

FILED/EFFECTIVE

# ARTICLES OF AMENDMENT TO ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

(Instructions on back of application)



1. The name of the limited liability company is: Rutherford Holding LLC

2. The date the articles of organization were filed was: March 9, 2001

## COMPLETE ONLY THE APPLICABLE ITEMS

3. The name of the limited liability company is amended to read: \_\_\_\_\_

4. The latest date certain upon which the limited liability company will dissolve is amended to read: \_\_\_\_\_

5. The management of the limited liability company shall henceforth be vested in

☒ Manager(s) ☐ Members.

6. The information on managers/members shall be amended as follows:

| Name:             | Address:                 | Add:                                | Delete:                  | Other: |
|-------------------|--------------------------|-------------------------------------|--------------------------|--------|
| Carrie L. Tillman | Entity Services Group    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |        |
|                   | 103 Foulk Road, Ste. 200 | <input type="checkbox"/>            | <input type="checkbox"/> |        |
|                   | Wilmington, DE 19803     | <input type="checkbox"/>            | <input type="checkbox"/> |        |
|                   |                          | <input type="checkbox"/>            | <input type="checkbox"/> |        |
|                   |                          | <input type="checkbox"/>            | <input type="checkbox"/> |        |
|                   |                          | <input type="checkbox"/>            | <input type="checkbox"/> |        |

5.A: See Attachment A hereto amending Article 5A to the Articles of Organization.

7. Signature of at least one manager, if any, or at least one member.

*Neal Crispin*  
Neal Crispin

Capacity

President of Manager, CMA Capital Management, Inc.

Capacity

Capacity

Capacity

Secretary of State use only

IDAHO SECRETARY OF STATE

05/25/2001 09:00  
CK: 68689 CT: 1177 BM: 399219

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W14594

g:\comptons\l4\pm6 Ref: 697

**ATTACHMENT A TO ARTICLES OF AMENDMENT (SECOND) OF  
RUTHERFORD HOLDING LLC , AN IDAHO LIMITED LIABILITY COMPANY**

**ARTICLE 5A**

**A. Separateness; Operation Matters.** The Company shall not:

1. fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of Idaho, or without the prior written consent of all other beneficial owners (the "Owners") of the Rutherford Trust, an Idaho common law trust, pursuant to the terms of the Rutherford Trust Agreement and related documents entered into on or about May 24, 2001, by and between the Company or related entities, and Fleet National Bank ("FNB") in connection with the Rutherford Trust transaction (the "Transaction"), amend, modify, terminate or fail to comply with the provisions of these Amended and Restated Articles of Organization (the "Articles");
2. own any subsidiary (other than Rutherford LLC) or make any investment in or acquire the obligations or securities of any other person or entity without the consent of the Owners;
3. commingle its assets with the assets of any of its principal(s), affiliates, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in the and properly accounted for;
4. allow any person or entity to pay its debts and liabilities (except for a Guarantor (as defined below), or fail to pay its debts and liabilities solely from its own assets;
5. fail to maintain its records, books of account and bank accounts separate and apart from those of the partners, members, principals and affiliates of the Company, the affiliates of a partner or member of the Company and any other person;
6. enter into any contract or agreement with any member or Affiliate of the Company, or any Guarantor or any partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any partner, member, principal or affiliate or Guarantor of the Company, as the case may be;
7. fail to correct any known misunderstandings regarding the separate identity of the Company;
8. hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or creditworthiness for the debts of the Company;

9. fail to file its own tax returns, as may be required by law, or to use separate contracts, purchase orders, stationery, invoices and checks;

10. fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any partner, member, principal or affiliate of the Company or any partner, member, principal or affiliate thereof);

11. fail to allocate fairly and reasonably among the Company and any third party (including, without limitation, any Guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

12. allow any person or entity to pay the salaries of its own employees or managers, if any;

13. fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

14. share any common logo with or hold itself out as or be considered as a department or division of (i) any partner, principal, member or affiliate of the Company, (ii) any Affiliate of a partner, principal, member or affiliate of the Company, or (iii) any other person or entity or allow any person or entity to identify the Company as a department or division of that person or entity; or

15. conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Company or the creditors of any other person or entity;

16. make any loans or advances to any Guarantor, Affiliate or other person or entity; and

17. seek or consent to the dissolution or winding up, in whole or in part, of the Company, nor shall the Company merge with or be consolidated into any other entity or acquire by purchase or otherwise all or substantially all of the business assets of, or any stock or beneficial ownership of, any entity.

As used in this Article 5A, Section A, "Guarantors" shall mean CMA Capital Management, Inc., CMA Rutherford Corp., CMA Rutherford Idaho LLC, LIC Rutherford Idaho Corp., and LIC Rutherford LLC, pursuant to their respective guaranties delivered in favor of FNB under the Transaction.

**B. Effect of Bankruptcy, Death or Incompetency of a Member.** The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver,

executor, administrator, committee, guardian or conservator of such member shall have all the rights of such member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Company interest shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent member.

**C. Independent Manager.** Notwithstanding any other provisions of the Articles, so long as any duties and obligations of the Company, whether as guarantor of, party to or as an Affiliate (as defined in the Company's Operating Agreement) of a guarantor of or party to, the Transaction remain outstanding and not discharged in full, the Company shall have at least one (1) Independent Manager. "Independent" shall mean an individual who is not at the time of initial appointment and has not been at any time during the preceding five (5) years: (a) a stockholder, director, officer, employee, partner, attorney, counsel, Member, or Manager of the Company or any Affiliate; (b) a customer, supplier or other person who derives more than 10% of its purchases or revenues from its activities with the Company or its Affiliates; (c) a person or other entity controlling, controlled by or under common control with any such stockholder, partner, customer, supplier, Member, Manager, or other person, or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier, Member, Manager, or other person. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

An individual that otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Manager of the Company if such individual is at the time of initial appointment, or at any time while serving as an Independent Manager of the Company, an Independent Manager of an Affiliate or other related entities to the Transaction, whose organizational documents contain restrictions on the respective Affiliate or related entity's activities and impose requirements intended to preserve the respective entity, as applicable, and provide, inter alia, that it: (a) is organized for the limited purpose of owning and operating one or more properties; (b) has restrictions on its ability to incur indebtedness, dissolve, liquidate, consolidate, merge and/or sell assets; (c) may not file voluntarily a bankruptcy petition without the consent of the Independent Manager or Director and (d) shall conduct itself in accordance with certain "separateness covenants" substantially similar to those contained in Sections A and B to Article 5A of these Articles.

No Independent Manager may be removed unless his or her successor has been elected. No Independent Manager shall, with regard to any action to be taken under or in connection with this Article 5A, owe a fiduciary duty or other obligation to the initial member nor to any successor members (except as may specifically be required by the statutory law of any applicable jurisdiction). Instead, such Independent Manager's fiduciary duty and other obligations with regard to such action under or in connection with this Article 5A shall be owed to the Company (including its creditors). The initial members of the Company have consented to and approved this Section C of Article 5A, believing its provisions to be in the best interest of the initial

members and the Company, and every other member, including each successor member, shall consent to the foregoing by virtue of such member's purchase of a membership interest in the Company, no further act or deed of any member being required to evidence such consent.

**D. Amendments; Unanimous Consent.** Notwithstanding any other provisions of the Articles or Operating Agreement, so long as any duties and obligations of the Company, whether as guarantor of, party to or as an Affiliate of a guarantor of or party to the Transaction, remain outstanding and not discharged in full, without the unanimous consent of all members and Managers, the Company shall have no authority to amend, modify or alter any provisions set forth in Article 5A to the Articles of Organization.

**E. Bankruptcy; Consent of Independent Manager.** Without the consent of the Independent Manager, the Company shall not and shall have no authority to file or consent to the filing of any voluntary or involuntary bankruptcy or insolvency petition with respect to the Company or otherwise initiate or consent to proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as a debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or take any Company action in furtherance of any such action.

**F. Termination.** Notwithstanding the foregoing or any other provisions in the Operating Agreement, the provisions contained in Article 5A shall terminate and be of no further effect on the date that is one (1) month after the date of the termination of the Term Interest in the Rutherford Trust pursuant to the Transaction.