

**H11000123852**

Florida Department of State  
Division of Corporations  
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To: *Attn: Brenda (Supervisor)*  
Division of Corporations  
Fax Number : (850) 617-6380

*#98058.0221*

From:  
Account Name : TRIPP SCOTT, P.A.  
Account Number : 075350000065  
Phone : (954) 525-7500  
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**MERGER OR SHARE EXCHANGE**

**Bay Area Charter Foundation, LLC**

Certificate of Status	0
Certified Copy	1
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CC 30.00*

*90.00*

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## TRIPP SCOTT

Attorneys At Law  
A Professional Association

GREGORY A. McLAUGHLIN  
Direct Dial: 954.760.4925  
Email: garm@trippscott.com

April 28, 2011

**Via Facsimile 850-245-6030**

Brenda  
Division of Corporations  
Florida Department of State  
Tallahassee, FL

**RE: Merger of Bay Area Charter Foundation, Inc. ("Inc"), into  
Bay Area Charter Foundation, LLC ("LLC")**

Brenda:

I am following up on our telephone conversation this morning.

What we are trying to accomplish is to have the charter school contract presently in the name of Inc. be transferred to LLC. LLC is organized in a manner consistent with not-for-profit status and its articles of organization provide for all of the restrictions on its purposes, activities and distribution of assets that are consistent with a not-for-profit organization which holds a 501(c)(3) determination letter from the IRS. See Article IV of LLC's Articles of Organization.

LLC is a disregarded tax subsidiary entity of the Florida Charter Educational Foundation, Inc., a Florida not-for-profit corporation ("FCEF"). FCEF changed its name earlier this year and was formerly known as The Homestead Charter Foundation, Inc. A copy of the Articles of Incorporation for FCEF filed with your office is attached. FCEF holds a determination letter from the Internal Revenue Service that FCEF qualifies as a 501(c)(3) tax exempt organization. A copy of the IRS determination letter is attached.

LLC's Articles of Organization in Section 5.1 specifically state that its sole managing member shall be FCEF, a tax exempt not-for-profit corporation, and in Section 4.1 LLC's articles state that LLC's owners/members may only be organizations which are 501(c)(3) organizations. The IRS allows not-for-profit corporations which are 501(c)(3)s to control limited liability companies which are disregarded entities for federal income tax purposes and thereby take the parent corporation's 501(c)(3) status without

110 Southeast Sixth Street • Fifteenth Floor • Fort Lauderdale, Florida 33301

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April 28, 2011  
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the need to file for exempt status. See the attached IRS Private Letter Ruling 200150027; IRS General Counsel Information Letter: Info 2010-0052 dated March 15, 2010.

The intent is that FCEF will be the Florida statewide charter school parent holding company which holds the IRS determination letter for 501(c)(3) exempt status and then have subsidiary LLC's in different geographic areas around the state to operate individual charter schools. This avoids the need to file separate applications for exempt status for each school.

Fla. Stat. 617.1108(1) permits mergers of Florida not-for-profit corporations into other business entities consistent with Fla. Stat. 607.1108. Your office expressed concern that 617.1102 would prevent the merger. However, Fla. Stat. 617.1102 at the end states the test in the alternative: the surviving entity must either be "...organized as a not-for-profit under a governing statute or other applicable law allows such a merger". The legislature would not have provided for the 617.1108 merger statute for other business entities if a merger in the manner we propose was not permitted. The "other applicable law" is Fla. Stats. 617.1108, 608.471 and the applicable provisions of the federal income tax law regarding 501(c)(3)'s and disregarded entities.

Please confirm that your office is prepared to accept filing of the articles of merger between Inc. and LLC. If you have any further questions please contact me.

Best regards,



Greg McLaughlin  
For the Firm

Enclosures

ARTICLES OF MERGER  
(Plan of Merger Attached)

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of

BAY AREA CHARTER FOUNDATION, INC.

with and into

BAY AREA CHARTER FONDATION, LLC

Pursuant to the applicable provisions of Sections 617.1101-617.1108 of the Florida Not For Profit Corporation Act ("Florida Not for Profit Act"), and the applicable provisions of Sections 607.1108, 607.1109, and 607.11101 of the Florida Business Corporation Act ("Florida Act") each of Bay Area Charter Foundation, Inc., a Florida not-for-profit corporation (the "Merging Corporation") and pursuant to the applicable provisions of Sections 606.438-608.4383 of the Florida Limited Liability Company Act (the "Florida LLC Act"), Bay Area Charter Foundation, LLC, a Florida limited liability company (the "Surviving Company") adopts the following Articles of Merger (the "Articles") and certifies as follows:

1. Bay Area Charter Foundation, Inc., 6245 N. Federal Highway, 5<sup>th</sup> Floor, Fort Lauderdale, FL 33308; FEI Number: None; Florida Document Number: N11000001710.
2. Bay Area Charter Foundation, LLC, 6245 N. Federal Highway, 5<sup>th</sup> Floor, Fort Lauderdale, FL 33308; FEI Number: None; Florida Document Number: L11000049574.
3. A Plan of Merger, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A" (the "Plan"), has been approved and adopted by (i) the Merging Corporation in accordance with Section 617.1105 of the Florida Not-for-Profit Act, and (ii) the Surviving Company in accordance with Section 608.4381 of the Florida LLC Act. The Plan provides for the merger (the "Merger") of the Merging Corporation into the Surviving Company, with the Surviving Company being the surviving entity in the Merger.
4. The Plan was (i) recommended, approved, and adopted by the sole member of the Merging Corporation on April 21, 2011, and (ii) recommended, approved, and adopted by the sole managing member of the Surviving Company on April 21, 2011.
5. The effective date of the Merger shall be the date on which these Articles of Merger are filed with the Florida Department of State.
6. A copy of the executed Plan shall be on file at the principal office of the Surviving Company located at 6245 N. Federal Highway, 5<sup>th</sup> Floor, Fort Lauderdale, FL 33308.

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7. The Surviving Company shall be responsible for the payment of all fees of the Merging Corporation and will be obligated to pay such fees if same are not timely paid.
8. The Merger is not prohibited by any regulation or the Articles of Organization of the Surviving Company.

**IN WITNESS WHEREOF**, the parties hereto have caused these Articles of Merger to be executed this 3rd day of May, 2011 by each of their duly authorized representatives.

**BAY AREA CHARTER FOUNDATION, INC.**  
as the Merging Corporation

By: Ken Haiko  
Name: Ken Haiko  
Title: Director and President

**BAY AREA CHARTER FOUNDATION, LLC,**  
as the Surviving Company

By: The Florida Charter Educational  
Foundation, Inc., its sole managing member

By: Ken Haiko  
Name: Ken Haiko  
Title: President

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**EXHIBIT "A"**

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**Plan of Merger**

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## PLAN OF MERGER

This Plan of Merger (the "Plan"), having been approved and adopted on April 21, 2011 by Bay Area Charter Foundation, Inc., a Florida not-for-profit corporation (the "Merging Corporation") in accordance with the applicable provisions of Sections 617.1101-617.1108 of the Florida Not for Profit Act, and 607.1108, 607.1109, and 607.11101 of the Florida Act (as such terms are described in the Articles of Merger), and on April 21, 2011 by Bay Area Charter Foundation, LLC, a Florida limited liability company (the "Surviving Company"), in accordance with the applicable provisions of Sections 608.438-608.4383 of the Florida LLC Act (as such term is described in the Articles of Merger), pertains to the merger of the Merging Corporation with and into the Surviving Company (the Merging Corporation and the Surviving Company shall be collectively referred to hereinafter as, the "Constituent Entities").

## RECITALS

A. The Board of Directors of the Merging Corporation, and the sole member of the Surviving Company have determined that it is advisable and in the best interest of the Constituent Entities, that the Merging Corporation be merged (the "Merger") with and into the Surviving Company on the terms and subject to the conditions set forth herein.

B. The Surviving Company was organized in the State of Florida on the 21<sup>st</sup> day of April, 2011 and shall be the Surviving Company in the Merger. A copy of the Surviving Company's Articles of Organization is attached hereto as Exhibit "A".

C. The Merging Corporation was incorporated in the State of Florida on the 17<sup>th</sup> day of February, 2011 under the name Bay Area Charter Foundation, Inc. and shall be the merging corporation in the Merger.

## ARTICLE I The Merger

At the Effective Time (as defined in Article II(A) hereof), the Merging Corporation shall be merged with and into the Surviving Company in accordance with the Florida Act, and the separate existence of the Merging Corporation shall cease and the Surviving Company shall thereafter continue as the surviving entity under the laws of the State of Florida.

A. At the Effective Time, the Articles of Organization and the Operating Agreement of the Surviving Company, as in effect immediately prior to the Effective Time, shall be the Articles of Organization and the Operating Agreement of the Surviving Company.

B. At the Effective Time, the Managing Member of the Surviving Company shall be the Managing Member of the Surviving Company.

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**ARTICLE II**  
**Effect of Merger**

A. The effective time of the Merger (the "Effective Time") shall be the date on which the Articles of Merger are filed with the Florida Department of State.

B. At the Effective Time, all property, rights, privileges, powers and franchises of the Merging Corporation shall vest in the Surviving Company, and all debts, liabilities, duties, and obligations of the Merging Corporation shall become liabilities, duties, and obligations of the Surviving Company.

**ARTICLE III**  
**Miscellaneous**

A. A copy of the executed Plan shall be on file at the principal office of the Surviving Company located at 6245 N. Federal Highway, 5<sup>th</sup> Floor, Fort Lauderdale, FL 33308.

B. A copy of the Plan will be furnished by the Surviving Company, upon written request and without cost, to any director, trustee or member of the corporation or limited liability company that is a party to the Merger.

C. Upon and as of the Effective Time of the Merger, any membership interest in the Corporation shall cease to be outstanding and any such membership interest shall be converted into a membership interest in the Surviving Company.

D. Promptly after the Merger, the management of the Surviving Company shall cause to be issued to the sole member of the Surviving Company, its membership interest in the Surviving Company.

E. The name and address of the managing member of the Surviving Company is:

The Florida Charter Educational Foundation, Inc.  
6245 N. Federal Highway, 5<sup>th</sup> Floor  
Fort Lauderdale, FL 33308

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**EXHIBIT "A"**

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**Articles of Organization of the Surviving Company**

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# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Organization of BAY AREA CHARTER FOUNDATION, LLC, a limited liability company organized under the laws of the state of Florida, filed on April 21, 2011, as shown by the records of this office.

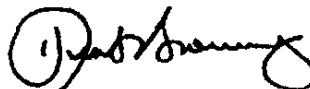
I further certify the document was electronically received under FAX audit number H11000106998. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this limited liability company is L11000049574.

Authentication Code: 811A00010193-042711-L11000049574-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Twenty-seventh day of April, 2011





Kurt S. Browning  
Secretary of State

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April 27, 2011

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

BAY AREA CHARTER FOUNDATION, LLC  
6245 N. FEDERAL HWY, 5TH FLOOR  
FORT LAUDERDALE, FL 33308

The Articles of Organization for BAY AREA CHARTER FOUNDATION, LLC were filed on April 21, 2011, and assigned document number L11000049574. Please refer to this number whenever corresponding with this office.

The certification you requested is enclosed. To be official, the certification for a certified copy must be attached to the original document number that was electronically submitted and filed under FAX audit number H11000106998.

To maintain "active" status with the Division of Corporations, an annual report must be filed yearly between January 1st and May 1st beginning in the year following the file date or effective date indicated above. If the annual report is not filed by May 1st, a \$400 late fee will be added. It is your responsibility to remember to file your annual report in a timely manner.

A Federal Employer Identification Number (FEI/EIN) will be required when this report is filed. Contact the IRS at 1-800-829-4933 for an SS-4 form or go to [www.irs.gov](http://www.irs.gov).

Please be aware if the limited liability company address changes, it is the responsibility of the limited liability to notify this office.

Should you have any questions regarding this matter, please contact this office at the address given below.

Karen A Saly  
Regulatory Specialist II  
Regulatory/Qualification Section  
Division of Corporations

Letter Number: 811A00010193

P.O BOX 6327 - Tallahassee, Florida 32314

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**ARTICLES OF ORGANIZATION  
OF  
BAY AREA CHARTER FOUNDATION, LLC**

**THE UNDERSIGNED**, as organizer and on behalf of a limited liability company under the laws of the State of Florida, does hereby subscribe to and file these Articles of Organization.

**ARTICLE I  
NAME**

Section 1.1. The name of this limited liability company is:

BAY AREA CHARTER FOUNDATION, LLC

**ARTICLE II  
ADDRESS**

Section 2.1. The mailing address and street address of the principal office of the Company is:

6245 N. Federal Highway, 5th Floor  
Fort Lauderdale, FL 33308

**ARTICLE III  
REGISTERED AGENT, REGISTERED OFFICE AND REGISTERED  
AGENT'S SIGNATURE**

Section 3.1. The name and the Florida street address of the registered agent is:

Edward J. Pozzuoli, Esq.  
Tripp Scott, P.A.  
110 SE 6th Street, 15th Floor  
Fort Lauderdale, FL 33301

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S.

  
Edward J. Pozzuoli, Esq.  
Registered Agent

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#### ARTICLE IV PURPOSE

Section 4.1. The purposes for which the Company is organized is to assist with the establishment, development and administration of charter schools, and to make grants to further elementary, middle and high school educational programs and facilities and other capital needs for such schools providing elementary, middle and high school educational programs through charter schools, and other charitable activities and to distribute the whole or any part of the income therefrom and the principal thereof exclusively for such purposes, either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and the Regulations issued pursuant thereto (the "Code"), as they now exist or as they may hereafter be amended.

Section 4.2. The Company shall have the power, either directly or indirectly, either alone or in conjunction or cooperation with others, to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which a Company is organized, and to aid or assist other organizations whose activities are such as to further accomplish, foster or attain any of such purposes. Notwithstanding anything herein to the contrary, the Company shall exercise only such powers as are in furtherance of the exempt purposes of its member or organizations as set forth in Section 501(c)(3) of the Code as the same now exist or as it may be hereinafter amended from time to time.

Section 4.3. No part of the net earnings of the Company shall inure to the benefit of, or be distributable to, any Manager or Officer of the Company or any other private individual (except that reasonable compensation may be paid for services rendered to or for the Company affecting one or more of its purposes); and no Manager or Officer of the Company, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Company.

Section 4.4. No substantial part of the activities of the Company shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Company shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition of any candidate for public office.

Section 4.5. The Company shall distribute its income for each taxable year at such time and in such manner as not to become subject to tax on undistributed income imposed by Section 4942 of the Code or corresponding provisions of any subsequent federal tax laws.

Section 4.6. The Company shall not distribute any of its assets to any Member who ceases to be an organization exempt from taxation under Section 501(c)(3) of the Code.

Section 4.7. The Company shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code or corresponding provisions of any subsequent federal tax laws.

Section 4.8. The Company shall not retain any excess business holdings as defined in Section 4943(c) of the Code or corresponding provisions of any subsequent federal tax laws.

Section 4.9. The Company shall not make any investments in such manner as to subject it to tax under Section 4944 of the Code or corresponding provisions of any subsequent federal tax laws.

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Section 4.10. The Company shall not make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent federal tax laws.

Section 4.11. The Company, interests in the Company (other than membership interest), or the assets of the Company may only be availed of or transferred to (whether directly or indirectly) any nonmember other than an organization exempt from taxation under Section 501(c)(3) of the Code in exchange for fair market value.

Section 4.12. Notwithstanding any other provision of these Articles of Incorporation, the Company shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Code or by an organization contributions to which are deductible under Section 170(c)(2) of the Code.

Section 4.13. Upon the dissolution of the Company, the Board of Managers shall, after paying or making provision for the payment of all of the liabilities of the Company, dispose of all of the assets of the Company to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes, as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provisions of any future United States Internal Revenue Law), as the Board of Managers shall determine. Any of such assets not so disposed of shall be disposed of by the court having proper jurisdiction in the county where the principal office of the Company is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

## ARTICLE V MEMBERS

Section 5.1. This Company shall have a membership consisting solely of organizations exempt from taxation under Section 501(c)(3) of the Code.

Section 5.2. The direct or indirect transfer of any membership interest in the Company to a transferee other than an organization exempt from taxation under Section 501(c)(3) of the Code is expressly prohibited.

Section 5.3. In the event one or more Members ceases to be an organization exempt from taxation under Section 501(c)(3) of the Code, such Member's interest in the Company shall be forfeited and its rights in the Company shall be fully terminated within ninety (90) days from the date such Member's exemption is revoked.

Section 5.4. The Members of the Company will expeditiously and vigorously enforce all of their rights in the Company and will pursue all legal and equitable remedies to protect their interests in the Company.

## ARTICLE VI MANAGEMENT

Section 6.1. The affairs of the Company shall be governed by a managing member (hereinafter referred to as the "Managing Member").

Section 6.2. The Initial Managing Member shall be :

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~~H11000106998~~

Title

Name and Address

MGRM

The Florida Charter Educational  
Foundation, Inc.  
6245 N. Federal Highway, 5th Floor  
Fort Lauderdale, FL 33308

**ARTICLE VII  
AMENDMENTS**

Section 7.1. These Articles of Organization may be amended in the manner and with the vote provided by law and Section 501(c)(3) of the Code.

Section 7.2. The Company shall not merge with, or convert into, a for-profit entity.

**ARTICLE VIII  
OPERATING AGREEMENT AND BYLAWS**

Section 8.1. The Members of this Company shall adopt an Operating Agreement and Bylaws for the government of this Company which shall be subordinate only to the Articles of Organization and the laws of the United States and the State of Florida. The Operating Agreement and Bylaws may be amended from time to time by the Members in the manner and with the vote provided by law and Section 501(c)(3) of the Code.

Section 8.2. The Operating Agreement may be amended in the manner and with the vote provided by law and Section 501(c)(3) of the Code.

Section 8.3. All of the Company's organizing documents, including these Articles of Organization, the Operating Agreement and the Bylaws shall be consistent with the laws of the State of Florida, and are enforceable at law and in equity.

**REQUIRED SIGNATURE:**

  
Name: Edward J. Pozzoli, Esq.  
Authorized Representative of the Members

(In accordance with Section 608.408(3), Florida Statutes, the execution of this document constitutes an affirmation under penalties of perjury that the facts stated herein are true.)

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**CONSENT TO USE OF NAME**

I, Ken Haiko, as Director and President of Bay Area Charter Foundation, Inc., a Florida corporation not-for-profit, consent to allow the name Bay Area Charter Foundation to be used by BAY AREA CHARTER FOUNDATION, LLC, a Florida limited liability company, for use as a domestic limited liability company in Florida.

Dated: April 20, 2011

**BAY AREA CHARTER FOUNDATION,  
INC.,** a Florida corporation not-for-profit

In the presence of:

  
Printed Name: Suzanne M. Delaney

By:   
Name: Ken Haiko  
Title: Director and President

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