

Division of Corporations

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DIVISION OF CORPORATIONS

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BASIC AMENDMENT

BRAY & GILLESPIE DELAWARE III, INC.

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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BRAY & GILLESPIE DELAWARE III, INC.**

FILED
03 FEB 11 PM 4:20
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, Charles A. Bray, President of Bray & Gillespie Delaware III, Inc., a Florida corporation organized under the laws of the State of Florida on January 1, 1999, hereby certifies that on January 31, 2003, the Shareholders of the Corporation owning a majority of the outstanding common stock of Bray & Gillespie Delaware III, Inc. have signed a consent in writing adopting the following amendment to the Certificate of Incorporation. The number of votes cast in favor of the amendment was sufficient for approval. Directors of the Corporation have also affirmed this Amendment.

I

The name of this corporation is Bray & Gillespie Delaware III, Inc. (the "Corporation").

II

(A) The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Florida other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the Florida Statutes.

(B) Notwithstanding paragraph (A) of this Article or any provision of these Articles or any other document, the purpose of this Corporation is limited solely to (i) being a general partner of Bray & Gillespie Delaware III, LP., a Delaware limited partnership (the "Borrower"), and (ii) causing the Borrower to enter into the Loan Agreement with Column Financial, Inc. (together with its successors and assigns as holders of the Loan, the "Lender") in order to obtain a mortgage loan (the "Mortgage Loan"), and (iii) acting as, and exercising all of the authority of, a general partner of the Borrower, and actions incident, necessary and appropriate to accomplish the foregoing.

III

The name and address in the State of Florida of the Corporation's initial agent for service of process is: Ronald R. Fieldstone, Esq., Fieldstone Lester Shear & Denberg, LLP, 201 Alhambra Circle, Suite 601, Coral Gables, Florida 33134.

IV

The Corporation is authorized to issue only one class of shares of stock and the total number of shares which the Corporation is authorized to issue is one thousand (1,000).

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V

The street address of the initial principal and mailing notice of the Corporation is:
600 North Atlantic Avenue, Daytona Beach, Florida 32118.

VI

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under Florida law.

VII

The following definitions shall apply to the Articles of Incorporation:

- (A) "Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.
- (B) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership, or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.
- (C) "General Partners" means the general partners of the Borrower, including the Corporation.
- (D) "Independent Director" means 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 five (5) years preceding initial appointment: (a) a stockholder, director (with the exception of serving as the Independent Director of the Corporation or another General partner of the Borrower), officer, employee, partner, member, attorney or counsel of the Corporation, the Borrower 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 Borrower 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

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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 shall not be disqualified 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 Corporation or the Borrower (other than any entity that owns a direct or indirect equity interest in 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 the Special Purpose Provisions of the Corporation's or the Borrower's organizational documents, as defined and set forth herein or therein, respectively, as of the date of the closing of the Mortgage Loan.

- (E) "*Loan Documents*" has the meaning assigned to that term in the Loan Agreement evidencing the Mortgage Loan.
- (F) "*Material Action*" means to institute proceedings to have the Borrower or the Corporation be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or the Corporation or file a petition seeking, or consent to, reorganization or relief with respect to the Borrower or the Corporation under any applicable federal or state law relating to bankruptcy, insolvency, relief from debts or protection of debtors, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Borrower or the Corporation or a substantial part of the property of either of them, or make any assignment for the benefit of creditors of the Borrower or the Corporation, or admit in writing the Borrower's or the Corporation's inability to pay its debts generally as they become due, or take action in furtherance of any of the foregoing actions.

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- (G) "*Partners*" means collectively, the General Partners and the limited partners of the Borrower.
- (H) "*Partnership Agreement*" means the Amended and Restated Limited Partnership Agreement of the Borrower, as amended in accordance with its terms.
- (I) "*Person*" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, or other organization, whether or not a legal entity, and any governmental authority.
- (J) "*Property*" has the meaning assigned to that term in the Loan Agreement evidencing the Mortgage Loan.
- (K) "*Rating Agencies*" has the meaning assigned to that term in the Loan Agreement.
- (L) "*Rating Agency Confirmation*" means, with respect to any action, that each Rating Agency shall have been given ten (10) days prior notice thereof and that each of the Rating Agencies shall have notified the Borrower in writing that such action will not result in a reduction, withdrawal or qualification of the then current rating by such Rating Agency of the Loan or any pool of loans of which the Loan forms a part, or of any security backed in whole or in part by the Loan. If no Rating Agency has rated securities backed in whole or in part by the Loan, then "*Rating Agency Confirmation*" shall mean, with respect to any action, that the Lender, its successors or assigns as holders of the Loan shall have notified the Borrower in writing that they consent to such action.

VIII

Limitations on the Corporation's Activities.

- (A) This Article VIII is being adopted in order to comply with certain provisions required in order to qualify the Corporation and the Borrower as "special purpose" entities.
- (B) Notwithstanding any other provision of these Articles or any other document governing the formation, management or operation of the Corporation, the Corporation shall not, so long as any part of the Mortgage Loan is outstanding, without Lender's consent, amend, alter, change or repeal any of Articles II, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX or XXI of these Articles of Incorporation, (the "Special

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Purpose Provisions") or the definition of any defined term used in the Special Purpose Provisions or any of the Special Purpose Provisions of the Borrower's Limited Partnership Agreement, as defined therein.

- (C) Notwithstanding any other provision of these Articles, or any other document, or any provision of law that otherwise so empowers the Borrower, its Partners or any other Person, the Corporation shall not, without the prior written consent of both of its Independent Directors, take any Material Action, and the Corporation shall not vote on, or authorize the taking of, any Material Action unless there are at least two (2) Independent Directors then serving in such capacity.
- (D) The Corporation, as a General Partner, shall cause the Borrower to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided that the Borrower shall not be required to preserve any such right of franchise if: (i) the General Partners shall determine that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Borrower; and (ii) the Rating Agency Confirmation is received.
- (E) Notwithstanding anything to the contrary on these Articles of Incorporation or in any other document, so long as the Mortgage Loan is outstanding, the Corporation shall:
 - i. Maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates or of any other Person and in its financial statements shall show its assets and liabilities separate and apart from those of any other Person;
 - ii. File its own tax returns separate from those of any other Person (to the extent the Corporation is required to file any such tax returns);
 - iii. Maintain its books, records, resolutions and agreements as official records;
 - iv. At all times hold itself out to the public as a legal entity separate and distinct from any other Person (including any Affiliate);
 - v. Correct any known misunderstanding regarding its status as a separate entity;
 - vi. Conduct business in its own name;
 - vii. Maintain and utilize separate stationery, invoices and checks bearing its own name and allocate fairly and reasonably any overhead for shared office space;

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- viii. Hold all of its assets in its own name and maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person;
- ix. 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 and compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred;
- x. Remain solvent, pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) only from its assets and as the same shall become due 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;
- xi. Cause all representatives of the Corporation to act at all times with respect to the Corporation consistently and in furtherance of the foregoing and in the best interests of the Corporation; and
- xii. Cause the Borrower to, at all times, comply with and not violate or cause or permit the Borrower to violate the Special Purpose Provisions of its Limited Partnership Agreement, as defined in Section 13.2 thereof as of the date of the closing of the Mortgage Loan.

Failure of the Borrower or the Corporation to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Corporation as a separate legal entity.

- (F) Notwithstanding anything to the contrary in these Articles or any other documents, so long as the Mortgage Loan is outstanding, the Corporation shall not:
 - i. Guarantee or become obligated for the debts of any other Person;
 - ii. Hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person;
 - iii. Engage, directly or indirectly, in any business other than as set forth in Article II (B) or any action other than the actions required to be performed under the Loan Documents or this Article VII or permitted to be performed under both of them;
 - iv. Own any asset or property other than (i) its interest in the Borrower and (ii) incidental personal property necessary for the ownership or operation of its interest in the Borrower;

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- v. Incur, create or assume any indebtedness other than as it may occur in the ordinary course of its business of being the general partner of Borrower, except insofar as it may be liable for the Borrower's indebtedness in its capacity as general partner in the Borrower;
- vi. Make any loans or advances to any Person (including any Affiliate) or acquire obligations or securities of its Affiliates or owners or any other Person;
- vii. Seek or effect the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of the Borrower or the Corporation;
- viii. Have its assets listed on the financial statements of any other Person; provided that the Corporation's assets may be included in a consolidated financial statement of its Affiliates provided that (I) appropriate notations shall be made on such consolidated financial statements to indicate the separateness of the Corporation and such Affiliates and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (II) such assets shall be listed on the Corporation's own separate balance sheet;
- ix. File a consolidated federal income tax return with any other Person;
- x. Identify itself or any of its Affiliates as a division or part of another;
- xi. Except for capital contributions as distributions permitted by the Loan Documents, enter into any contract or agreement with any Affiliate, except in the ordinary course of business and on terms and conditions which are intrinsically fair, are fully disclosed to Lender, its successors or assigns as holders of the Loan in advance and are substantially similar to those that would be available on an arms-length basis with third parties other than any such party;
- xii. Commingle its funds or other assets with those of any Affiliate or any other Person;
- xiii. Pledge its assets for the benefit of any other Person; or
- xiv. Permit any Affiliate or any Partner independent access to its bank accounts;

(G) As long as the Mortgage Loan is outstanding, the Corporation shall at all times have at least two (2) Independent Directors. To the fullest extent permitted by law, the Independent Directors shall consider only the interests of the Corporation and the Borrower, and its creditors in acting or otherwise voting on the matters referred to in this Article VIII.

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IX

The Corporation is prohibited from incurring indebtedness except insofar as it is liable in its capacity as a general partner, for the indebtedness of Borrower.

X

For so long as the Mortgage Loan is outstanding, the Corporation is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of substantially all its assets or any sale of its assets outside the ordinary course of its business as defined in Article II (B) and from causing the Borrower (or any of the Borrower's special purpose entity constituents) to do any of the foregoing.

XI

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 49% interest in the Corporation unless an acceptable non-consolidation opinion is delivered to the holder of the Mortgage Loan and to each of the Rating Agencies concerning, as applicable, the Borrower, the Corporation, the new transferee and/or their respective owners, and (ii) the Lender consents, and, after the securitization of the Mortgage Loan, the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

XII

The Corporation shall continue to serve in the capacity of a general partner of Borrower and to own at least a 0.5% direct interest in the Borrower for so long as the Mortgage Loan is outstanding.

XIII

The Corporation shall conduct its own business in its own name.

XIV

The Corporation shall observe all organizational formalities applicable to a Florida corporation.

XV

The Corporation shall not make loans to any other person or entity or buy or hold evidence of indebtedness issued by any other person or entity (except for cash and investment grade securities).

XVI

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The Corporation shall 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 any affiliate.

XVII

The Corporation shall not form, acquire or hold any subsidiaries or own any equity interest in any other entity other than its interest in Borrower.

XVIII

The Corporation may not take any of the following actions without the unanimous consent or vote of all duly elected and acting directors of the Corporation:

(A) 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 in each case with regard to the Corporation or the Borrower;

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

(C) Make any assignment for the benefit of creditors of the Corporation or for the Borrower; or

(D) Take any action in furtherance of any of the foregoing, including but not limited to causing the Borrower to take any such actions.

XIX

The Corporation shall hold a special meeting of shareholders only: (i) On call of the Board of Directors or persons authorized to do so by the Corporation's By-laws; or (ii) If the holders of not less than fifty (50%) percent of all votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the Corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

XX

These Articles of Incorporation may not be amended without the consent of the Lender, or, after the securitization of the Mortgage Loan only if the Borrower 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 Lender or its successors and assigns.

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XXI

In the event of any conflict between any of the Special Purpose Provisions and any other provision of these Articles or of any other document, the Special Purpose Provision shall prevail and govern.

February
Date: ~~January~~ 11, 2003.

BRAY & GILLESPIE
DELAWARE III, INC.

By: 
Charles A. Bray, President

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.


Ronald R. Fieldstone

Date: February 11, 2003.

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