§ 57D-1-03. Definitions.

Unless otherwise specifically provided, the following definitions apply in this Chapter:

(1) Approve. – With respect to a manager or other company official, member, or organizer and a decision or other action to be taken by the managers or other applicable company officials, members, or organizers, as the case may be, (i) the affirmative vote of that person at a meeting of the managers or other applicable company officials, members, or organizers, as applicable, or (ii) any other expression of assent to the action to be taken that is made in the manner or form required to establish the assent of the members to amendments of the operating agreement.

(2) Articles of organization. – The document filed under G.S. 57D-2-20 (or former G.S. 57C-2-20 for LLCs formed before January 1, 2014), for the purpose of forming an LLC, as amended or restated.

(3) Business. – Any lawful trade, investment, or other purpose or activity, whether or not conducted or undertaken for profit, except that the term "business," as used in Article 7 of this Chapter, or to which reference is otherwise made in this Chapter to a foreign LLC "transacting business" (or is authorized or required to be authorized to "transact business") in this State, has the same meaning in that context as applied in Article 15 of Chapter 55 of the General Statutes.

(4) Capital interest. – An interest owner's interest in or share of the owners' equity of the LLC which may be based on the method of accounting consistently applied under which the LLC maintains its financial records to be made available to the members under G.S. 57D-3-04(a)(2).

(5) Company official. – Any person exercising any management authority over the limited liability company whether the person is a manager or referred to as a manager, director, or officer or given any other title.

(6) Contribution amount. – The fair market value, net of liabilities assumed (or to which any property contributed to the LLC is subject, but not in excess of the fair market value of the property that is subject to the liability), or other consideration paid by the LLC, of contributions in any form described in G.S. 57D-4-01 made in respect of an economic interest, determined as of the time the contribution is made, reduced by any money or other property or services promised to be transferred or rendered to or on behalf of the LLC in respect of the economic interest that are discharged without performance.

(7) Corporation. – A domestic corporation or a foreign corporation as those terms are defined in G.S. 55-1-40.

(8) Debtor in bankruptcy. – A person who is the subject of either of the following:

a. An order for relief under Title 11 of the United States Code or a successor statute of general application.

b. A comparable order under federal, State, or foreign law governing insolvency.

(9) Distribution. – Except as provided in the last sentence of this definition of distribution with respect to G.S. 57D-4-05, 57D-4-06, and 57D-6-12, the direct or indirect transfer of money or other property to, or incurrence of indebtedness by, an LLC for the benefit of an interest owner in respect of the interest owner's ownership interest. The amount of a distribution is the fair market value of the property distributed, net of liabilities assumed, or other consideration paid by the interest owner (or to which any property

distributed to the interest owner is subject, but not in excess of the fair market value of the property that is subject to the liability), determined as of the time the distribution is made. As used in G.S. 57D-4-05, 57D-4-06, and 57D-6-12, "distribution" does not include payments made to, or an account of, an interest owner that constitute compensation for services and does not include payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

(10) Economic interest. – The proprietary interest of an interest owner in the capital, income, losses, credits, and other economic rights and interests of a limited liability company, including the right of the owner of the interest to receive distributions from the limited liability company.

(11) Economic interest owner. – A person who owns an economic interest but is not a member.

(12) Entity. – A corporation, limited liability company, partnership (including a limited partnership), unincorporated association, trust, estate, government or governmental agency, instrumentality, or other entity.

(13) Foreign LLC. – An unincorporated entity organized under the law of (i) a state other than this State that is denominated thereunder as a limited liability company or (ii) a foreign jurisdiction other than a state, and the statute under which it is organized is substantially similar to the limited liability company statute of any state and is not more appropriately characterized as a corporation, partnership, or trust.

(14) Individual. – A human being.

(15) Interest owner. – A member or an economic interest owner.

(16) Liabilities, debts, and obligations. – Have the same meaning and are used interchangeably throughout this Chapter. Reference to "liabilities," "debts," or "obligations," whether individually or in any combination, means all liabilities, debts, and obligations, whether arising in contract, tort, or other applicable law.

(17) Limited liability company. – An LLC or foreign LLC.

(18) Limited partnership. – A domestic limited partnership or a foreign limited partnership as those terms are defined in G.S. 59-102.

(19) LLC. – An entity formed under this Chapter (or former Chapter 57C of the General Statutes) that has not become another entity or form of entity by merger, conversion, or other means.

(20) Manager. – Has the following meanings: (i) with respect to an LLC, any person designated as a manager as provided in the operating agreement or, if applicable, in G.S. 57D-3-20(d) and (ii) with respect to a foreign LLC, any person designated as a manager under the law of the jurisdiction in which the foreign LLC is organized.

(21) Member. – A person who has been admitted as a member of the LLC as provided in the operating agreement or G.S. 57D-3-01, who was a member of the LLC immediately before the repeal of Chapter 57C of the General Statutes until the person ceases to be a member as provided in the operating agreement or G.S. 57D-3-02, or, with respect to a foreign LLC, a person who has been admitted as a member of the foreign LLC under the law of the jurisdiction in which the foreign LLC is organized until the person ceases to be a member under that law.

(22) Nonprofit corporation. – A domestic corporation or a foreign corporation as those terms are defined in G.S. 55A-1-40.

(23) Operating agreement. – Any agreement concerning the LLC or any ownership interest in the LLC to which each interest owner is a party or is otherwise bound as an interest owner. Subject to other controlling law, the operating agreement may be in any form, including written, oral, or implied, or any combination thereof. The operating agreement may specify the form that the operating agreement must take, in which case any purported amendment to the operating agreement or other agreement expressed in a nonconforming manner will not be deemed to be part of the operating agreement and will not be enforceable to the extent it would be part of the operating agreement if it were in proper form. Subject to G.S. 57D-2-21 and the other provisions of this Chapter governing articles of organization, the articles of organization are to be deemed to be, or be part of, the operating agreement. If the LLC has only one interest owner and no operating agreement to which another person is a party, then any document or record intended by the interest owner to serve as the operating agreement will be the operating agreement.

(24) Organizer. – A person who executes the articles of organization in the capacity of an organizer.

(25) Ownership interest. – All of an interest owner's rights and obligations as an interest owner in an LLC, including (i) any economic interest, (ii) any right to participate in the management or approve actions proposed by persons responsible for the management of the LLC, (iii) any right to bring a derivative action, and (iv) any right to inspect the books and records of or receive information from the LLC.

(26) Person. – An individual or an entity.

(27) Principal office. – The principal executive office of the limited liability company as stated in its most recent annual report filed by the Secretary of State or, if the limited liability company has never filed an annual report, in its articles of organization or application for a certificate of authority.

(28) Proceeding. – Any civil or criminal proceeding or other action pending before any court of law or other governmental body or agency or any arbitration proceeding.

(29) Professional service. – Has the meaning provided in G.S. 55B-2.

(30) Professional limited liability company. – A limited liability company subject to G.S. 57D-2-02.

(31) Record. – When used as a noun, information that is inscribed on a tangible medium or that is stated in an electronic or other medium and is retrievable in readable form.

(32) Secretary of State. – The Secretary of State of North Carolina.

(32a) Service-disabled veteran. – A veteran with a disability that was incurred or aggravated during the veteran's service in the Armed Forces of the United States.

(32b) Service-disabled veteran-owned small business. – A business that satisfies both of the following requirements:

a. The business's net annual receipts do not exceed one million dollars ($1,000,000).

b. One or more service-disabled veterans own more than fifty percent (50%) of the business.

(33) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and "this State" refers to the State of North Carolina.

(34) Transfer. – As a noun, the transfer of legal, equitable, or beneficial ownership by sale, exchange, assignment, gift, donation, grant, or other conveyance or disposition of any kind, whether voluntary or involuntary, including transfers by operation of law or legal process and includes, with respect to the ownership interest of an interest owner for purposes of G.S. 57D-3-02(a)(3), any (i) appointment of a receiver, trustee, liquidator, custodian, or other similar official for that interest owner or all or any part of the property of that interest owner under any law of bankruptcy or insolvency; (ii) gift, donation, transfer by will or intestacy, or other similar type of transfer or disposition, whether during one's life or because of death; (iii) appointment of a personal or other legal representative or other person serving in a similar capacity of a deceased interest owner; (iv) appointment of a guardian or other person serving in a similar capacity of an interest owner who has been adjudicated to be incompetent by a court of competent jurisdiction; and (v) other transfer or disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable, community or marital property distribution, judicial decree, or other court order concerning the division or partition of property between spouses, former spouses, or other persons); and, as a verb, the act of making any transfer.

(35) Veteran. – An individual entitled to any benefits or rights under the laws of the United States by reason of service in the Armed Forces of the United States.

(36) Veteran-owned small business. – A business that satisfies both of the following requirements:

a. The business's net annual receipts do not exceed one million dollars ($1,000,000).

b. One or more veterans own more than fifty percent (50%) of the business. (2013-157, s. 2; 2017-90, s. 4; 2017-212, s. 8.7(a).)