

10/13/2004

Division of Corporations

301/78-0380

FOWLER, WHITE, BURNETT

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P04000122415

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BASIC AMENDMENT

AQUILA WEISS, INC.

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Amended & Restated
Art.

850-205-0381 Received 10/13/2004 15:15 in 00:36 on line 141 for ADMINISTRATOR * Pg 1/1
10/13/2004 3:09 PAGE 001/001 Florida Dept of State



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

October 13, 2004

AQUILA WEISS, INC.
100 SE 2ND STREET 17TH FLOOR
MIAMI, FL 33131

SUBJECT: AQUILA WEISS, INC.
REF: PG4000122415

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

AMENDED AND RESTATED ARTICLES OF INCORPORATION FOR A FLORIDA PROFIT CORPORATION ARE FILED PURSUANT TO 607.1007, FLORIDA STATUTES.

Please correct your document to reflect that it is filed pursuant to the correct statute number.

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) 245-6906.

Darlene Connell
Document Specialist

FAX Aud. #: E04000204739
Letter Number: 404A00059134

TELEFAX

**FROM THE LAW OFFICES OF
FOWLER WHITE BURNETT P.A.
100 SouthEast Second Street
Miami, FL 33131-1101**

OUR FAX NO. 305-789-9201
OUR TELEPHONE NO. 305-789-9200

PLEASE DELIVER THE FOLLOWING PAGES AS SOON AS POSSIBLE TO:

NAME: Darlene Connell

FIRM: Document Specialist

CITY:

FAX NO.: 850-205-0380

FROM: Judy Rodman, Paralegal

OUR FILE NO.: 65848-FKL AQUILA WEISS, INC.

COMMENTS: Fax Audit No. H04000204739 3
Letter No. 404A00059134
Account No. 071250001512

Enclosed please find the corrected Amended and Restated Articles of Incorporation, a copy of your letter referenced above, and the fax audit sheet. Please process accordingly.

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: 12

DATE: October 13, 2004

IMPORTANT MESSAGE

THIS TRANSMITTAL IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS TRANSMITTAL IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL TRANSMITTAL TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

Audit No. H04000204739_3

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
AQUILA WEISS, INC.**

FILED
04 OCT 13 PM 4:59
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Sections 607.1005 and 607.1007 of the Florida Business Corporation act, the undersigned Corporation hereby adopts the following Amended and Restated Articles of Incorporation:

1. The name of the Corporation is: AQUILA WEISS, INC.
2. The text of the Corporation's Amended and Restated Articles of Incorporation is as follows:

ARTICLE I

Name

The name of the Corporation is: AQUILA WEISS, INC. (the "Corporation").

ARTICLE II

Purpose

The Corporation is organized for the sole purpose of owning a Membership Interest in, and acting as the Managing Member of AQUILA WEISS, LLC (the "Company"), and as such, to cause the Company to enter into the Loan Agreement and Basic Documents and comply with the terms thereof.

ARTICLE III

Authorized Capital

The Corporation is authorized to issue Ten Thousand (10,000) shares of common stock, with a par value of \$0.001 per share.

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ARTICLE IV

Address

The principal office and mailing address of the Corporation is 100 S.E. 2nd Street, 17th Floor, Miami, Florida 33131.

ARTICLE V

Registered Office and Agent

The street address of the Corporation's initial registered office is 100 S.E. 2nd Street, 17th Floor, Miami, Florida 33131. The name of the initial registered agent at such office is Fred K. Lickstein.

ARTICLE VI

Indemnification

(a) The Corporation shall indemnify, or advance expenses to, to the fullest extent authorized or permitted by the Act, any person made, or threatened to be made, a party to any action, suit or proceeding by reason of the fact that he: (i) is or was a director of the Corporation; (ii) is or was an officer of the Corporation, provided that he is or was at the time a director of the Corporation; or (iii) is or was serving at the request of the Corporation as a director, officer, agent or employee of another corporation, partnership, joint venture, trust or other enterprise, provided that he is or was at the time a director of the corporation.

(b) Except for those persons entitled to indemnification pursuant to subparagraph (a) of this Article VI, the Board of Directors of the Corporation shall have, unless otherwise expressly prohibited by the Act, the sole and exclusive discretion, on such terms and conditions as it shall determine, to indemnify, or advance expenses to, any person made, or threatened to be made, a party to any action, suit or proceeding by reason of the fact that he is or was an officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(c) Except for those persons entitled to indemnification pursuant to subparagraph (a) of this Article VI, no person may apply for indemnification or advancement of expenses to any court of competent jurisdiction.

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(d) Notwithstanding the foregoing, any indemnification set forth herein shall be fully subordinate to the Loan and shall not constitute a claim against the Corporation in the event the Corporation's cash flow is insufficient to pay its obligations.

ARTICLE VII

Incorporator

The name and address of the incorporator of the Corporation are Fred K. Lickstein, 100 S.E. 2nd Street, 17th Floor, Miami, Florida 33131.

ARTICLE VIII

Board of Directors

There shall be no initial Board of Directors. Until a Board of Directors is elected and shares are issued, the incorporator shall have all the rights and powers of a shareholder, including, without limitation, the power to elect a Board of Directors. The Board of Directors shall be elected as soon as convenient after filing these Articles.

ARTICLE IX

Limitations on the Corporation's activities.

- a) This Article IX is included in order to comply with certain provisions required in order to qualify the Corporation as a "special purpose" entity.
- b) The Board of Directors and shareholders shall not, so long as any Obligation is outstanding, amend, alter, change or repeal the definition of "Independent Director" or Article II or this Article IX, without the unanimous written consent of the Board (including all Independent Directors). Subject to this Article IX, the Board of Directors and shareholders reserve the right to amend, alter, change or repeal any other provisions contained in these Articles of Incorporation in accordance with Florida Statutes.
- c) Notwithstanding any other provision of Florida Statutes or these Articles of Incorporation that otherwise so empowers the Corporation, the shareholders, the Board, any officer of the Corporation, or any other Person, neither the shareholders nor the Board nor any officer nor any other Person shall be authorized or empowered, nor shall they permit the Corporation or the Company,

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without the prior unanimous written consent of the Board (including all Independent Directors), to take any Material Action, provided, however, that the Board may not vote on, or authorize the taking of, any Material Action, unless there is at least one (1) Independent Director then serving in such capacity.

- (d) The Board shall cause the Corporation and the Company 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, however, that the Corporation shall not be required to preserve any such right or franchise if: (1) the Board 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 Corporation or the Company and (2) the Rating Agency Condition is satisfied. The Board also shall cause the Corporation and the Company to:

- i) maintain its own separate books and records and bank accounts;
- ii) at all times hold itself out to the public and all other Persons as a legal entity separate from the Board, the shareholders, and any other Person;
- iii) have a Board of Directors including an Independent Director;
- iv) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;
- v) not commingle its assets with assets of any other Person;
- vi) conduct its business in its own name and strictly comply with all organizational formalities to maintain its separate existence;
- vii) maintain separate financial statements;
- viii) pay its own liabilities only out of its own funds;
- ix) maintain an arm's length relationship with its Affiliates and the members of the Board and its shareholders;

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- x) pay the salaries of its own employees, if any;
- xi) not hold out its credit or assets as being available to satisfy the obligations of others;
- xii) allocate fairly and reasonably any overhead for shared office space;
- xiii) use separate stationery, invoices and checks;
- xiv) except as contemplated by the Basic Documents, not pledge its assets for the benefit of any other Person;
- xv) correct any known misunderstanding regarding its separate identity;
- xvi) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities;
- xvii) cause its Board of Directors to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Florida corporate formalities; and
- xviii) not acquire any securities of any Person other than the Company; and
- (xix) cause the Directors, officers, agents and other 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.

Failure of the Corporation, or the Board on behalf of the Corporation, to comply with any of the foregoing covenants or any other covenants contained in these Articles of Incorporation shall not affect the status of the Corporation as a separate legal entity or the limited liability of the Directors or shareholders.

- e) So long as any Obligation is outstanding, the Board shall not cause or permit the Corporation or the Company to:
 - i) guarantee any obligation of any Person, including any Affiliate;

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- ii) in the case of the Corporation, engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Article II, the Basic Documents or this Article IX, and, in the case of the Company, engage directly or indirectly, in any business other than as expressly permitted under its Operating Agreement.
- iii) incur, create or assume any indebtedness other than as expressly permitted under the Loan Documents;
- iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Loan Documents and may make any advance required or expressly permitted to be made pursuant to any provisions of the Loan Documents and permit the same to remain outstanding in accordance with such provisions;
- v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of ownership interests other than such transfers of ownership interests as are expressly permitted pursuant to any provision of the Loan Documents; or
- vi) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) except in the case of the Corporation, its interest in the Company or as may be permitted by the Loan Documents.

ARTICLE X

Independent Director.

As long as any Obligation is outstanding, the Corporation shall at all times have at least one (1) Independent Director who will be appointed by the shareholders. To the fullest extent permitted by law, the Independent Director shall consider only the interests of the Corporation and the Company, including their respective creditors, in acting or otherwise voting on the matters referred to hereinabove. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor shall have accepted his or her appointment as an Independent Director by a written instrument. In the event of a vacancy in the

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position of Independent Director, the shareholders shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in these Articles of Incorporation. Except as provided in the second sentence of this Section X, in exercising their rights and performing their duties under these Articles of Incorporation, any Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the Business Corporation Act of the State of Florida. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Corporation or the Company.

ARTICLE XI

Defined Terms Used Above

"Basic Documents" means these Articles of Incorporation, the Loan Documents, and all documents and certificates contemplated thereby or delivered in connection therewith.

"Board" or "Board of Directors" means the Board of Directors of the Corporation.

"Directors" means the Persons elected to the Board of Directors from time to time by the shareholders, including the Independent Director, in their capacity as directors of the Corporation.

"Independent Director" means a natural person who, for the five (5) year period prior to his or her appointment as Independent Director, and as of his or her appointment as Independent Director, has not been, and during the continuation of his or her service as Independent Director is not: (i) an employee, director, stockholder, partner or officer of the Corporation or any of its affiliates (other than his or her service as an Independent Director or other similar capacity); (ii) a customer or supplier of the Corporation or any of its affiliates; or (iii) any member of the immediate family of a person described in (i) or (ii).

"Lender" means Citigroup Global Markets Realty Corp., as lender under the Loan Documents, together with its successors and assigns.

"Loan" means that certain loan from Lender to the Company, in an amount not to exceed \$6,770,000.00 made pursuant to the Loan Agreement and secured by, among other things, the Property.

"Loan Agreement" means that certain Loan Agreement, among the Company, Lender, and the other Lenders (as defined therein) pursuant to which Lender is making the Loan.

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"Loan Documents" has the meaning set forth in the Loan Agreement.

"Material Action" means to consolidate or merge the Corporation or the Company with or into any Person, or sell all or substantially all of the assets of the Corporation or the Company, or to institute proceedings to have the Corporation or the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation or the Company, or file a petition seeking, or consent to, reorganization or relief with respect to the Corporation or the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Company, or a substantial part of its property, or make any assignment for the benefit of creditors of the Corporation or the Company, or admit in writing the Corporation's or the Company's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Corporation or the Company.

"Obligations" means the indebtedness, liabilities and obligations of the Company under or in connection with its ownership or operation of the Property, the Loan Documents or any related document in effect as of any date of determination.


"Property" means the membership interest of the Company in AWI, LLC, a Florida limited liability company.

"Rating Agency" has the meaning assigned to that term in the Loan Documents.

"Rating Agency Condition" means (i) with respect to any action taken at any time before the Loan has been sold or assigned to a securitization trust, that the lender thereunder has consented in writing to such action, and (ii) with respect to any action taken at any time after the Loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Company in writing that such action will not result in a reduction or withdrawal of the then current rating by such Rating Agency of any of securities issued by such securitization trust.

3. The foregoing Amendment and Restatement was adopted by the sole incorporator of the Corporation, prior to the issuance of any shares of stock of the corporation in accordance with section 607.1005 of the Florida Business Corporation Act on October 12, 2004.

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation this 12 day of October, 2004.

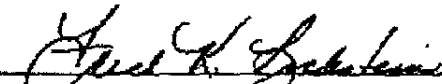

Fred K. Lickstein, sole incorporator

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ACCEPTANCE OF APPOINTMENT
AS
REGISTERED AGENT

Having been named as registered agent for the above-named corporation at the place designated in these Articles of Incorporation, 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.


Fred K. Lickstein

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