

m 980000001430

ANDREWS & KURTH

L.L.P.

ATTORNEYS

1717 MAIN STREET

SUITE 3700

DALLAS, TEXAS 75201

OTHER OFFICES:
HOUSTON
WASHINGTON, D.C.
LOS ANGELES
NEW YORK
THE WOODLANDS
LONDON

TELEPHONE: (214) 659-4400
TELECOPIER: (214) 659-4401

October 30, 1998

VIA FEDERAL EXPRESS

Registration Section
Division of Corporations
403 E. Gaines Street
Tallahassee, FL 32399

400002677774--4
-11/02/98--01073--011
***293.75 ***293.75

RE: Application by Foreign Limited Liability Company for Authorization to Transact
Business in Florida on behalf of American Commercial Capital LLC ("ACC")

Dear Sir or Madam:

Please find enclosed for filing the following:

1. Duplicate originals of Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida executed by ACC;
2. Duplicate originals of Certificate of Designation of Registered Agent/Registered Office executed by Randy A. Shelley, Assistant Secretary of C T Corporation System;
3. Original Certificate of Existence and Good Standing dated October 20, 1998, issued by the Secretary of State of Delaware with respect to ACC; and
4. Our check in the sum of \$293.75, representing \$250.00 filing fee, \$35.00 Designation of Registered Agent filing fee; and \$8.75 Certificate of Status.

FILED
98 DEC -1 PM 1:40
TALLAHASSEE, FLORIDA

| | |
|--------------------|--|
| Name | 11/1/98 |
| Availability | 11/1/98 |
| Document | undersigned collect at direct dial (214) 659-4553. |
| Examiner | DCC |
| Updater | Best regards, DCC |
| Updater | Eileen Frank DCC |
| Verifier | Eileen Frank DCC |
| Legal Assistant to | Mark W. Harris |
| Enclosures | DCC |

After filing, please forward the letter of acknowledgment and Certificate of Status to the undersigned at the above address. Should you have any questions, please contact the undersigned collect at direct dial (214) 659-4553.

Best regards,

Eileen Frank

Legal Assistant to Mark W. Harris

Enclosures

12 pg

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ANDREWS & KURTH L.L.P.

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WASHINGTON, D.C.
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THE WOODLANDS
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1717 MAIN STREET, SUITE 3700
DALLAS, TEXAS 75201

TELEPHONE: 214.659.4400
FACSIMILE: 214.659.4401

December 3, 1998

VIA FEDERAL EXPRESS

Registration Section
Division of Corporations
403 E. Gaines Street
Tallahassee, FL 32399

Attention: Diane Cushing
Corporate Specialist

RE: Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida on behalf of American Commercial Capital LLC ("ACC") - Letter Number: 298A00053773

Dear Ms. Cushing:

In response to your letter dated November 4, 1998, a copy of which is enclosed for your convenience, please find enclosed the following:

1. Resolution of Managing Members or Managers executed by James Kendrick Noble III, Managing Director, adopting the alternate name "American (FL) Commercial Capital LLC";
2. Affidavit of Membership and Contribution of Foreign Limited Liability Company executed by James Kendrick Noble III, Managing Director, reflecting \$750,000.00 cash; \$1,305,000 value other than cash contributed by members, for a total of \$2,055,000.00, together with (i) Chart showing Membership Interest and Capital Contributions of Members and (ii) description of the agreed value of other than cash contributed by members; and
3. Written description of services.

This should satisfy the requirements of the Affidavit. After filing, please forward the letter of acknowledgment and Certificate of Status to the undersigned at the above address.

Should you need further information, we respectfully request that you call the undersigned **COLLECT** at (214) 659-4553.

Best regards,


Eileen Franks
Legal Assistant to Mark W. Harris

Enclosures



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

November 4, 1998

EILEEN FRANKS
C/O ANDREWS & KURTH
1717 MAIN STREET, SUITE 3700
DALLAS, TX 75201

SUBJECT: AMERICAN COMMERCIAL CAPITAL LLC
Ref. Number: W98000025009

We have received your document for AMERICAN COMMERCIAL CAPITAL LLC and your check(s) totaling \$293.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

The name designated in your document is not available. Therefore, the limited liability company must adopt an alternate name for use in the state of Florida. To adopt an alternate name the entity must submit a resolution signed by a managing member or manager adopting the alternate name for use in the state of Florida. The alternate name must end with "L.L.C.," "L.C.," "Limited Liability Company" or "Limited Company."

You must provide this office with the agreed value and a written description of the property and/or services you refer to in your affidavit. You may amend your affidavit to include this description or include an attachment.

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

If you have any questions concerning the filing of your document, please call (850) 487-6913.

Diane Cushing
Corporate Specialist

Letter Number: 298A00053773

RESOLUTION OF MANAGING MEMBERS OR MANAGERS

FILED
98 DEC - 1 PM 1:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

I, the undersigned James Kendrick Noble III
(Name)

do hereby certify that this Resolution of the Managing Members or Managers of

American Commercial Capital LLC

(Name of Limited Liability Company)

a limited liability company duly organized and existing under the laws of the State of

Delaware

, was duly adopted on November 4, 1998 ~~11/15/98~~

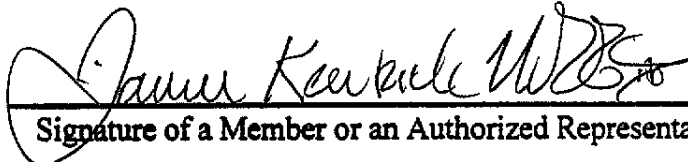
Be it resolved, that American Commercial Capital LLC

(Name of Limited Liability Company)

organized and existing in the state of Delaware, hereby adopts the

name of AMERICAN (FL) COMMERCIAL CAPITAL LLC for use in Florida.

Dated: November 30, 1998


Signature of a Member or an Authorized Representative of a Member

JAMES KENDRICK NOBLE III

1/16/98

**APPLICATION BY FOREIGN LIMITED LIABILITY COMPANY FOR AUTHORIZATION TO
TRANSACTION BUSINESS IN FLORIDA**

IN COMPLIANCE WITH SECTION 608.503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A FOREIGN LIMITED LIABILITY COMPANY TO TRANSACTION BUSINESS IN THE STATE OF FLORIDA:

1. AMERICAN COMMERCIAL CAPITAL LLC
(Name of foreign limited liability company must end with the words "limited company" or their abbreviation "L.C." if not so contained in the name at present.)
2. DELAWARE 3. 74-2875584
(Jurisdiction under the law of which foreign limited liability company is organized) (FEI number, if applicable)
4. Delaware 5. Perpetual
(Date of Organization) (Duration: Year limited liability company will cease to exist or "perpetual")
6. Transacting no business until Authorization is approved.
(Date first transacted business in Florida. (See sections 608.501, 608.502, and 817.155, F.S.))
7. 5963 LaPlace, Suite 300, Carlsbad, CA 92008
- _____
(Street address of principal office)

8. List name, title, and business address of each managing member[MGRM] or manager[MGR] who will manage the foreign limited liability company in Florida: (attach additional page if necessary)

| NAME & ADDRESS: | TITLE: | NAME & ADDRESS: | TITLE: |
|-----------------|--------|-----------------|--------|
|-----------------|--------|-----------------|--------|

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

| | | | |
|-------|-------|-------|-------|
| _____ | _____ | _____ | _____ |
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| _____ | _____ | _____ | _____ |

9. Attached is an original certificate of existence, no more than 90 days old, duly authenticated by the Secretary of State or the proper official having custody of records in the state under the law of which it is organized. (A photocopy is not acceptable. If the certificate is in a foreign language, a translation of the certificate under oath of the translator must be submitted.)

EXHIBIT A

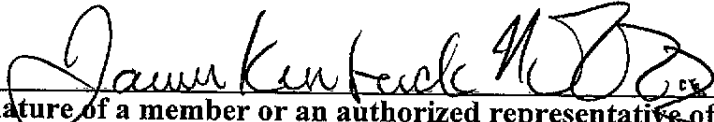
**AMERICAN COMMERCIAL CAPITAL LLC
Board of Managers**

| <u>Name and Address</u> | <u>Title</u> |
|--|---|
| Adolf John Banu 277 Park Avenue New York, New York 10172 | Manager |
| Marc Keith Furstein 5963 LaPlace Court, Suite 300 Carlsbad, CA 92008 | Managing Director and Co-Head of Operations and Administration |
| Glenn Scott Goldman 277 Park Avenue New York, New York 10172 | Manager |
| Scott Michael Mannes 277 Park Avenue New York, New York 10172 | Manager |
| James Kendrick Noble III 5963 LaPlace Court, Suite 300 Carlsbad, CA 92008 | Managing Director and Co-Head of Operations and Administration |
| John Richard Shrewsberry 5963 LaPlace Court, Suite 300 Carlsbad, CA 92008 | Managing Director and Head of Capital Markets |
| William Vincent Trefethen 5963 LaPlace Court, Suite 300 Carlsbad, CA 92008 | Managing Director and Head of Origination |
| Michael Paul Valentino 277 Park Avenue New York, New York 10172 | Manager |

**AFFIDAVIT OF MEMBERSHIP AND CONTRIBUTIONS OF FOREIGN
LIMITED LIABILITY COMPANY**

The undersigned member or authorized representative of a member of AMERICAN COMMERCIAL CAPITAL LLC
d/b/a American (FL) Commercial Capital LLC/in Florida. Certifies:

- 1) the above named liability company has at least one member;
- 2) the total amount of cash contributed by the member(s) is \$ 750,000;
- 3) if any, the agreed value of property other than cash contributed by member(s) is \$ 1,305,000;
(A description of the property is attached and made a part hereto.)
and
- 4) the total amount of cash and property contributed and anticipated to be contributed
by member(s) is \$ 2,055,000.
(This total includes amounts from 2 and 3 above.)



Signature of a member or an authorized representative of a member.
(In accordance with section 608.408(3), Florida Statutes, the execution of this
affidavit constitutes an affirmation under the penalties of perjury that the facts
stated herein are true.)

FILED
98 DEC -1 PM 1:40
STATE
TALLAHASSEE
FLORIDA

JAMES KENDRICK NOBLE III, Managing Director

Typed or printed name of signee

Filing Fee: \$250.00 for Application and Affidavit

The names, business addresses and Membership Interests and Capital Contributions of the Members as of May 15, 1998 are set forth below.

| <u>Date</u> | <u>Name and Address</u> | <u>Capital Contribution</u> | <u>Percentage of Nonvoting Preferential Return Membership Interests</u> | <u>Percentage of Class A-1 Membership Interests Held</u> | <u>Percentage of Class A-2 Membership Interests Held</u> | <u>Number of Class A-2 Membership Units Held</u> |
|--------------|---|---|---|--|--|--|
| May 15, 1998 | ContiFinancial Corporation 277 Park Avenue New York, NY 10172 | With respect to Class A-1 Membership Units: \$520,000 contributed as of the date hereof. With respect to Nonvoting Preferential Return Membership Interests: \$750,000 to be contributed at a future date. | 100% | 100% | 0% | 0 |
| May 15, 1998 | ARCC Partners LLC 5963 La Place Court Suite 300 Carlsbad, CA 92008 | \$785,400 contributed as of the date hereof. | 0% | 0% | 100% | 885,000 |

| ContiFinancial Corporation (through its affiliate ContiTrade Services LLC) | |
|---|--|
| Item | Description/Deviation |
| CTS LLC Legal Fees | CTS LLC has incurred outside counsel fees (Dewey Ballentine LLC) for the establishment of the Warehouse, Standby, and Working Capital Facilities which are typically paid by the borrower which in this case is ACC |
| CTS LLC Commitment Fees | CTS LLC has waived the following commitment fees which are typically charged to the borrower which in this case is ACC. The fees were calculated as follows: 25 bps on the warehouse of \$150mm, 50 bps on the \$5mm Standby Facility, 50 bps of the \$4.5mm Working Capital Facility and 100 bps on the Preferred Stock.. |
| ARCC Partners | |
| ACC legal Fees | The outside counsel fees that were not necessary due to the legal services for ACC provided by one of the ARCC managers, James Kendrick Noble III (Rick), former partner at the law firm of Battle Fowler. |
| Recruiting Fees | The recruiting fees (equal to 30% of first year compensation) to executive search firms that were not necessary due to the employees (excluding the three original principals) working for the Company prior to CFN's investment |
| Pipeline | Represents a discounted agency fee of 3% for 10% of pipeline principal balance prior to CFN's investment |

BUSINESS PLAN

The plan of business of American Commercial Capital LLC, a Delaware limited liability company ("ACC") is to originate, securitize and service commercial loans to operators of branded businesses and to owners of real property upon which such businesses operate. ACC also intends to broker commercial loans, including senior and subordinated/mezzanine loans, and floating and fixed rate loans. Initially, the primary focus of ACC's origination will be on franchises of national and regional restaurant and automotive aftermarket franchise systems. In the near term, ACC expects to also focus its origination efforts on owners and operators of gas stations, convenience stores and truck stops.

**CERTIFICATE OF DESIGNATION OF
REGISTERED AGENT/REGISTERED OFFICE**

PURSUANT TO THE PROVISIONS OF SECTION 608.415 or 608.507, FLORIDA STATUTES, THE UNDERSIGNED LIMITED LIABILITY COMPANY SUBMITS THE FOLLOWING STATEMENT TO DESIGNATE A REGISTERED OFFICE AND REGISTERED AGENT IN THE STATE OF FLORIDA.

1. The name of the Limited Liability Company is:

AMERICAN COMMERCIAL CAPITAL LLC

2. The name and the Florida street address of the registered agent and office are:

C T CORPORATION SYSTEM

(Name)

1200 SOUTH PINE ISLAND ROAD

Florida street address (P.O. Box NOT ACCEPTABLE)

PLANTATION

FL

33324

City/State/Zip

FILED
98 DEC -1 PM 1:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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.

Randy A. Shelley

(Signature)

Randy A. Shelley, Assistant Secretary

Filing Fee: \$ 35 for Designation of Registered Agent

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "AMERICAN COMMERCIAL CAPITAL LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTIETH DAY OF OCTOBER, A.D. 1998.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

FILED
98 DEC -1 PM 1:40
SECRETARY OF STATE
TALLAHASSEE, FLORIDA



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION:

2871989 8300

DATE: 9362562

981403707

10-20-98