorporator of the Corporation on the 1st day of November, 2004, without shareholder action, and the number of votes cast for such amendment and restatement was sufficient for approval. Shareholder action was not required for the adoption of these Amended and Restated Articles of Incorporation.

DATED this 1st day of November, 2004.

A.G.C. Co.

By: 

Name: Kenneth C. Wright
Vice President