

P98000024444

Florida Department of State
Division of Corporations
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H12000099066 3)))



H120000990663ABC0

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet. *RE-SUBMIT*

To: Division of Corporations
Fax Number : (850) 617-6380

From: Account Name : C T CORPORATION SYSTEM
Account Number : FCA000000023
Phone : (850) 222-1092
Fax Number : (850) 878-5368

Please retain original filing date of submission 4/13

Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.

Email Address: _____

FILED
12 APR 13 PM 12:26
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

COR AMND/RESTATE/CORRECT OR O/D RESIGN
TAMCO II, INC.

Certificate of Status	0
Certified Copy	0
Page Count	05 10
Estimated Charge	\$35.00

Electronic Filing Menu Corporate Filing Menu Help

APR 18 2012
C. MUSTAIN

https://efile.sunbiz.org/scripts/efilcovr.exe

4/13/2012



April 16, 2012

FLORIDA DEPARTMENT OF STATE
Division of Corporations

TAMCO II, INC.
19501 BISCAYNE BLVD SUITE 400
AVENTURA, FL 33180

SUBJECT: TAMCO II, INC.
REF: F98000024444

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Carol Mustain
Regulatory Specialist II

FAX Aud. #: H12000099066
Letter Number: 512A00011846

RECEIVED

12 APR 17 AM 8:08

TALLAHASSEE, FLORIDA

RE-SUBMIT

Please retain original filing
date of submission 4/13

P.O BOX 6327 - Tallahassee, Florida 32314

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
TAMCO II, INC.

To the Department of State
State of Florida

Pursuant to the provisions of the Florida Business Corporation Act, the corporation hereinafter named (the "corporation") does hereby amend and restate its Articles of Incorporation.

1. The name of the corporation is TAMCO II, Inc.
2. The text of the Amended and Restated Articles of Incorporation of the corporation, as amended hereby, is annexed hereto and made a part hereof.

CERTIFICATE

It is hereby certified that:

1. The annexed Amended and Restated Articles of Incorporation contains amendments to the Articles of Incorporation of the corporation requiring shareholder approval.
2. ~~Article 5 of the Articles of Incorporation of the corporation is hereby deleted.~~
3. Articles 6, 7, 8 and 9 of the Articles of Incorporation of the corporation are hereby amended so as henceforth to read as set forth in the Amended and Restated Articles of Incorporation annexed hereto and made a part hereof.
4. The date of adoption of the aforesaid amendments was April 13, 2012.
5. Only one voting group of shareholders was entitled to vote on the said amendments and restatement.
6. The number of votes cast for the said amendments and restatement by the shareholders was sufficient for the approval thereof.
7. The effective time and date of these Amended and Restated Articles of Incorporation shall be upon filing with the Florida Department of State.

Executed on April 13 2012

TAMCO II, INC.

By: 
Jacquelyn Seffer, Vice President

230094v1
4910221

230094v1.DOC
4910221

FILED
12 APR 13 PM 12:26
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

SECRETARY OF STATE
DIVISION OF CORPORATIONS
Registration Section
2661 Executive Center Circle
Tallahassee, Florida 32301

AMENDED AND RESTATED ARTICLES OF INCORPORATION
of
TAMCO II, INC.

The undersigned, intending to form a corporation for profit under the Florida Business Corporation Act of 1990, as amended (the "Act"), hereby adopts the following Articles of Incorporation.

ARTICLE 1
Name

The name of the corporation is TAMCO II, Inc. (hereinafter the "Corporation").

ARTICLE 2
Address

The principal office and mailing address of the Corporation in the State of Florida is 19501 Biscayne Boulevard, Suite 400, Aventura, Florida 33180.

ARTICLE 3
Stock

The Corporation shall have the authority to issue one thousand (1,000) shares of common stock, with no par value per share.

ARTICLE 4
Registered Office/Agent

The address of the Corporation's registered office in the State of Florida is 515 East Park Avenue, Tallahassee, Florida 32301. The name of the Corporation's registered agent at said registered office is NRAI Services, Inc.

ARTICLE 5
(Intentionally Deleted)

4910264

ARTICLE 6

Purpose

Subject to the limitations set forth herein, the purpose for which the Corporation is organized is to engage in the following activities:

(A) being the general partner and holding a general partnership interest in TAMCO II Company, Ltd., a Florida limited partnership (the "Partnership"), and TAMCO II Holding Group, L.P., a Florida Limited Partnership ("TAMCO II Holding");

(B) acting as, and exercising all of the authority of, the general partner of the Partnership or TAMCO II Holding;

(C) owning, holding, selling, transferring, pledging, financing and exchanging the Collateral (used herein as defined in the Primary Loan Agreement), entering into the Primary Loan Agreement (as defined below), lending or otherwise utilizing the proceeds of the Primary Loan (as defined below) and other proceeds that the corporation may have previously received for such purposes as it determines, refinancing the Collateral in connection with a permitted repayment of the Primary Loan (as defined below), and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; and

(D) transacting of any and all lawful business for which a corporation may be organized under Florida law that is incident, necessary and appropriate to accomplish the foregoing.

The Partnership has entered into a Cash Flow Loan Agreement, dated as of the date hereof (the "Secondary Loan Agreement"), with Pacific Life Insurance Company, a Nebraska corporation ("Lender"), pursuant to which Secondary Loan Agreement Lender shall issue a loan to the Partnership in the amount of \$15,000,000 (the "Secondary Loan"). TAMCO II Holding, TAMCO Holding Group, Inc., a Delaware corporation ("TAMCO Holding") and the Corporation have entered into a Mezzanine Loan Agreement, dated as of June 8, 2010 (the "Primary Loan Agreement" and collectively with the Secondary Loan Agreement, the "Loan Agreements"), with Lender (as successor in interest to ACC US Investment LLC), pursuant to which Primary Loan Agreement Lender is the lender under a loan to TAMCO II Holding, TAMCO Holding and the Corporation in the amount of \$50,000,000, which loan shall be amended and restated on or about the date hereof (the "Primary Loan" and collectively with the Secondary Loan, the "Loans"). The Corporation shall serve in the capacity of general partner of the Partnership and TAMCO II Holding, for so long as either the debt as defined in the Primary Loan Agreement or the debt as defined in the Secondary Loan Agreement (collectively, the "Debt") is outstanding, provided that the Corporation shall no longer be required to serve in such capacities if, as and when the Debt has been paid in full.

ARTICLE 7

Management

230140v1

-2-

The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and shareholders, and the Corporation shall cause the Partnership and TAMCO II Holding to observe such provisions, to the extent applicable to the Partnership and TAMCO II Holding:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation (the "Board").

(2) Until the Debt is fully paid, there shall be at least two duly elected members (each an "Independent Director") of the Board each of whom is not at the time of such individual's initial appointment, and shall not have been at any time prior to such appointment, and shall not be at any time while serving as a director of such entity, either (i) a member, manager, director, trustee, officer, employee, attorney, or counsel of any of the Borrower Parties or their Affiliates, (ii) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with any Borrower Party or any Affiliate of a Borrower Party, (iii) a direct or indirect legal or beneficial owner in any Borrower Party or any Affiliate of a Borrower Party, (iv) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above, or (v) a person Controlling or under the common Control of anyone listed in (i) through (iv) above. Each Independent Director shall be approved by Lender, in writing, to satisfy each of the criteria noted above and who is otherwise qualified to act independently of the other partners, members, managers, and equity holders of the Corporation and its Affiliates, to comply with the organizational documents of the Corporation, and to exercise its fiduciary duties consistent with the provisions set forth in this Article 7. A natural person who satisfies the foregoing definition other than subparagraph (ii) shall not be disqualified from serving as an Independent Director of the Corporation if such individual is an independent director or independent manager provided by a nationally-recognized company that provided professional independent directors and independent managers and that also provides other corporate services in the ordinary course of its business and the fees that such individual earns from serving as independent manager or director of Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

(3) Until the Debt is paid in full, the Corporation:

(a) shall not engage in any business unrelated to the purposes described in Article 6 above;

(b) shall not have any assets or property other than (i) an interest in the Collateral, an interest in the proceeds of the Primary Loan and proceeds previously received that have been utilized to make certain loans, and incidental personal property related thereto; and (ii) its general partnership interests in the Partnership and TAMCO II Holding;

(c) shall not, without Lender's prior consent, engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, and shall not engage in, seek or consent to any amendment of these Articles of Incorporation with respect to the matters set forth in this Article 7;

230140v1

(d) shall have at least two (2) Independent Directors, and shall not cause or allow the board of directors of the Corporation to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless the two (2) Independent Directors shall have participated in such vote;

(e) shall not, without Lender's prior written consent: (A) dissolve, merge, liquidate, consolidate; (B) sell all or substantially all of its assets; or (C) engage in any other business activity, or amend its organizational documents;

(f) shall not, without the affirmative vote of two (2) Independent Directors, and of all other directors or managers, as applicable, of the Corporation, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(g) shall remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and shall 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;

(h) shall not fail to correct any known misunderstanding regarding the separate identity of the Corporation;

~~(i) shall file its own tax returns, except to the extent that it is~~
(i) required to file consolidated tax returns by law or (ii) disregarded for tax purposes and not required to file tax returns under applicable laws;

(j) shall maintain its own separate records and books, resolutions, agreements, bank statements and bank accounts;

(k) shall not commingle its funds or assets with those of any other Person and shall not participate in any cash management system with any other Person;

(l) shall hold its assets in its own name;

(m) shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of the Corporation, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in subsection (x) below, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of the Corporation and holds all of its assets in its own name;

(n) shall maintain its financial statements, accounting records and other entity documents separate from any other Person and shall not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP, provided, however, that (1) appropriate notation shall be made on such consolidated financial statements to

230140v1

indicate the separateness of the Corporation from such Affiliate and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (2) such assets shall also be listed on the Corporation's own separate balance sheet;

(o) shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and shall maintain a sufficient number of employees in light of its contemplated business operations;

(p) shall observe all corporate formalities and as are necessary to maintain its separate existence;

(q) shall not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligations), other than the Primary Loan;

(r) shall not acquire obligations or securities of its shareholders or any other Affiliate, except for the equity interests indicated on Exhibit A attached to the Primary Loan Agreement;

(s) shall allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(t) shall maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Corporation or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Corporation's agent;

(u) shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of the Corporation and not as a division or part of any other Person, except for services rendered under a business management services agreement or leasing agreement with an Affiliate that complies with the terms contained in subsection (x) below, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of the Corporation;

(v) shall 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 other Person;

(w) shall not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(x) shall not identify its shareholders or any Affiliate of any of them, as a division or part of it, and shall not identify itself as a division of any other Person;

(y) shall not enter into or be a party to, any transaction with its shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with the Loan Agreements;

(z) shall not, indemnify its officers, directors or shareholders, as the case may be, unless such an obligation is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation except that the Corporation shall be permitted to indemnify the Independent Directors without compliance the provisions of this subsection (z);

(aa) shall consider the interests of its creditors in connection with all corporate actions;

(bb) shall not have any of its obligations guaranteed by any Affiliate;
and

(cc) except as permitted by the Loan Agreements, shall not form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity.

(4) For so long as the Debt remains outstanding, no transfer of a direct or indirect interest in the Corporation shall be made in violation of the Loan Agreements.

(5) For so long as the Debt remains outstanding, the Corporation shall not, and shall not cause the Partnership or TAMCO II Holding to, without the unanimous written consent of the members of the Board (including the Independent Directors), do any of the following: (a) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute a proceeding under applicable insolvency law or otherwise seek relief under laws relating to the relief from debts or the protection of debtors, generally seek or consent to the appointment of a receiver, controller, rehabilitator, conservator, liquidator, assignee, trustee, sequestrator (or other similar official) for the Corporation or the Partnership or TAMCO II Holding of a substantial part of their properties, or make an assignment for the benefit of creditors, or admit its inability to pay its debts as they become due, or take any action in furtherance of the foregoing; or (b) consent to a proceeding of the type referred to in subpart (a) above relating to the Partnership or TAMCO II Holding or consent to the taking of any action referenced in subpart (a) above relating to the Partnership or TAMCO II Holding.

For purposes of these Articles of Incorporation, any capitalized terms not defined herein shall have the same meanings as set forth in the Primary Loan Agreement.

ARTICLE 8
Duration

The duration of the Corporation shall be perpetual.

ARTICLE 9
Indemnification

Subject to Article 7, the Corporation shall, to the fullest extent permitted by the provisions of the Act, indemnify any and all persons whom it shall have power to indemnify under said provisions 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 By-law, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person. Notwithstanding the foregoing provisions, any indemnification set forth in this Article 9 other than indemnification of the Independent Directors shall be fully subordinate to the Debt and shall not constitute a claim against the Corporation in the event that the Corporation's cash flow is insufficient to pay all its obligations to creditors. The provisions of this Article 9 shall survive any termination of these Articles.

ARTICLE 10
Shares of Stock

Each interest in shares of stock in the Corporation shall constitute and shall remain a "security" within the meaning of (i) Sections 8-102(a)(15) and 8-103 of the Uniform Commercial Code as in effect from time to time in the State of Florida and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute of the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. Notwithstanding any provision of these Articles or any bylaw that is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code, such provision of Article 8 shall be controlling.