

Fiduciary Duties in LLCs and Corporations

**David W. Bailey, Jr.
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August, 1982 to Present

- Major Areas of Practice Include Corporate and Business Law and Estate Planning, Insurance Defense and Coverage, and General Litigation
- Licensed to Practice in the State of North Carolina since August, 1982 and in the United States District Courts for the Eastern, Western, and Middle Districts of North Carolina

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DUKE UNIVERSITY, 1975–1979, BACHELOR OF ARTS

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- N.C. CHAPTER OF INTERNATIONAL ASSOCIATION OF ARSON INVESTIGATORS (NCIAAI)
- N.C. ASSOCIATION OF DEFENSE ATTORNEYS
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- STATE BAR OF NORTH CAROLINA
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**FIDUCIARY DUTIES
IN
CORPORATIONS AND LLC'S
(with a primer on common business entities)**

David W. Bailey, Jr.
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North Carolina Paralegal Association, Inc.
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TABLE OF CONTENTS

Common Business Entities	1
A. Sole Proprietorship.....	1
B. General Partnership.....	2
C. Limited Partnership.....	2
D. Corporations (S-Corp and C-Corp).....	3
E. Limited Liability Company (LLC)	5
Fiduciary Duty	6
A. Partnership	6
B. Corporations.....	7
C. LLC's	8

FORMS

Certificate of Partnership or Business Under Assumed Name	10
Partnership Agreement	12
Limited Partnership Agreement.....	14
Articles of Incorporation	19
Stock Certificate	22
Election by a Small Business Corporation (Form 2553).....	24
Articles of Organization	27
Operating Agreement.....	30

I. COMMON BUSINESS ENTITIES

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Corporations
- Limited Liability Company (LLC)

A. SOLE PROPRIETORSHIP

1. FEATURES

- a) It is all about the individual owner.
- b) The simplest business entity.
- c) No separation between the owner's business and personal assets or liability.
- d) Business activity reported on Schedule C of personal income tax return.

2. ADVANTAGES

- a) Minimal cost to establish and operate.
- b) Not answerable to partners, shareholders, or directors.
- c) No statutory or procedural requirements for governance—individual owner “runs the show”.

3. DISADVANTAGES

- a) No liability protection for owner.
- b) Personal assets are always at risk.

- c) Owner does not have employee status for certain tax deductible benefits.

B. GENERAL PARTNERSHIP

1. FEATURES

- a) See N.C.G.S. Chapter 59, Article 2, Uniform Partnership Act.
- b) Multiple owners.
- c) Equality of authority.

2. ADVANTAGES

- a) Simplicity.
- b) Minimal cost to establish and operate.
- c) Informality of governance.

3. DISADVANTAGES

- a) No liability protection for partners.
- b) Liable for partners' actions.
- c) Personal assets always at risk.
- d) Dispute resolution can be difficult.
- e) Partners subject to self employment tax.

C. LIMITED PARTNERSHIP

1. FEATURES

- a) See N.C.G.S. Chapter 59, Article 5, Revised Uniform Limited Partnership Act.
- b) Established by Limited Partnership Agreement
- c) Combination of general partners and limited partners (investors).
- c) Managed by general partners.

2. ADVANTAGES

- a) Relative simplicity of governance and operation.
- b) Creates opportunity for financial protection of limited partners who want their risk to be limited to the extent of their investment.

3. DISADVANTAGES

- a) Unlimited liability of general partners.

D. CORPORATIONS (S-CORP. AND C-CORP.)

1. FEATURES

- a) See N.C.G.S. Chapter 55, North Carolina Business Corporation Act.
- b) Established by articles of incorporation.
- c) Owned by shareholders.
- d) Governed by directors who are elected by shareholders.

- e) Operated by officers who are selected by directors.
- f) Statutorily created entities, thus subject to many statutory requirements.

2. ADVANTAGES

- a) Shareholders not exposed to personal liability.
- b) Predictable scheme of organization and governance requirements as dictated by statute.

3. DISADVANTAGES

- a) The statutory requirements, while predictable, are inflexible and strict.

4. C-CORP., S-CORP. DISTINCTIONS

- a) C-CORP.
 - (1) Double taxation, both corporation and shareholders pay income tax on corporate profits and dividends.
- b) S-CORP.
 - (1) No double taxation, as only shareholders pay income tax on profits and dividends.
 - (2) A more simple corporate option than C-Corp. for small businesses.

- (3) Subject to “at risk” limitation, the ability to deduct corporate losses against outside income.
- (4) Relatively high cost of maintaining compliance with laws and regulations.

E. LIMITED LIABILITY COMPANY (L.L.C.)

1. FEATURES

- a) See N.C.G.S. Chapter 57C, North Carolina Limited Liability Company Act.
- b) Established by articles of organization.
- c) Operated according to operating agreement, as well as statute.
- d) Owned by members.
- e) Managed by managers.
- f) Combines best features of S-Corp. and general partnership.
- g) Can be treated for tax purposes as an S-Corp, Partnership, C-Corp, or Sole Proprietorship.

2. ADVANTAGES

- a) Flexibility in governance and operations.
- b) Third Party Liability protection for members and managers.

- c) Relatively low cost to establish and maintain.

3. DISADVANTAGES

- a) Few disadvantages.
- b) \$200 annual fee to Secretary of State for annual report.

II. FIDUCIARY DUTY

- For a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties. A fiduciary relationship has been defined by our Supreme Court as “one in which ‘there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence..., [and] it extends to any possible case in which there is confidence reposed on one side, and *resulting domination and influence on the other.*’” (*Abitt v. Gregory*, 201 N.C. 577, 598, 160 S.E. 896, 906 (1931)).

A. PARTNERSHIP

1. Fiduciary duties owed in partnership defined by statute as follows:

N.C.G.S. § 59-51. Partner accountable as fiduciary.

- (a) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership of

from any use by him of its property.

- (b) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

B. CORPORATIONS

1. Fiduciary duties in corporations defined by statute as follows

- a) N.C.G.S. § 55-8-30. General standards for directors.

- (a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) In good faith;

- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

- (3) In a manner he reasonably believes to be in the best interests of the corporation.

- b) N.C.G.S. § 55-8-42. Standards of conduct for officers.

- (a) An officer with discretionary authority shall discharge his duties under that authority:
 - (1) In good faith;
 - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) In a manner he reasonably believes to be in the best interests of the corporation.

C. L.L.C.'s

- 1. N.C.G.S. § 57C-3-20. Determination of managers; management.
 - (a) Unless the articles of organization provide otherwise, all members by virtue of their status as members shall be managers of the limited liability company...
- 2. N.C.G.S. § 57C-3-22. Duties of managers
 - (a) The provisions of this section are all subject to G.S. 57C-3-30.
 - (b) A manager shall discharge his duties as manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in the manner the manager reasonably believes to be in the best interests of the limited liability company...

- (c) A manager is not acting in good faith if the manager has actual knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

Kaplan v. O.K. Technologies, 196 N.C. App. 469, 675 S.E. 2d 13 (2010).

- The North Carolina Limited Liability Company Act does not create fiduciary duties among members. Members of a limited liability company are like shareholders in a corporation in that members do not owe a fiduciary duty to each other or to the company.”
- “An exception to this rule is that a controlling shareholder owes a fiduciary duty to minority shareholders.”
- “[L]ike directors [of corporations], managers of a limited liability company also owe a fiduciary duty to the company, and not to individual members.”

Do not write above this line

Mail after recording to:

**CERTIFICATE OF PARTNERSHIP OR BUSINESS UNDER ASSUMED NAME
FORSYTH COUNTY, NORTH CAROLINA**

Each of the undersigned hereby certifies that he proposes to engage in a business in
Forsyth County, N. C. and files the following information with the Register of Deeds of
Forsyth County, pursuant to the provisions of G.S. 66-68:

THE BUSINESS

Name:

Street & No.

City-State-Zip

THE OWNERS

First Name

Middle Name

Last Name

Residence Address

Signed:

If Owner is A Corporation

Name of Corporation _____

Home Office Address _____

By: _____
 _____ President

Seal/Stamp STATE OF NORTH CAROLINA - Forsyth County
 I, _____, a Notary Public of Forsyth County, NC do
 hereby certify that _____ personally came before me this
 day and acknowledged that _____ he is _____ President of
 _____ and acknowledged on
 behalf of the corporation, the due execution of the foregoing instrument.
 Witness my hand and notarial seal this the ____ day of _____, 20____.

My commission expires _____, 20____. _____ Notary Public

Seal/Stamp STATE OF NORTH CAROLINA - Forsyth County
 I, _____, a Notary Public of Forsyth County, NC do
 hereby certify that _____
 _____ personally appeared before me
 this day and acknowledged the execution of the foregoing instrument.
 Witness my hand and notarial seal this the ____ day of _____, 20____.

My commission expires _____, 20____. _____ Notary Public

Seal/Stamp STATE OF NORTH CAROLINA - Forsyth County
 I, _____, a Notary Public of Forsyth County, NC do
 hereby certify that _____
 _____ personally appeared before me
 this day and acknowledged the execution of the foregoing instrument.
 Witness my hand and notarial seal this the ____ day of _____, 20____.

My commission expires _____, 20____. _____ Notary Public

STATE OF NORTH CAROLINA - Forsyth County
 I, C. Norman Holleman, Register of Deeds of Forsyth County, NC, do hereby certify that _____

 Personally appeared before me this day and acknowledged the execution of the foregoing instrument.
 Witness my hand this the _____ day of _____, 20____.
 C. Norman Holleman, Register of Deeds for Forsyth County: _____

NORTH CAROLINA)
)
FORSYTH COUNTY)

PARTNERSHIP AGREEMENT

This Agreement is entered into on _____, by and between _____ and _____, both of _____ County, North Carolina;

WITNESSETH:

The parties hereto have this day formed a general partnership, upon the following terms and conditions:

First. The name under which the partnership will do business is _____

Second. This partnership is formed for the following purpose:

[Describe business to be engaged in]

Third. The principal place of business of the partnership is _____ unless changed by mutual consent of the partners.

Fourth. This partnership is to continue in full force and effect until dissolved by either partner hereto, which shall occur after one of the partners has given to the other partner _____ months' written notice of his desire to dissolve the partnership.

Fifth. Each partner has contributed to the partnership the amount of \$ _____ in cash or in personal property, the value of which has been agreed upon by both partners. Each partner shall exclusively participate in and be liable for, as the case may be, the future assessments, profits and losses, return of capital, and each item of income, gain, loss, deduction, or credit for federal or state income tax purposes in equal shares, in accordance with each partner's contribution to the partnership. Upon dissolution, each partner shall receive an equal share of the partnership assets after all partnership debts have been paid. An individual capital account shall be maintained for each partner and no interest shall be paid or accrued thereon.

Sixth. Each partner shall give to the business his entire time and attention and not engage in any other business while this partnership is in force.

Seventh. Each partner shall receive as payment for services rendered an amount for his services as from time to time may be mutually agreed upon. The partners hereby agree that the amounts paid to each partner for his services shall be equal.

Eighth. In the conduct of the business of the partnership, each partner shall have equal authority to bind the partnership; provided that neither partner shall, without the consent of the other partner, (i) execute on behalf of the partnership any lease, contract of sale, deed, deed of trust, mortgage, note, security agreement, or other instrument for and in the name of the partnership; (ii) assign, transfer, pledge, compromise, or release any of the claims of or debts due the partnership without receiving the full amount thereof; (iii) make, execute, or deliver any assignment for the benefit of creditors, or any bond, confession of judgment, guarantee, indemnity bond, or surety bond; or (iv) on behalf of the partnership, become a surety, guarantor, or accommodation party to any obligation. No act by a partner contrary to the provisions of this section shall be binding upon the partnership or any other partner. All matters and things not expressly set forth in this partnership agreement shall be decided by mutual consent of the partners.

IN WITNESS WHEREOF, the parties hereto have executed this contract in duplicate originals, one of which is retained by each of the parties.

_____ (Seal)

_____ (Seal)

Notes:

N.C.G.S. § 59-84.1 requires that every partnership other than a limited partnership comply with the "assumed name" statute, N.C.G.S. § 66-68.

NORTH CAROLINA)
)
 FORSYTH COUNTY) LIMITED PARTNERSHIP AGREEMENT

This **LIMITED PARTNERSHIP AGREEMENT** is entered into on _____, by and among the limited partners and general partner listed in Section IV below (collectively, the "Partners").

RECITALS:

1. The parties hereto desire to form a Limited Partnership (hereinafter referred to as the "Limited Partnership") under the Uniform Limited Partnership Act of the State of North Carolina, as amended, for the purposes herein set forth.

NOW, THEREFORE, in consideration of the capital contributions set forth below, and other good and valuable consideration, the parties hereto agree as follows:

- I. Name. The name of the Limited Partnership is _____

- II. Business. The business of the Limited Partnership is to [acquire and own, develop, maintain, operate, improve, lease, mortgage, sell, exchange, and otherwise deal with certain real estate (the "Property") located at _____, as is more particularly described in the Agreement of Purchase and Sale referred to in Section XV (C) below] [*or, state any other purpose*] _____, and in connection with or incidental to the accomplishment of such purposes, to enter into any kind of activity and to perform and carry out contracts. The Limited Partnership shall not engage in any other business.

- III. Principal Office. The principal office of the Limited Partnership shall be located at _____.

- IV. Partners. The name and address of the general partner (the "General Partner") and each limited partner (the "Limited Partners"), and the capital contributions of each are listed below:

General Partner:

Name	Address	Capital Contribution
------	---------	----------------------

Limited Partners:

Name	Address	Capital Contribution
------	---------	----------------------

- V. Term. The Limited Partnership shall continue until _____, except that the Limited Partnership shall be dissolved prior to such date upon the happening of any of the following:
- (1) the sale or other disposition of all or substantially all the assets of the Limited Partnership; or,
 - (2) the retirement (which term includes the dissolution, bankruptcy, or withdrawal for any reason) of the General Partner; or,
 - (3) the decision of the General Partner to terminate the Limited Partnership.
- VI. Capital Contributions; Capital Accounts. Each Partner has made capital contributions to the Limited Partnership in the amounts set forth in Section IV above. An individual capital account shall be maintained for each Partner. No Partner shall be entitled to receive interest on his capital contribution or capital account. Each Partner's capital account shall consist of the amount of cash plus the fair market value of any property contributed to the Limited Partnership, plus the Partner's distributive share of any income or gain that is allocated to him under the Limited Partnership Agreement, minus (1) the amount of all cash and the fair market value of any property distributed to the Partner, and (2) the Partner's distributive share of any expense or loss that is allocated to him under the Limited Partnership Agreement. Each of the foregoing items shall be computed in accordance with federal income tax accounting principles.
- VII. Additional Contributions. No Limited Partner has agreed to make any additional capital contribution. Except to the extent required by law, the General Partner shall not be required to make any additional capital contributions.
- VIII. Returns. No time has been agreed upon for the return of the contributions of the Limited Partners.
- IX. Profits. All profits, losses, and distributions shall be shared by the Partners in the ratio that the capital contributions of each Partner bear to the aggregate capital contributions of all the Partners.
- X. Assignments. In no event shall all or any part of a Limited Partner's interest in the Limited Partnership be assigned or transferred to a minor or incompetent, and such attempted assignment shall be void and ineffectual and shall not bind the Limited Partnership.

No Limited Partner shall have the right to substitute an assignee as a Limited Partner in his place. The General Partner shall, however, have the right to permit any such assignee to become a Substitute Limited Partner and any such permission by the General Partner shall be binding and conclusive without the consent or approval of any Limited Partners. Any such Substitute Limited Partner shall execute, acknowledge, and deliver an instrument to the General Partner signifying his agreement to be bound by all the provisions of the Partnership Agreement, as last amended, and shall accept such other terms as the General Partner in his exclusive discretion may determine as a condition to permitting such substitution.

In the event of the death, incapacity, bankruptcy, or dissolution of a Limited Partner, his legal representatives shall have the same status as an assignee of the Limited Partner unless and until the General Partner shall permit such legal representatives to become a Substitute Limited Partner on the same terms and conditions as herein provided for assignees generally. The death, bankruptcy, or dissolution of a Limited Partner shall not dissolve the Partnership.

An assignee of a Limited Partner who does not become a Substitute Limited Partner as provided above shall have the right to receive the same share of profits, losses, and distributions of the Limited Partnership to which the assigning Limited Partner would have been entitled if no such assignment had been made by such Limited Partner.

Any Limited Partner who shall assign all his interest in the Limited Partnership shall cease to be a Limited Partner of the Limited Partnership and shall no longer have any rights or privileges of a Limited Partner.

If any assignment of the interest of a Limited Partner shall be made, there shall be filed with the Limited Partnership a duly executed and acknowledged counterpart of the instrument making such assignment, and such instrument must evidence the written acceptance of the assignee to all the terms and provisions of this Partnership Agreement, and if such an instrument is not so filed, the Limited Partnership need not recognize any such assignment for any purpose hereunder.

- XI. *Additional Limited Partners.* The General Partner is authorized at any time and from time to time to admit to the Limited Partnership additional Limited Partners upon each such additional Limited Partner's making, or agreeing to make, such contributions to the capital of the Limited Partnership as the General Partner shall determine.

- XII. Priorities. No Limited Partner has any right of priority over any other Limited Partner, as to contributions or as to compensation by way of income.
- XIII. Continuation. Upon the dissolution, bankruptcy, or withdrawal from the Limited Partnership of the General Partner, any remaining or surviving General Partner or Partners may elect to continue the business of the Limited Partnership in accordance with the applicable provisions of the Uniform Limited Partnership Act of the State of North Carolina.
- XIV. Demands for Property. A Limited Partner has no right to demand and receive property in return for his capital contribution.
- XV. Additional Provisions.
- A. Management and control of the business and affairs of the Limited Partnership shall be vested in the General Partner; except as otherwise expressly provided herein, no Limited Partner shall have or exercise any rights in connection with the management of such business. The General Partner shall devote to the conduct of the business of the Limited Partnership so much of his time as may be reasonably necessary to efficient operations, but he shall not be precluded from conducting other businesses as well, even if in so doing he competes with the Limited Partnership. The General Partner is hereby designated as the Tax Matters Partner for the Limited Partnership within the meaning of Section 6231 of the Internal Revenue Code of 1986, as amended (the Code). The Tax Matters Partner shall have the right and obligation to take all actions authorized and required by the Code for the Tax Matters Partner.
- B. The General Partner is specifically authorized to execute such documents as it deems necessary in connection with the acquisition, construction, development, and financing of the Limited Partnership property, including, without limiting the generality hereof, purchase agreement, note, mortgage, or loan and any other documents that may be required in connection with the acquisition and construction of the Limited Partnership property or the financing and development thereof.
- C. The Limited Partnership is hereby authorized to execute, become bound by the obligations of, and entitled to the rights of an Agreement of Purchase and Sale between the Limited Partnership and _____, and in

connection therewith, to execute all agreements, promissory notes, guarantees, instruments, and other documents, and to perform all acts, contemplated by such Agreement of Purchase and Sale.

- D. The General Partner is hereby authorized to decrease, increase, or refinance any mortgage loan, including any required transfer or conveyance of Limited Partnership assets for security or mortgage purposes, and sell, lease, exchange, or otherwise transfer or convey all or substantially all the assets of the Limited Partnership.]

- E. Each Limited Partner (including a Substitute or additional Limited Partner) and any Substitute or additional general partner hereby irrevocably constitutes, and empowers to act alone, [*name of the General Partner*], from time to time serving in such capacity, as attorney-in-fact for such Limited Partner or General Partner, with full power of substitution, with authority to execute, acknowledge, and swear to all instruments and file all documents requisite to carrying out the intention and purpose of this Agreement, including, without limitation, all business certificates and necessary certificates of limited partnership and amendments thereto from time to time in accordance with all applicable laws.

The foregoing appointment shall be deemed to be a power coupled with an interest in recognition of the fact that each of the partners under this Agreement will be relying upon the power of [*name of General Partner*] to act as contemplated by this Partnership Agreement in such filing and other action on behalf of the Limited Partnership and the Partners. The foregoing power of attorney shall survive the assignment by any Partner of the whole or any part of his or its interest hereunder or the retirement of any appointing General Partner.

IN WITNESS WHEREOF, the undersigned have subscribed and sworn to this Agreement of Limited Partnership as of the _____ day of _____, 2013.

GENERAL PARTNER

LIMITED PARTNER (if applicable)

LIMITED PARTNER (if applicable)

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION

Pursuant to §55-2-02 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Incorporation for the purpose of forming a business corporation.

1. The name of the corporation is: _____

2. The number of shares the corporation is authorized to issue is: _____

3. These shares shall be: *(check either a or b)*

a. all of one class, designated as common stock; or

b. divided into classes or series within a class as provided in the attached schedule, with the information required by N.C.G.S. Section 55-6-01.

4. The street address and county of the initial registered office of the corporation is:

Number and Street _____

City _____ State _____ Zip Code _____ County _____

5. The mailing address, *if different from the street address*, of the initial registered office is:

Number and Street _____

City _____ State _____ Zip Code _____ County _____

6. The name of the initial registered agent is: _____

7. Principal office information: *(must select either a or b.)*

a. The corporation has a principal office.

The street address and county of the principal office of the corporation is:

Number and Street _____

City _____ State _____ Zip Code _____ County _____

The mailing address, *if different from the street address*, of the principal office of the corporation is:

Number and Street _____

City _____ State _____ Zip Code _____ County _____

b. The corporation does not have a principal office.

8. Any other provisions, which the corporation elects to include, are attached.

9. The name and address of each incorporator is as follows:

10. These articles will be effective upon filing, unless a date and/or time is specified:

This the _____ day of _____ 20____

Signature

Type or Print Name and Title

NOTES:

1. Filing fee is \$125. This document must be filed with the Secretary of State.

CORPORATIONS DIVISION
(Revised January, 2002)

P. O. BOX 29622

RALEIGH, NC 27626-0622
(Form B-01)

Instructions for Filing

ARTICLES OF INCORPORATION
(Form B-01)

- Item 1** Enter the complete corporate name which must include a corporate ending required by N.C.G.S. §55D-20-01(a) (corporation, company, limited, incorporated, corp., co., ltd., or inc.).
- Item 2** Enter the number of shares the corporation will have the authority to issue.
- Item 3** Check (a) or (b), whichever is applicable. If (b) is checked, add an attachment that includes the description of the designations, preferences, limitations, and relative rights of the shares.
- Item 4** Enter the complete street address of the registered office and the county in which it is located.
- Item 5** Enter the complete mailing address of the registered agent only if mail is not delivered to the street address stated in Item 3 or if you prefer to receive mail at a P. O. Box or Drawer.
- Item 6** Enter the name of the registered agent. The registered agent must be either an individual who resides in North Carolina; a domestic business corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in North Carolina whose business office is identical with the registered office.
- Item 7** Select item "a" if the corporation has a principal office. Enter the complete street address of the principal office and the county in which it is located. If mail is not delivered to the street address of the principal office or if you prefer to receive mail at a P.O. Box or Drawer, enter the complete mailing address of the principal office.
- Select item "b" if the corporation does not have a principal office.
- Item 8** See form.
- Item 9** Enter the name and address of each incorporator. Only one incorporator is required in order to file.
- Item 10** The document will be effective on the date and at the time of filing, unless a delayed date or an effective time (on the day of filing) is specified. If a delayed effective date is specified without a time, the document will be effective at 11:59:59 p.m. on the day specified. If a delayed effective date is specified with a time, the document will be effective on the day and time so specified. A delayed effective date may be specified up to and including the 90th day after the day of filing.

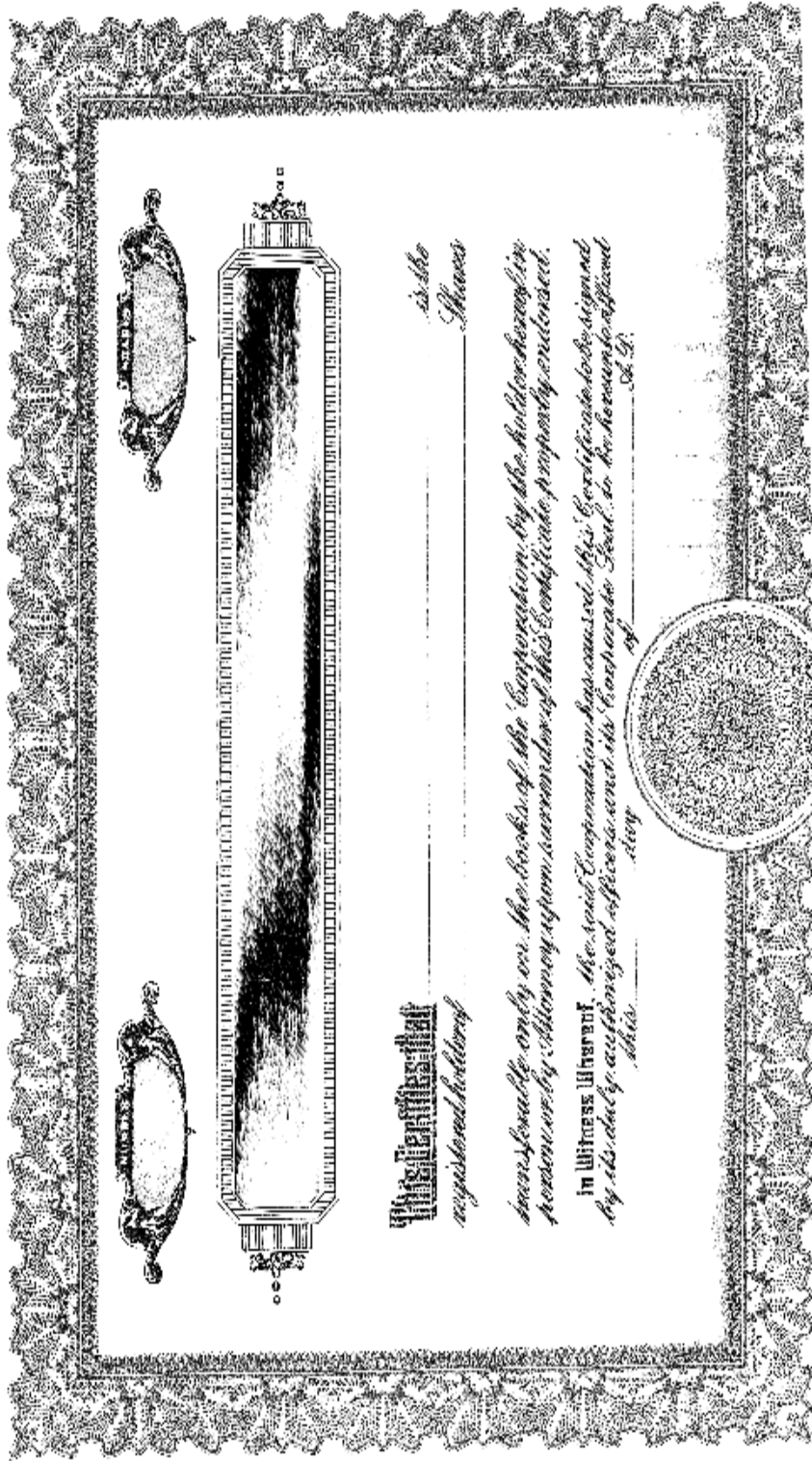
Date and Execution

Enter the date the document was executed.

In the blanks provided enter:

- The name of the entity executing the Articles of Incorporation; if an individual, leave blank.
- The signature of the incorporator or representative of the incorporating entity.
- The name of the incorporator or name and title of the above signed representative

ATTENTION: Corporations wishing to render a professional service as defined in N.C.G.S. §55b-2(6) shall contact the appropriate North Carolina licensing board to determine whether compliance with additional licensing requirements may be mandated by law.



This Certificate
is the
registered holder of

shares, locally, only, in the books of the Corporation, by the holder thereof in
possession by Attorney at Law, in and for the County of _____ State of _____

In Witness Whereof, the said Corporation has caused this Certificate to be signed
by its duly authorized officers, and its Corporate Seal to be hereunto affixed
this _____ day of _____ 19____



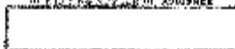
The following abbreviations, when used in the description on the face of this certificate, shall be construed as though they were written out in full, according to applicable laws or regulations.

TEN COM	-- as tenfold in common	UNITED GIFT MIN ACT--(State).....
TEN ENT	-- as tenfold by the certificate		(State) (State)
JT TEN	-- as joint tenancy with right of survivorship and not as tenants in common	AT--(State).....

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto

LEGAL INSTRUMENT SECURITY OR OTHER
 TITLE INSURANCE COMPANY



PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF GRANTEE

_____ Shares
 represented by the within Certificate, and do hereby irrevocably constitute
 and appoint _____

Attorney to transfer the said shares on the books of the within-named Corporation
 with full power of substitution in the premises.

Dated, _____

In presence of _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST BE SET WITHIN THE
 BOUNDARY OF THE SIGNATURE LINE AND MUST BE IN FULLY PRINTED LETTERS.
 THE SIGNATURE LINE IS LOCATED ON THE REVERSE SIDE OF THIS CERTIFICATE.

Election by a Small Business Corporation
(Under section 1362 of the Internal Revenue Code)

▶ See Parts II and III on page 3 and the separate instructions.
▶ The corporation can fax this form to the IRS (see separate instructions).

Note. This election to be an S corporation can be accepted only if all the tests are met under **Who May Elect** on page 1 of the instructions; all shareholders have signed the consent statement; an officer has signed below; and the exact name and address of the corporation and other required form information are provided.

Part I Election Information

Type or Print	Name (see instructions)	A Employer identification number :
	Number, street, and room or suite no. (if a P.O. box, see instructions.)	B Date incorporated
	City or town, state, and ZIP code	C State of incorporation

D Check the applicable box(es) if the corporation, after applying for the EIN shown in **A** above, changed its name or address

E Election is to be effective for tax year beginning (month, day, year) (see instructions) ▶ / /

Caution. A corporation (entity) making the election for its first tax year in existence will usually enter the beginning date of a short tax year that begins on a date other than January 1.

F Selected tax year:

(1) Calendar year

(2) Fiscal year ending (month and day) ▶ _____

(3) 52-53-week year ending with reference to the month of December

(4) 52-53-week year ending with reference to the month of ▶ _____

If box (2) or (4) is checked, complete Part II

G If more than 100 shareholders are listed for item J (see page 2), check this box if treating members of a family as one shareholder results in no more than 100 shareholders (see test 2 under **Who May Elect** in the instructions) ▶

H Name and title of officer or legal representative who the IRS may call for more information	I Telephone number of officer or legal representative ()
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If this S corporation election is being filed with Form 1120S, I declare that I had reasonable cause for not filing Form 2553 timely, and if this election is made by an entity eligible to elect to be treated as a corporation, I declare that I also had reasonable cause for not filing an entity classification election timely. See below for my explanation of the reasons the election or elections were not made on time (see instructions).

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Sign Here Under penalties of perjury, I declare that I have examined this election, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

_____	_____	_____
Signature of officer	Title	Date

Part II Selection of Fiscal Tax Year (see instructions)

Note. All corporations using this part must complete item O and item P, Q, or R.

O Check the applicable box to indicate whether the corporation is:

- 1. A new corporation **adopting** the tax year entered in item F, Part I.
- 2. An existing corporation **retaining** the tax year entered in item F, Part I.
- 3. An existing corporation **changing** to the tax year entered in item F, Part I.

P Complete item P if the corporation is using the automatic approval provisions of Rev. Proc. 2006-46, 2006-45 L.R.B. 859, to request (1) a natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) or (2) a year that satisfies the ownership tax year test (as defined in section 5.08 of Rev. Proc. 2006-46). Check the applicable box below to indicate the representation statement the corporation is making.

- 1. **Natural Business Year** ▶ I represent that the corporation is adopting, retaining, or changing to a tax year that qualifies as its natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) and has attached a statement showing separately for each month the gross receipts for the most recent 47 months (see instructions). I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.
- 2. **Ownership Tax Year** ▶ I represent that shareholders (as described in section 5.08 of Rev. Proc. 2006-46) holding more than half of the shares of the stock (as of the first day of the tax year to which the request relates) of the corporation have the same tax year or are concurrently changing to the tax year that the corporation adopts, retains, or changes to per item F, Part I, and that such tax year satisfies the requirement of section 4.01(3) of Rev. Proc. 2006-46. I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

Note. If you do not use item P and the corporation wants a fiscal tax year, complete either item Q or R below. Item Q is used to request a fiscal tax year based on a business purpose and to make a back-up section 444 election. Item R is used to make a regular section 444 election.

Q **Business Purpose**—To request a fiscal tax year based on a business purpose, check box Q1. See instructions for details including payment of a user fee. You may also check box Q2 and/or box Q3.

1. Check here ▶ If the fiscal year entered in item F, Part I, is requested under the prior approval provisions of Rev. Proc. 2002-99, 2002-22 L.R.B. 1046. Attach to Form 2553 a statement describing the relevant facts and circumstances and, if applicable, the gross receipts from sales and services necessary to establish a business purpose. See the instructions for details regarding the gross receipts from sales and services. If the IRS proposes to disapprove the requested fiscal year, do you want a conference with the IRS National Office?

Yes No

2. Check here ▶ to show that the corporation intends to make a back-up section 444 election in the event the corporation's business purpose request is not approved by the IRS. (See instructions for more information.)

3. Check here ▶ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event (1) the corporation's business purpose request is not approved and the corporation makes a back-up section 444 election, but is ultimately not qualified to make a section 444 election, or (2) the corporation's business purpose request is not approved and the corporation did not make a back-up section 444 election.

R **Section 444 Election**—To make a section 444 election, check box R1. You may also check box R2.

1. Check here ▶ to show that the corporation will make, if qualified, a section 444 election to have the fiscal tax year shown in item F, Part I. To make the election, you must complete Form 8716, Election To Have a Tax Year Other Than a Required Tax Year, and either attach it to Form 2553 or file it separately.

2. Check here ▶ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event the corporation is ultimately not qualified to make a section 444 election.

Part III Qualified Subchapter S Trust (QSST) Election Under Section 1361(d)(2)*

Income beneficiary's name and address	Social security number
Trust's name and address	Employer identification number

Date on which stock of the corporation was transferred to the trust (month, day, year) ▶ / /

In order for the trust named above to be a QSST and thus a qualifying shareholder of the S corporation for which this Form 2553 is filed, I hereby make the election under section 1361(d)(2). Under penalties of perjury, I certify that the trust meets the definitional requirements of section 1361(d)(2) and that all other information provided in Part III is true, correct, and complete.

Signature of income beneficiary or signature and title of legal representative or other qualified person making the election Date

*Use Part III to make the QSST election only if stock of the corporation has been transferred to the trust on or before the date on which the corporation makes its election to be an S corporation. The QSST election must be made and filed separately if stock of the corporation is transferred to the trust **after** the date on which the corporation makes the S election.

**State of North Carolina
Department of the Secretary of State**

**Limited Liability Company
ARTICLES OF ORGANIZATION**

Pursuant to §57C-2-20 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Organization for the purpose of forming a limited liability company.

1. The name of the limited liability company is: _____

2. If the limited liability company is to dissolve by a specific date, the latest date on which the limited liability company is to dissolve: *(If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company.)* _____

3. The name and address of each person executing these articles of organization is as follows:
(State whether each person is executing these articles of organization in the capacity of a member, organizer or both. Note: This document must be signed by all persons listed here).

4. The street address and county of the initial registered office of the limited liability company is:
Number and Street _____
City, State, Zip Code _____ County _____

5. The mailing address, *if different from the street address*, of the initial registered office is:

6. The name of the initial registered agent is: _____

7. Principal office information: *(Select either a or b.)*
 - a. The limited liability company has a principal office.
The street address and county of the principal office of the limited liability company is:
Number and Street _____
City, State, Zip Code _____ County _____
The mailing address, *if different from the street address*, of the principal office of the corporation is:

 - b. The limited liability company does not have a principal office.

8. Check one of the following:

_____ (i) *Member-managed LLC*: all members by virtue of their status as members shall be managers of this limited liability company.

_____ (ii) *Manager-managed LLC*: except as provided by N.C.G.S. Section 57C-3-20(a), the members of this limited liability company shall not be managers by virtue of their status as members.

9. Any other provisions which the limited liability company elects to include are attached.

10. These articles will be effective upon filing, unless a date and/or time is specified:

This is the ____ day of _____, 20 ____.

Signature

Type or Print Name and Title

NOTES:

1. **Filing fee is \$125. This document must be filed with the Secretary of State.**

CORPORATIONS DIVISION
(Revised January 2002)

P.O. Box 29622

RALEIGH, NC 27626-0622
(Form L-01)

Instructions for Filing

**LIMITED LIABILITY COMPANY
ARTICLES OF ORGANIZATION
(Form L-01)**

- Item 1** Enter the complete company name, which must include a limited liability company ending required by N.C.G.S. § 55D-20 (limited liability company, L.L.C., ltd. liability co., limited liability co., or ltd. liability company).
- Item 2** Enter the latest date on which the limited liability company may dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited liability company. (See N.C.G.S. §57C-2-30)
- Item 3** Enter the name and address of each person who executes the articles of organization and whether they are executing them in the capacity of a member or of an organizer or both. Unless the articles of organization provide otherwise, each person executing the articles of organization in the capacity of a member of the limited liability company becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective. (See N.C.G.S. § 57C-3-01)
- Item 4** Enter the complete street address of the registered office and the county in which it is located.
- Item 5** Enter the complete mailing address of the registered office only if mail is not delivered to the street address shown in Item 4 or if the registered agent prefers to have mail delivered to a P.O. Box or Drawer.
- Item 6** Enter the name of the registered agent. The registered agent must be either an individual who resides in North Carolina; a domestic business corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or a foreign corporation, nonprofit corporation or limited liability company authorized to transact business or conduct affairs in North Carolina whose business office is identical with the registered office.
- Item 7** Select item "a" if the limited liability company has a principal office. Enter the complete street address of the principal office and the county in which it is located. If mail is not delivered to the street address of the principal office or if you prefer to receive mail at a P.O. Box or Drawer, enter the complete mailing address of the principal office.
Select item "b" if the limited liability company does not have a principal office.
- Item 8** Unless the articles of organization provide otherwise, all members shall be managers of the LLC, together with any other persons designated as managers in, or in accordance with, the articles of organization or the LLC's written operating agreement. If the articles of organization provide that all members are not necessarily managers by virtue of their status as members, then those persons designated as managers in, or in accordance with, the articles of organization or a operating agreement shall manage the LLC, except for such period during which no designation has been made or is in effect, in which case all members shall be managers.
- Item 9** N.C.G.S. §57C-2-21(b) states that the articles of organization may contain any provision not inconsistent with law, including any matter that under Chapter 57C is permitted to be set forth in a limited liability company's operating agreement. The name and address of each of the initial members of the limited liability company may be stated as an attachment. Unless the articles of organization provide otherwise, each person who is named in the articles of organization as a member of the limited liability company becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective. (See N.C.G.S. § 57C-3-01)
- Item 10** The document will be effective on the date and at the time of filing, unless a delayed date or an effective time (on the day of filing) is specified. If a delayed effective date is specified without a time, the document will be effective at 11:59:59 p.m. Raleigh, North Carolina time on the day specified. If a delayed effective date is specified, the document will be effective on the day and at the time specified. A delayed effective date may be specified up to and including the 90th day after the day of filing.

Date and Execution

Enter the date the document was executed.

In the blanks provided enter:

- The name of the entity executing the Articles of Organization; if an individual, leave blank.
- The signature of the member and/or organizer or representative of the organizing entity.
- The name of the member and/or organizer or name of the above-signed representative.
- The title of the individual or entity executing the Articles of Organization (i.e. Organizer, Member or both)
- The document may, but need not, contain an acknowledgment, verification, or proof.

ATTENTION: Limited liability companies wishing to render a professional service as defined in N.C.G.S. §55B-2(6) shall contact the appropriate North Carolina licensing board to determine whether compliance with additional licensing requirements may be mandated by law. Such limited liability companies should consult N.C.G.S. §57C-2-01 for further details.

NORTH CAROLINA)	OPERATING AGREEMENT
)	OF
FORSYTH COUNTY)	_____

THIS OPERATING AGREEMENT (this "Agreement") of _____ (the "Company"), a Limited Liability Company organized pursuant to the North Carolina Limited Liability Company Act, is executed effective as of the _____ day of _____, 2013, by and among the Company and the persons executing this Agreement as the initial Members (as defined below).

ARTICLE I - DEFINITIONS.

1.1 Definitions. The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

- (a) "Act" means the North Carolina Limited Liability Company Act, as the same may be amended from time to time.
- (b) "Adjusted Capital Account" means, with respect to a Member, the balance in such Member's Capital Account at the end of the relevant fiscal year, as determined in accordance with the Treasury Regulation Section 1.704-1(b)(2)(iv).
- (c) "Articles of Organization" means the Articles of Organization of the Company filed with the Secretary of State, as amended or restated from time to time.
- (d) "Capital Account" means for each Member the account established pursuant to Section 8.2 hereof and maintained in accordance with the provisions of this Agreement.
- (e) "Capital Contribution" means any contribution to the capital of the Company in cash or property by a Member whenever made.
- (f) "Code" means the Internal Revenue Code of 1986 as amended from time to time (and any corresponding provision of succeeding law).
- (g) "Distributable Cash" means, with respect to the Company for a period of time, all funds of the Company on hand or in bank accounts of the Company as, in the discretion of the Managers, is available for distribution to the Members after provision has been made for (i) payment of all operating expenses of the Company as of such time, (ii) provision for payment of all outstanding and

unpaid current obligations of the Company as of such time, and (iii) provision for such reserves as the Managers deem necessary or appropriate for Company operations.

- (h) "Fiscal Year" means the calendar year, provided that the first Fiscal Year of the Company shall commence on _____ day of _____, 20____, and continue through the 31st of December, 20____.
- (i) "Income" means, for each Fiscal Year or other period, each item of income and gain as determined, recognized and classified for Federal income tax purposes, provided that any income or gain that is exempt from Federal income tax shall be included as if it was an item of taxable income.
- (j) "Initial Capital Contribution" means the initial contribution to the capital of the Company made by a Member pursuant to Section 8.1(a) of this Agreement.
- (k) "Loss" means, for each Fiscal Year or other period, each time of loss or deduction as determined, recognized, and classified for Federal income tax purposes, increased by (i) expenditures described in Section 705(a)(2)(B) of the Code, (ii) expenditures contemplated by Section 709 of the Code (except for amounts with respect to which an election is properly made under Section 709(b) of the Code), and (iii) expenditures resulting in a deduction of a loss incurred in connection with the sale or exchange of Company property that is disallowed to the Company under Section 267(a)(1) or Section 707(b).
- (l) "Majority" means, with respect to any referenced group of Managers, a combination of any of such Managers constituting more than fifty percent (50%) of the number of Managers of such referenced group who are then elected and qualified.
- (m) "Majority in Interest" means, with respect to any referenced group of Members, a combination of any of such Members who, in the aggregate, own more than fifty percent (50%) of the Membership Interest owned by all of such referenced group of Members.
- (n) "Manager" means each initial Member named in the Articles of Organization of the Company or any other Person that succeeds such Person in their capacity as a manager, and each other Person elected to act as a manager of the Company as provided herein. "Managers" refers to such Persons as a group.
- (o) "Member" means each Person designated as a member of the Company on Schedule I hereto, whether such Person becomes a

member by virtue of executing and filing the Articles of Organization or such Person is admitted as a member of the Company in accordance with Article X. "Members" refers to such Persons as a group.

- (p) "Membership Interest" means all of a Member's rights in the Company, including without limitation, the Member's share of the profits and losses of the Company, the right to receive distributions of the Company's assets, any right to vote and any right to participate in the management of the Company as provided in the Act and this Agreement. As to any Member, Membership Interest shall mean the percentage set forth opposite such Member's name on Schedule I hereto.
- (q) "Net Income" and "Net Loss" means, for each Fiscal Year or other relevant period, (i) the excess of the Income for such period over the Loss for such period, or (ii) the excess of the Loss for such period over the Income for such period, respectively; provided, however, that Net Income and Net Loss for a Fiscal Year or other relevant period shall be computed by excluding from such computation any Income specially allocated under Section 8.1.
- (r) "Person" means an individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability Company, a foreign limited liability Company, an unincorporated association, or another entity.
- (s) "Secretary of State" means the Secretary of State of North Carolina.
- (t) "Treasury Regulations" means the Income Tax Regulations and Temporary Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE II - FORMATION OF THE COMPANY

2.1 Formation. The Company was formed on ____ day of _____, 20____, upon the filing with the Secretary of State of the Articles of Organization of the Company. In consideration of the mutual promises and covenants, contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the rights and obligations of the parties and the administration and termination of the Company shall be governed by this Agreement, the Articles of the Organization and the Act.

2.2 Name. The business and affairs of the Company shall be conducted under the name of _____. The name of the Company may be changed from time to time by amendment of the Articles of Organization. The Company may transact business under an assumed name by filing an assumed name certificate in the manner prescribed by applicable law.

2.3 Register Office and Registered Agent. The Company's registered office shall be _____, and the name of its initial registered agent at such address shall be _____.

2.4 Principal Place of Business. The principal place of business of the Company within the State of North Carolina shall be _____ County, North Carolina. The Company may locate its place(s) of business and registered office at any other place or places as the Managers may from time to time deem necessary or advisable.

2.5 Term. The Company shall continue in existence as specified in the Company's Articles of Organization, unless the Company is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

2.6 Purposes and Powers.

- (a) The Company may engage in any lawful business for which limited liability companies may be organized under the Act unless a more limited purpose is stated in the Articles of Organization.
- (b) The Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act. The Company shall carry out the foregoing activities pursuant to the arrangements set forth in the Articles of Organization and this Agreement.

2.7 Nature of Members' Interests. The interests of the Members in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company. Neither any Member nor a successor, representative or assign of such Member, shall have any right, title or interest in or to any Company property or the right to partition any real property owned by the Company. Interest may be evidenced by a certificate of Membership interest issued by the Company, in such form as the Managers may determine.

ARTICLE III - RIGHT AND DUTIES OF MANAGERS

3.1 Management. The business and affairs of the Company shall be managed by the Managers. In addition to the powers and authorities expressly conferred by this Agreement upon the Managers, the Managers shall have full and complete authority, power and discretion to manage and control the business of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary to or incident to the management of the Company's business, except only as to those acts and things as to which approval by the Members is expressly required by the Articles of Organization, this Agreement, the Act or other applicable law. At any time when there is more than one Manager: (i) any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act; and (ii) the Managers may elect one or more officers who may but need not be Members or Managers of the Company, with such titles, duties and compensation as may be designated by the Managers, subject to any applicable restrictions specifically provided in this Agreement or contained in the Act.

3.2 Number and Qualifications. There shall initially be two Managers of the Company, who are Members. The names and consent of the Managers to serve as such shall be evidenced on Schedule II attached hereto and made a part hereof, as amended upon any change of Managers. The number of Managers of the Company may be fixed from time to time by the affirmative vote of a Majority in Interest of all of the Members, but in no instance shall any decrease in the number of Managers have the effect of shortening the term of any incumbent Manager.

3.3 Election and Term of Office. Managers shall be elected at the annual meeting of the Members (except as provided in Sections 3.5 and 3.6). Each Manager shall hold office until the Member's successor shall have been elected and qualified, or until the death or dissolution of such Member, or until his or its resignation or removal from office in the manner provided in this Agreement or in the Act.

3.4 Resignation. Any Manager of the Company may resign at any time by giving written notice to all of the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.5 Removal. At any special meeting of the Members called expressly for that purpose, all or any lesser number of Managers may be removed at any time, either with or without cause, by the affirmative vote of a Majority in Interest of all the Members then entitled to vote at any election of Managers. In case any vacancy so created shall not be filled by the Members at such meeting, such vacancy may be filled by the Managers as provided in Section 3.6.

3.6 Vacancies. Any vacancy occurring for any reason in the Managers of the Company may be filled by the affirmative vote of a Majority of Managers, except for a vacancy occurring in the Managers by reason of any increase in the number of Managers, which shall be filled by the affirmative vote of a Majority in Interest of all the Members at an annual meeting of Members or at a special meeting of Members called for that purpose.

3.7 Inspection of Books and Records. Any Manager shall have the right to examine all books and records of the Company for a purpose reasonably related to such Manager's position as a Manager.

3.8 Compensation. The compensation of the Managers of the Company shall be fixed from time to time by an affirmative vote of a Majority in Interest of the Members or by contract approved by an affirmative vote of a Majority in Interest of the Members, and no Manager shall be prevented from receiving such salary by reason of the fact that he is also a Member of the Company.

3.9 Committees of the Managers. The Managers, by resolution, may designate from among the Managers one or more committees, each of which shall be comprised of one or more of the Managers.

ARTICLE IV - MEETINGS OF MANAGERS

4.1 Place of Meeting. The Managers of the Company may hold their meetings, both regular and special, at any place within or without the State of North Carolina.

4.2 Notice of Meetings. The first meeting of newly elected Managers shall be held immediately following the adjournment of the annual meeting of the Members. The Managers may otherwise meet at such intervals and at such time and place as they shall schedule. The first meeting of Managers, and any scheduled meetings of the Managers, may be held without notice. Special meetings of the Managers may be called at any time by no less than one-third of the then serving Managers for any purpose or purposes. Notice of such special meetings, unless waived by attendance or by written consent to the holding of the special meeting, shall be given at least five (5) days before the date of such meeting to all Managers not calling the meeting. Notice of such special meeting shall state that it shall be held at the principal place of business of the Company, the date and hour of the special meeting, and its purpose or purposes. Absent the written consent of a Majority of the Managers to take other action, the business transacted at such special meeting shall be limited to such purpose or purposes as stated in the notice.

4.3 Action by Managers; Quorum; Voting; Action Without a Meeting.

(a) A Majority of the Managers shall be necessary to constitute a quorum for the transaction of business. Every act or decision done

or made by a Majority of the Managers present at a meeting duly held at which a quorum is present shall be regarded as the act of the Company, unless a great number is required by law or by the Articles of Incorporation.

- (b) Managers may participate in any meeting of the Managers by means of conference telephone or similar communications equipment, provided all persons participating in the meeting can hear one another, and such participation in a meeting shall constitute presence in person at the meeting.
- (c) All votes required of Managers hereunder may be by voice vote unless a written ballot is requested, which request may be made by any one Manager.
- (d) Any action which under any provision of the Act or this Agreement is to be taken at a meeting of the Managers may be taken without a meeting by written consent signed by all Managers who would be entitled to vote upon such action at a meeting. Such written consent must be kept with the records of the Company.

4.4 Adjournment. A Majority of the Managers present may adjourn any Managers' meeting to meet again at a stated day and hour or until the time fixed for the next regular meeting of the Managers.

ARTICLE V - MEMBERS

5.1 Names and Addresses of Members. The names, addresses, and Membership Interests of the Members are as reflected in Schedule I attached hereto and made a part hereof, which Schedule shall be as amended by the Company as of the effectiveness of any transfer or subsequent issuance of any Membership Interest.

5.2 Admission of Members.

- (a) In the case of a Person acquiring a Membership Interest directly from the Company, the Person shall become a Member with respect to such Membership Interest on compliance with the requirements of Article X and making the Capital Contributions specified in Section 8.1.
- (b) An assignee of a Membership Interest shall become a Member on compliance with the requirements of Article X.
- (c) Any Person may become a Member unless such Person lacks capacity or is otherwise prohibited from being admitted by applicable law.

ARTICLE VI - MEETINGS OF MEMBERS

6.1 Annual Meetings of Members. An annual meeting of the Members will be held at such time and date at the principal office of the Company or at such other place within or without the State of North Carolina as shall be designated by the Managers from time to time and stated in the notice of the meeting. The purposes of the annual meeting need not be enumerated in the notice of such meeting.

6.2 Special Meeting of Members. Special meetings of the Members may be called by the Managers or by the holders of not less than thirty percent (30%) of all the Membership Interests. Business transacted at all special meetings shall be confined to the purpose or purposes stated in the notice.

6.3 Notice of Meetings of Members. Written notice stating the place, day and hour of the meeting and, additionally in the case of special meetings, stating the principal place of business of the Company as the location and the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each Member of record entitled to vote at such meeting.

6.4 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which any such distribution is declared, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

6.5 Quorum. A Majority in Interest of the Members shall constitute a quorum at all meetings of the Members, except as otherwise provided by law or this Agreement. Once a quorum is present at the meeting of the Members, the subsequent withdrawal from the meeting of any Member prior to adjournment or the refusal of any Member to vote shall not affect the presence of a quorum at the meeting. If, however, such quorum shall not be present at the opening of any meeting of the Members, the Members entitled to vote at such meeting shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the holders of the requisite amount of Membership Interest shall be present or represented.

6.6 Actions by Members Other than the Election of Managers. Except for a matter for which the affirmative vote of the holders of a greater portion of the Membership Interest entitled to vote is required by law, the Articles of Organization or this Agreement, the act of Members shall be the affirmative vote of a Majority in Interest of all the Members represented and voting at the meeting. All actions of the Members provided for herein may be taken by written consent

without a meeting. Any such action which may be taken by the Members without a meeting shall be effective only if the consents are in writing, set forth the action so taken, and are signed by all Members eligible to vote on such action. Members may participate in any meeting of the Members by means of a conference telephone or similar communications equipment, provided all persons participating in the meeting can hear one another, and such participation in a meeting shall constitute presence in person at the meeting.

6.7 Action by Members to Elect Managers. For purposes of voting on the election of Managers, Managers shall be elected at any meeting of the Members at which a quorum is present by a plurality of the Membership Interest represented and voting at the meeting.

6.8 List of Members Entitled to Vote. The Managers shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting, or any adjournment of such meeting, arranged in alphabetical order, with the address of and the Membership Interest held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of meeting and shall be subject to inspection of any Member during the whole time of the meeting. However, failure to comply with the requirements of this Section shall not affect the validity of any action taken at such meeting.

6.9 Registered Members. The Company shall be entitled to treat the holder of record of any Membership Interest as the holder in fact of such Membership Interest for all purposes, and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership Interest on the part of any other person, whether or not it shall have express or other notice of such claim or interest, except as expressly provided by this Agreement or the laws of North Carolina.

ARTICLE VII - LIMITATION OF LIABILITY AND INDEMNIFICATION OF MANAGERS AND MEMBERS

7.1 Limitation of Liability. No Manager or Member of the Company shall be liable to the Company or its Members for monetary damages for an act or omission in such person's capacity as a Manager or a Member, except as provided in the Act for (i) acts or omissions which a Manager knew at the time of the acts or omissions were clearly in conflict with the interests of the Company, (ii) any transaction from which a Manager derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date this provision becomes effective. If the Act is amended to authorize action further eliminating or limiting the liability of Managers and Members, then the liability of a Manager or Member of the Company shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of this section shall not adversely

affect the right or protection of a Manager or Member existing at the time of such repeal or modification.

7.2 Indemnification. The Company shall indemnify the Managers and Members to the fullest extent permitted or required by the Act, as amended from time to time

7.3 Other Rights. The indemnification provided by this Agreement shall:(i) inure to the benefit of the estate, heirs, executors, administrators or other successors of an indemnitee; and (ii) not be deemed to create any rights for the benefit of any other person or entity.

7.4 Report to Members. The details concerning any action to limit the liability, indemnify, or advance expenses to a Manager, Member, or other, taken by the Company shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting or, if sooner, separately within ninety (90) days immediately following the date of the action.

ARTICLE VIII - CONTRIBUTIONS TO CAPITAL AND CAPITAL ACCOUNTS; LOANS

8.1 Capital Contribution; Loans.

- (a) Upon execution of this Agreement, each Member agrees to contribute cash to the Company in the amount set forth as the Initial Capital Contribution of such Member on Schedule I, attached hereto.
- (b) If the Managers determine that the Initial Capital Contributions are insufficient to carry out the purposes of the Company, the Managers may request that the Members make additional contributions to the capital of the Company. If a Majority in Interest of the Members approve such request, then each of the Members shall be obligated to make such additional contributions (each an "Additional Capital Contribution") to the Company ratably in accordance with such Members' then existing Membership Interest within the time period approved by the Majority in Interest of the Members. In the event any Member fails to fulfill any commitment to contribute additional capital (the "Defaulting Member"), the Managers may elect to allow the remaining Members (the "Lending Members") to contribute to the Company, pro rata by Membership Interest, such Additional Capital Contribution. All amounts so contributed by the Lending Members shall be considered a loan to the Defaulting Member bearing interest at the prime rate, as set out in the Wall Street Journal on the date of the loan, plus three percent (3%) simple interest, until repaid. In addition, until all of such loans are repaid

by the Defaulting Member, all distributions from the Company which would have been paid to the Defaulting Member shall be paid to the Lending Members in proportion to the then outstanding interest and principal of such loans.

- (c) No Member shall be paid interest on any Capital Contribution to the Company.
- (d) In addition to the loans to the Defaulting Member provided for in Section 8.1(b) above, upon approval of the terms thereof by the Managers, any Member may make a loan to the Company upon commercially reasonable terms. Loans by a Member to the Company shall not be considered Capital Contributions.

8.2 Capital Accounts.

- (a) The Company shall maintain a separate capital account (each a "Capital Account") for each Member pursuant to the principals of this Section 8.2 and Treasury Regulations. The Initial Capital Account of each Member shall be the Initial Capital Contribution of such Member. Such Capital Account shall be increased by (i) the amount of the subsequent Capital Contributions of such Member to the Company under Section 8.1; and (ii) such Member's allocable share of Company Income and Net Income pursuant to Section 9.1. Such Capital Account shall be decreased by (i) the amount of cash distributed to the Member by the Company pursuant to Section 9.2 and (ii) such Member's allocable share of Loss and Net Loss pursuant to Section 9.1.
- (b) The provisions of this Section 8.1 and other portions of this Agreement relating to the proper maintenance of Capital Accounts are designed to comply with the requirement of Treasury Regulations Sections. The Members intend that such provisions be interpreted and applied in a manner consistent with such Treasury Regulations. The Managers are authorized to modify the manner in which the Capital Accounts are maintained if the Managers determine that such modification (i) is required or prudent to comply with the Treasury Regulations and (ii) is not likely to have a material effect on the amounts distributable to any Member upon the dissolution of the Company.

8.3. Withdrawal or Reduction of Members' Contributions to Capital.

- (a) No Member shall have the right to withdraw all or any part of its Capital Contribution, except as may be otherwise specifically provided in this Agreement. Under circumstances involving a return of any Capital Contribution, no Member shall have the right to receive property other than cash.

- (b) No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Income, Net Losses, or distributions, provided that this subsection shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

8.4 Liability of Members. No Member shall be liable for the debts, liabilities, or obligations of the Company beyond his or its respective Initial Capital Contribution and any Additional Capital Contribution required of such Member pursuant to Section 8.1(b) above. Except as otherwise expressly provided herein, no Member shall be required to contribute to the capital of, or to loan any funds to, the Company.

ARTICLE IX - ALLOCATIONS, DISTRIBUTIONS, ELECTIONS, AND REPORTS

9.1 Allocations. Subject to the provisions below, for purposes of maintaining Capital Accounts and in determining the rights of the Members among themselves, Net Income, or Net loss, if any, for a Fiscal year, or other period, shall be allocated to the Members in proportion to their respective Membership Interest after giving effect to all Capital Account adjustments attributable to contributions and distributions of cash and property made during such Fiscal year.

9.2 Distributions. The Managers shall distribute Distributable Cash and other property at such times and in such amounts as they may determine, in their sole discretion. All distributions of the Distributable Cash or other property shall be made to the Members in proportion to their respective Membership Interest. Except as provided in Section 9.3, all distributions of Distributable Cash and property shall be made at such time as determined by the Managers.

9.3 Limitation Upon Distributions. No distribution shall be declared and paid if payment of such distribution would cause the Company to violate any limitation on distributions provided in the Act.

9.4 Allocations for Tax Purposes. Except as otherwise provided herein, each item of Income, Net Income or Net Loss of the Company shall be allocated to the Members in the same manner as such allocations are made for book purposes pursuant to Section 9.1. In the event of a transfer of, or other change in, an interest in the Company during a Fiscal Year, each item of taxable income and loss shall be prorated in accordance with Section 706 of the Code, using any convention permitted by law and selected by the Managers.

9.5 Tax Status, Elections, and Modifications to Allocations.

- (a) Notwithstanding any provision contained in this agreement to the contrary, solely for Federal income tax purposes, each of the

Members hereby recognizes that the Company will be subject to all provision of Subchapter X of the Code; provided, however, that the filing of all required returns thereunder shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.

- (b) The Managers, in their sole discretion, may cause the Company to elect pursuant to Section 754 of the Code and the Treasury Regulations to adjust the basis of the Company assets as may be provided by the Code and the Treasury regulations thereunder. The Company shall make such elections for Federal income tax purposes as may be determined by the Managers, acting in their sole and absolute discretion.
- (c) The Managers shall prepare and execute any amendments to this Agreement necessary for the Company to comply with the provisions of Treasury Regulations.

9.6 Tax Matters Partner. The Managers shall designate a Member serving as a Manager, or if there is none or if none are eligible to act, any Member, as the "tax matters partner" for Federal income tax purposes.

9.7 Records and Reports. At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. The Company shall keep at its principal place of business the records required by the Act to be maintained there.

9.8 Books of Account.

- (a) The Company shall maintain the Company's books and records and shall determine all items of Income, Loss, Net Income, and Net Loss in accordance with the method of accounting selected by the Managers, consistently applied. All of the records and books of account of the Company, in whatever form maintained, shall at all times be maintained at the principal office of the Company and shall be open to the inspection and examination of the Members or their representatives during the reasonable business hours. Such right may be exercised through any agent or employee of a Member designated by it or by an attorney or independent certified public accountant designated by such Member. Such Member shall bear all expenses incurred in any examination made on behalf of such Member.
- (b) All expenses in connection with the keeping of the book and records of the Company and the preparation of audited or unaudited financial statements required to implement the provisions of this Agreement or otherwise needed for the conduct

of the Company's business shall be borne by the Company as an ordinary expense of its business.

9.9 Company Tax Return and Annual Statement. The Managers shall cause the Company to file a Federal income tax return and all other tax returns required to be filed by the Company for each Fiscal Year or part thereof, and shall provide to each person who at any time during the Fiscal Year was a Member with an annual statement (including a copy of Schedule K-1 to Internal Revenue Service Form 1065) indicating such Member's share of the Company's income, loss, gain, expense and other items relevant for Federal income tax purposes. Such annual statement may be audited or unaudited as required by the Managers.

9.10 Bank Accounts. The bank account or accounts of the Company shall be maintained in the bank approved by the Managers. The terms governing such accounts shall be determined by the Managers and withdrawals from such bank accounts shall only be made by such parties as may be approved by the Managers.

ARTICLE X - TRANSFERABILITY OF MEMBERSHIP INTERESTS; ADMISSION OF MEMBERS

10.1 Transferability of Membership Interest. The term "transfer" when used in this Agreement with respect to a Membership Interest includes a sale, assignment, gift, pledge, exchange or other disposition. A Member shall not at any time transfer its Membership Interest except in accordance with the conditions and limitations set out in Section 10.2. Any transferee of a Membership Interest by any means shall have only the rights, powers, and privileges set out in Section 10.3 or otherwise provided by law and shall not become a Member of the Company except as provided in Section 10.4.

10.2 Restrictions on Transfers of Membership Interests. All or part of a Membership Interest may be transferred only with the prior written approval of a Majority of the Managers, which approval may be granted or denied in the sole discretion of the Managers. The Managers, shall not so consent unless the proposed transferee shall have furnished the Company with an opinion of counsel, satisfactory in form and substance to such Managers, that neither the offering nor the proposed transfer will violate any Federal or applicable state securities law and that neither such offering nor the proposed sale of the Membership Interest will violate any Federal or applicable state securities law and that neither such offering or sale will adversely affect the Company from being taxed as a partnership for Federal income tax purposes.

10.3 Rights of Transferee. Unless and until admitted as a Member of the Company in accordance with Section 10.4, the transferee of a Membership Interest shall not be entitled to any of the rights, powers, or privileges of a Member, except that the transferee shall be entitled to receive the distributions and allocations to which the Member would be entitled but for the transfer of his Membership Interest.

10.4 Admission of Transferees as Members. A transferee of a Membership Interest may be admitted as a Member of the Company upon furnishing to the Company all of the following:

- (a) The written consent of all the Members;
- (b) The acceptance, in a form satisfactory to a Majority of the Managers, of all the terms and conditions of this Agreement; and
- (c) Payment of such reasonable expenses as the Company may incur in connection with his admission as a Member.

10.5 Admission of New Members. New Members to the Company may only be admitted with the unanimous consent of the Members, upon compliance with all terms specified by the Managers and upon receipt by the Company of an opinion of counsel, satisfactory in form and substance to a Majority of the Managers, that neither the offering nor the proposed sale of the Membership Interest will violate any Federal or applicable state securities law and that neither such offering or sale will adversely affect the Company from being taxed as a partnership for Federal income tax purposes.

ARTICLE XI - DISSOLUTION AND TERMINATION

11.1 Withdrawal. Except as otherwise provided in this agreement, no Member shall at any time retire or withdraw from the Company or withdraw any amount out of his Capital Account. Any Member retiring or withdrawing in contravention of this Section 11.1 shall indemnify, defend, and hold harmless the Company and all other Members (other than a Member who is, at the time of such withdrawal, in default under this Agreement) from and against any losses, expenses, judgments, fines, settlements, or damages suffered or incurred by the Company or any such other Member arising out of or resulting from such retirement or withdrawal.

11.2 Dissolution.

- (a) The Company shall be dissolved upon the first of the following to occur:
 - (i) When the period fixed for the duration of the Company in the Articles of Organization shall expire;
 - (ii) Upon the election to dissolve the Company by all of the Members;
 - (iii) Upon the happening of any event of withdrawal (as defined in the Act) with respect to any Member, unless there is at least one remaining Member and the business of the

Company is continued by the written consent of all of the remaining Members holding a Majority in Interest within ninety (90) days of the action by or affecting the withdrawing Member; or

- (iv) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.
- (b) Upon dissolution of the Company, the business and affairs of the Company shall terminate and be wound up, and the assets of the Company shall be liquidated under this Article XI.
- (c) Dissolution of the Company shall be effective as of the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until there has been a winding up of the Company's business and affairs, and the assets of the Company have been distributed as provided in Section 11.3.
- (d) Upon dissolution of the Company, the Managers may cause any part or all of the assets of the Company to be sold in such manner as the Managers shall determine in an effort to obtain the best prices for such assets; provided, however, that the Managers may distribute assets of the Company in kind to the Members to the extent practicable.

11.3 Articles of Dissolution. Upon the dissolution and commencement of the winding up of the Company, the Managers shall cause Articles of Dissolution to be executed on behalf of the Company and filed with the Secretary of State, and a Manager or authorized Member shall execute, acknowledge, and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company.

11.4 Distribution of Assets Upon Dissolution. In settling accounts after dissolution, the assets of the Company shall be paid in the following order:

- (a) First, to creditors, in the order or priority as provided by law, except those to Members on account of their Capital Contributions;
- (b) Second, an amount equal to the then remaining credit balances in the Capital Accounts of the Members shall be distributed to the Members in proportion to the amount of such balances; and
- (c) Third, any remainder shall be distributed to the Members of the Company, pro rata, to their respective Membership Interests.

11.5 Distributions in Kind. If any assets of the Company are distributed in kind, such assets shall be distributed to the Members entitled thereto as tenants-in-common in the same proportions as the Members would have been entitled to

cash distributions if such property had been sold for cash and the net proceeds thereof distributed to the Members. In the event that distributions in kind are made to the Members upon dissolution and liquidation of the Company, the Capital Account balances of such Members shall be adjusted to reflect the Members' allocable share of gain or loss which would have resulted if the distributed property had been sold at its fair market value.

ARTICLE XII - MISCELLANEOUS PROVISIONS

12.1 Competing Business. Except as otherwise expressly provided in this Agreement or the Act, neither the Managers nor the Members, nor any of their shareholders, directors, officers, employees, partners, agents, family Members, or affiliates shall be prohibited or restricted in any way from investing in or conducting either directly or indirectly, and may invest in and/or conduct, either directly or indirectly, businesses of any nature whatsoever, including the ownership and operation of businesses or properties similar to or in the same geographical area as those held by the Company. Except as otherwise provided in this Agreement or the Act, any investment in or conduct of any such businesses by any such person or entity shall not give rise to any claim for an accounting by any Member or the Company or any right to claim any interest therein or the profits therefrom.

12.2 Member Representations and Agreements. Not with standing anything contained in this Agreement to the contrary, each Member hereby represents and warrants to the Company, the Managers and to each other that: (a) the Membership Interest of such Member is acquired for investment purposes only, for the Member's own account, and not with a view to or in connection with any distribution, reoffer, resale, or other disposition not in compliance with the Securities Act of 1933, as amended, and the rules and regulations thereunder (the "1933 Act") and applicable state securities laws; (b) such Member, along or together with the Member's representatives, possesses such expertise, knowledge, and sophistication in financial and business matters generally, and in the type of transactions in which the Company proposes to engage in particular, that the Member is capable of evaluating the merits and economic risks of acquiring and holding the Membership Interest and the Member is able to bear all such economic risks now and in the future; (c) such Member has had access to all of the information with respect to the Membership Interest acquired by the Member under this Agreement that the Member deems necessary to make a complete evaluation thereof and has had the opportunity to question the other Members and the Managers (if any) concerning such Membership Interest; (d) such Member's decision to acquire the Membership Interest for investment has been based solely upon the evaluation made by the Member; (e) such Member is aware that the Member must bear the economic risk; (f) such Member is aware that only the Company can take action to register Membership Interests and the Company is under no such obligations and does not propose to attempt to do so; (g) such Member is aware that this Agreement provides restrictions on the ability of a Member to sell, transfer, assign, mortgage, hypothecate, or otherwise encumber the Member's Membership Interest.

12.3 Notice.

- (a) All notices, demands, or requests provided for or permitted to be give pursuant to this Agreement must be in writing.
- (b) All notices, demands, and requests to be sent to any Manager or Member pursuant to this Agreement shall be deemed to have been properly given or served if addressed to such person at the address as it appears on the Company records and (i) personally delivered; (ii) deposited for next day delivery by Federal Express or other similar overnight courier services; (iii) deposited in the United States mail, prepaid and registered or certified with return receipt requested; or (iv) transmitted via telecopier or other similar device to the attention of such person with receipt acknowledged.
- (c) All notices, demands, and requests so given shall be deemed received; (i) when actually received, if personally delivered, deposited for next day delivery with an overnight courier or telecopied, or (ii) as indicated upon the return if deposited in the United States mail.
- (d) The Managers and Members shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses by delivering to the other parties written notice of such change in the manner prescribed in Section 12.3(b).
- (e) All distributions to any Member shall be made at the address at which notices are sent unless otherwise specified in writing by any such Member.

12.4 No Action. No Member shall have any right to maintain any action for partition with respect to the property of the Company.

12.5 Amendments. This Agreement or the Articles of Organization may only be amended or modified by a writing executed and delivered by each of the Members.

12.6 Governing Law; Arbitration. This Agreement is made in Winston-Salem, Forsyth County, North Carolina, and the rights and obligations of the Members hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of North Carolina. Any dispute arising out of or in connection with this Agreement or the breach thereof shall be decided by arbitration to be conducted in Forsyth County, North Carolina, in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association, and judgment thereof may be entered in any court having jurisdiction thereof.

12.7 Entire Agreement. This Agreement, including all schedules to this Agreement, as amended from time to time in accordance with the terms of this Agreement, contains the entire agreement among the parties relative to the subject matters hereof.

12.8 Waiver. No consent or waiver, express or implied, by any Member to or for any breach or default by any other Member in the performance by such other Member of his or its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Member of the same or any other obligations of such other Member under this Agreement. Failure on the part of any Member to complain of any act or failure to act of any of the other Members or to declare any of the other Members in default, regardless of how long such failure continues, shall not constitute a waiver by such Member of his or its rights hereunder.

12.9 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby, and the intent of this Agreement shall be enforced to the greatest extent permitted by law.

12.10 Binding Agreement. Subject to the restrictions on transferability set forth in this Agreement, this Agreement shall inure to the benefit of and be binding upon the undersigned Members and their respective legal representatives, successors and assigns.

12.11 Tense and Gender. Unless the context clearly indicates otherwise, the singular shall include the plural and vice versa. Whenever the masculine, feminine, or neuter gender is used inappropriately in this Agreement, this Agreement shall be read as if the appropriate gender was used.

12.12 Captions. Captions are included solely for convenience of reference and if there is any conflict between captions and the text of this Agreement, the text shall control.

12.13 Benefits of Agreement. Nothing in this Agreement expressed or implied, is intended or shall be construed to give to any creditor of the Company or any creditor of any Member or any other person or entity whatsoever, other than the Members and the Company, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions, or provisions herein contained, and such provisions are and shall be held to be for the sole and exclusive benefit of the Members and the Company.

12.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which when taken together shall constitute a single counterpart instrument. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument.

All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.

IN WITNESS WHEREOF, the undersigned, being the initial Managers and all of the Members of the Company, have caused this Agreement to be duly adopted by the Company as of the _____ day of _____ 20_____, and do hereby assume and agree to be bound by and to perform all of the terms and provisions set forth in this Agreement.

_____(SEAL)

_____(SEAL)

SCHEDULE I

List of Members:

Percent Ownership:

SCHEDULE II

List of Managers: