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FOWLER WHITE BURNETT

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LIMITED LIABILITY AMENDMENT

1040 BISCAYNE ASSOCIATES, LLC

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**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
1040 BISCAYNE ASSOCIATES, LLC**

Pursuant to the provisions of Sections 608.407, 608.408 and 608.411 of the Florida Limited Liability Company Act, the undersigned being all of the members of the Limited Liability Company hereby adopt the following Amended and Restated Articles of Organization:

1. The name of the Limited Liability Company is 1040 BISCAYNE ASSOCIATES, LLC.
2. The original Articles of Organization of the Limited Liability Company were filed with the Department of State on December 30, 2003.
3. The Amended and Restated Articles of Organization shall be effective upon the filing thereof with the Department of State.
4. The text of the Limited Liability Company's Amended and Restated Articles of Organization is as follows:

**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
1040 BISCAYNE ASSOCIATES, LLC**

**ARTICLE I**

The name of this Limited Liability Company is: 1040 BISCAYNE ASSOCIATES, LLC ("Company").

**ARTICLE II**

The Limited Liability Company shall exist for a period of thirty (30) years from the date of filing the Articles of Organization with the Florida Secretary of State, unless sooner dissolved by the Member(s) or as provided by statute.

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ARTICLE III

The place of business and the mailing address of this Limited Liability Company shall be 2800 Biscayne Boulevard, Suite 300, Miami, FL 33137, and such other place or places as the Members from time to time may determine.

ARTICLE IV

The Limited Liability Company will be managed by a Manager. The name and address of the initial Manager is as follows: Gregory S. Covin, 2800 Biscayne Boulevard, Suite 300, Miami, FL 33137.

ARTICLE V

These Articles may be amended only with the consent of the sole Member, or by a unanimous vote of the Members if there be more than one.

ARTICLE VI

The street address of the Limited Liability Company's registered office is 2800 Biscayne Boulevard, Suite 300, Miami, FL 33137. The name of the initial registered agent at such office is Gregory S. Covin.

ARTICLE VII

The purpose for which the Company is organized is limited solely to the development, construction, sale and leasing of a condominium, office and retail use project known as Ten Museum Park, Miami, Florida, and transacting any and all lawful business for which a Company may be organized under (its constitutive law) that is incident, necessary and appropriate to accomplish the foregoing.

The Company's ability to incur indebtedness other than the first mortgage loan (see Loan executed in favor of Mellon United National Bank ("Lender") is limited to incurring liabilities in the ordinary course of its business that are related to the purpose of the Company set forth above.

The Company is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of assets for so long as the Loan is outstanding.

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The Company's ability to enter into transactions with affiliates is limited only to transactions on an arm's length basis and on commercially reasonable terms.

No transfer of any direct or indirect ownership interest in the Company may be made unless such transfer is consented to by Lender if such consent is required by the documents evidencing or securing the Loan.

The Company covenants and is required:

- To maintain books and records separate from any other person or entity;
- To maintain its bank accounts separate from any other person or entity;
- Not to commingle its assets with those of any other person or entity and to hold all of its assets in its own name;
- To conduct its own business in its own name;
- To maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
- To pay its own liabilities and expenses only out of its own funds;
- To observe all limited liability company and other organizational formalities;
- To maintain an arm's length relationship with its affiliates and to enter into transactions with affiliates only on a commercially reasonable basis;
- To pay the salaries of its own employees from its own funds;
- To maintain a sufficient number of employees in light of its contemplated business operations;
- Not to guarantee or become obligated for the debts of any other entity or person;
- Not to hold out its credit as being available to satisfy the obligations of any other person or entity;
- Not to acquire the obligations or securities of its affiliates or owners, including partners, members or shareholders, as appropriate;

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Not to make loans to any other person or entity or to buy or hold evidence of indebtedness issued by any other person or entity;

To 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;

To use separate stationery, invoices, and checks bearing its own name;

Not to pledge its assets for the benefit of any other person or entity, except with respect to existing subordinate mortgage in favor of Beauty and Health Institute, Beautymed, Inc., a Swiss corporation in an amount not exceeding \$16,000,000.00;

To hold itself out as a separate identity;

To correct any known misunderstanding regarding its separate identity;

Not to identify itself as a division of any other person or entity; and

To maintain adequate capital in light of its contemplated business operations.

Notwithstanding anything contained in this or any other organizational document to the contrary, any obligation which Company may owe to any of its officers, directors, partners, members, shareholders or affiliates (collectively, "Interested Parties"), whether characterized as a salary, fee or indemnification, shall not constitute a claim against Company until, and shall be subject to and fully subordinate to, the prior payment in full of the Loan. This Section shall not serve to prohibit Company from compensating Greggory S. Covin or Kevin Venger for services rendered in accordance with the budget approved by the Lender in connection with the Loan.

The Company is prohibited from amending the provisions specified in this Article VII without approval of such amendment by the Lender. Any inconsistencies between this Article VII and the balance of these Amended and Restated Articles of Organization shall be resolved in favor of this Article VII.

The foregoing Amended and Restated Articles of Organization are duly executed and being filed in accordance with and in the manner prescribed by Sections 608.411 and 608.408 of the Florida Limited Liability Company Act.

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IN WITNESS WHEREOF, the undersigned have executed these Amended and Restated Articles of Organization this 20 day of JUNE, 2005.

**MEMBERS**


**BEAUTYMED, U.S.A., INC.**

By:   
Its: President

**ULTIMATE DEVELOPMENT III, L.L.C.**

By:   
Its: Member

By: \_\_\_\_\_  
Its: Brian Gaines  
Member

By:   
Its: Member

**CHAD OPPENHEIM**

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IN WITNESS WHEREOF, the undersigned have executed these Amended and Restated Articles of Organization this 20 day of JUNE, 2005.

MEMBERS

BEAUTYMED, U.S.A., INC.

By: \_\_\_\_\_  
Armin Mattli  
Its: President

ULTIMATE DEVELOPMENT III, L.L.C.

By: \_\_\_\_\_  
Gregory S. Covin  
Its: Member

By: \_\_\_\_\_  
Brian Gaines  
Its: Member

By: \_\_\_\_\_  
Kevin Veiger  
Its: Member

CHAD OPPENHEIM  
By: \_\_\_\_\_  
CHAD OPPENHEIM


Its: MEMBER  
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**ACCEPTANCE OF APPOINTMENT  
AS  
REGISTERED AGENT**

Having been named as registered agent for the above-named Limited Liability Company at the place designated in these Articles of Organization, 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.

  
\_\_\_\_\_  
Greggory S. Covin

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