



Benjamin S. Parvey II
CEO

October 11, 2016

16-2120-EZ-AG 6

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street, Columbus,
Ohio 43215-3793

Re: Power Broker Certification Application

Dear Sir/Madam:

Enclosed please find an original and three (3) copies of the notarized Certification Application by Blue Sky Power LLC. Blue Sky Power LLC is applying as a Power Broker only. Should the Commission have any questions or need additional information, please feel free to contact me.

Respectfully submitted,

Benjamin S. Parvey II

w/ enclosures

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21 Tanner Street, Suite 103 • Haddonfield, NJ 08033
Office: 856-888-1311 • Mobile: 202-285-6931 • Fax: 856-795-6222
E-mail: bparvey@BlueSkyPower.com
www.BlueSkyPower.com

PUCO USE ONLY		
Date Received	Case Number	Version
1/6/2015	EL-AGG	December 2014

CERTIFICATION APPLICATION FOR ELECTRIC AGGREGATORS/ POWER BROKERS

Please print or type all required information. Identify all attachments with an exhibit label and title (Example: Exhibit A-5 Experience). All attachments should bear the legal name of the Applicant. Applicants should file completed applications and all related correspondence with the Public Utilities Commission of Ohio, Docketing Division; 180 East Broad Street, Columbus, Ohio 43215-3793.

**This PDF form is designed so that you may input information directly onto the form.
You may also download the form, by saving it to your local disk, for later use.**

A. APPLICANT INFORMATION

A-1 Applicant's legal name, address, telephone number and web site address

Legal Name Blue Sky Power, LLC
 Address 21 Tanner Street, Suite 103, Haddonfield, NJ 08033
 Telephone # (856) 888-1311 Web site address (if any) blueskypower.com

A-2 List name, address, telephone number and web site address under which Applicant will do business in Ohio

Legal Name Blue Sky Power, LLC
 Address 21 Tanner Street, Suite 101, Haddonfield, NJ 08033
 Telephone # (856) 888-1311 Web site address (if any) blueskypower.com

A-3 List all names under which the applicant does business in North America

Blue Sky Power, LLC

A-4 Contact person for regulatory or emergency matters

Name Benjamin Parvey
 Title Chief Executive Officer

Business address 21 Tanner Street, Suite 103 Haddonfield, NJ 08033
Telephone # (856) 888-1311 Fax # (856) 795-6222
E-mail address bparvey@blueskypower.com

A-5 Contact person for Commission Staff use in investigating customer complaints

Name Benjamin Parvey
Title Chief Executive Officer
Business address 21 Tanner Street, Suite 103 Haddonfield, NJ 08033
Telephone # (856) 888-1311 Fax # (856) 795-6222
E-mail address bparvey@blueskypower.com

A-6 Applicant's address and toll-free number for customer service and complaints

Customer Service address Blue Sky Power, LLC, 21 Tanner Street, Suite 103 Haddonfield, NJ 08033
Toll-free Telephone # (856) 888-1311 Fax # (856) 795-6222
E-mail address info@blueskypower.com

A-7 Applicant's federal employer identification number # 263567458

A-8 Applicant's form of ownership (check one)

- | | |
|--|--|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | <input type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Other _____ |

A-9 (Check all that apply) Identify each electric distribution utility certified territory in which the applicant intends to provide service, including identification of each customer class that the applicant intends to serve, for example, residential, small commercial, mercantile commercial, and industrial. (A mercantile customer, as defined in (A) (19) of Section 4928.01 of the Revised Code, is a commercial customer who consumes more than 700,000 kWh/year or is part of a national account in one or more states).

- | | | | | |
|--|--------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> First Energy | | | | |
| <input type="checkbox"/> Ohio Edison | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Toledo Edison | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Cleveland Electric Illuminating | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Duke Energy | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Monongahela Power | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> American Electric Power | | | | |
| <input type="checkbox"/> Ohio Power | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Columbus Southern Power | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Dayton Power and Light | <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Industrial |

- A-10** Provide the approximate start date that the applicant proposes to begin delivering services

December 1, 2016

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

- A-11** **Exhibit A-11 "Principal Officers, Directors & Partners"** provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.
- A-12** **Exhibit A-12 "Corporate Structure,"** provide a description of the applicant's corporate structure, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale electricity or natural gas to customers and companies that aggregate customers in North America.
- A-13** **Exhibit A-13 "Company History,"** provide a concise description of the applicant's company history and principal business interests.
- A-14** **Exhibit A-14 "Articles of Incorporation and Bylaws,"** if applicable, provide the articles of incorporation filed with the state or jurisdiction in which the Applicant is incorporated and any amendments thereto.
- A-15** **Exhibit A-15 "Secretary of State,"** provide evidence that the applicant has registered with the Ohio Secretary of the State.

B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

- B-1** **Exhibit B-1 "Jurisdictions of Operation,"** provide a list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail or wholesale electric services including aggregation services.
- B-2** **Exhibit B-2 "Experience & Plans,"** provide a description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4928.10 of the Revised Code.

B-3 **Exhibit B-3 "Summary of Experience,"** provide a concise summary of the applicant's experience in providing aggregation service(s) including contracting with customers to combine electric load and representing customers in the purchase of retail electric services. (e.g. number and types of customers served, utility service areas, amount of load, etc.).

B-4 **Exhibit B-4 "Disclosure of Liabilities and Investigations,"** provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational status or ability to provide the services it is seeking to be certified to provide.

B-5 Disclose whether the applicant, a predecessor of the applicant, or any principal officer of the applicant have ever been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.

☒ No ☐ Yes

If yes, provide a separate attachment labeled as **Exhibit B-5 "Disclosure of Consumer Protection Violations"** detailing such violation(s) and providing all relevant documents.

B-6 Disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail or wholesale electric service including aggregation service denied, curtailed, suspended, revoked, or cancelled within the past two years.

☒ No ☐ Yes

If yes, provide a separate attachment labeled as **Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation"** detailing such action(s) and providing all relevant documents.

C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

C-1 **Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information in Exhibit C-1 or indicate that Exhibit C-1 is not applicable and why.

C-2 **Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 that the applicant is not required to file with the SEC and why.

- C-3 **Exhibit C-3 “Financial Statements,”** provide copies of the applicant’s two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer certified financial statements covering the life of the business.
- C-4 **Exhibit C-4 “Financial Arrangements,”** provide copies of the applicant's financial arrangements to conduct CRES as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.,).
- C-5 **Exhibit C-5 “Forecasted Financial Statements,”** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant’s CRES operation, along with a list of assumptions, and the name, address, e-mail address, and telephone number of the preparer.
- C-6 **Exhibit C-6 “Credit Rating,”** provide a statement disclosing the applicant’s credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody’s Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant’s parent or affiliate organization that guarantees the obligations of the applicant.
- C-7 **Exhibit C-7 “Credit Report,”** provide a copy of the applicant’s credit report from Experian, Dun and Bradstreet or a similar organization.
- C-8 **Exhibit C-8 “Bankruptcy Information,”** provide a list and description of any reorganizations, protection from creditors or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or within the two most recent years preceding the application.

C-9 Exhibit C-9 "Merger Information." provide a statement describing any dissolution or merger or acquisition of the applicant within the five most recent years preceding the application.


Signature of Applicant & Title
CEO

Sworn and subscribed before me this 18 day of October, 2016
Month Year


Signature of official administering oath

Matthew Cowperthwait
Print Name and Title
Assistant Store Manager

MATTHEW COWPERTHWAIT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/18/2018

My commission expires on 11/18/2018

AFFIDAVIT

State of New Jersey :

Madisonville ss.
(Town)

County of Camden :

Benjamin Parvey, Affiant, being duly sworn/affirmed according to law, deposes and says that:

He/She is the Managing Member & CEO(Office of Affiant) of Blue Sky Power, LLC (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant,

1. The Applicant herein, attests under penalty of false statement that all statements made in the application for certification are true and complete and that it will amend its application while the application is pending if any substantial changes occur regarding the information provided in the application.
2. The Applicant herein, attests it will timely file an annual report with the Public Utilities Commission of Ohio of its intrastate gross receipts, gross earnings, and sales of kilowatt-hours of electricity pursuant to Division (A) of Section 4905.10, Division (A) of Section 4911.18, and Division (F) of Section 4928.06 of the Revised Code.
3. The Applicant herein, attests that it will timely pay any assessments made pursuant to Sections 4905.10, 4911.18, or Division F of Section 4928.06 of the Revised Code.
4. The Applicant herein, attests that it will comply with all Public Utilities Commission of Ohio rules or orders as adopted pursuant to Chapter 4928 of the Revised Code.
5. The Applicant herein, attests that it will cooperate fully with the Public Utilities Commission of Ohio, and its Staff on any utility matter including the investigation of any consumer complaint regarding any service offered or provided by the Applicant.
6. The Applicant herein, attests that it will fully comply with Section 4928.09 of the Revised Code regarding consent to the jurisdiction of Ohio Courts and the service of process.
7. The Applicant herein, attests that it will comply with all state and/or federal rules and regulations concerning consumer protection, the environment, and advertising/promotions.
8. The Applicant herein, attests that it will use its best efforts to verify that any entity with whom it has a contractual relationship to purchase power is in compliance with all applicable licensing requirements of the Federal Energy Regulatory Commission and the Public Utilities Commission of Ohio.
9. The Applicant herein, attests that it will cooperate fully with the Public Utilities Commission of Ohio, the electric distribution companies, the regional transmission entities, and other electric suppliers in the event of an emergency condition that may jeopardize the safety and reliability of the electric service in accordance with the emergency plans and other procedures as may be determined appropriate by the Commission.
10. If applicable to the service(s) the Applicant will provide, the Applicant herein, attests that it will adhere to the reliability standards of (1) the North American Electric Reliability Council (NERC), (2) the appropriate regional reliability council(s), and (3) the Public Utilities Commission of Ohio. (Only applicable if pertains to the services the Applicant is offering)

11. The Applicant herein, attests that it will inform the Commission of any material change to the information supplied in the application within 30 days of such material change, including any change in contact person for regulatory purposes or contact person for Staff use in investigating customer complaints.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.


Signature of Affiant & Title

CEO

Sworn and subscribed before me this 18 day of October, 2016
Month Year


Signature of official administering oath

Matthew Cowperthwait
Print Name and Title
Assistant Store Manager

MATTHEW COWPERTHWAIT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/18/2018

My commission expires on 11/18/2018



Exhibit A-11
Principal Officers, Directors & Partners

Benjamin S. Parvey II
CEO
21 Tanner Street, Suite 103
Haddonfield, NJ 08033
856-888-1311

Frederic C. Parvey
Member
21 Tanner Street, Suite 103
Haddonfield, NJ 08033
856-888-1311

Michael C. Fuhrman
Director
21 Tanner Street, Suite 101
Haddonfield, NJ 08033
856-795-6111



Exhibit A-12 Corporate Structure

Blue Sky Power LLC is a member managed New Jersey limited liability company, formed October 2008 and has no affiliate or subsidiary companies. The Managing Member and Chief Executive Officer of Blue Sky Power, LLC is Benjamin Parvey.

Mr. Parvey manages and controls the business development and finance teams of the organization and is primarily responsible for the operation of the company and its performance. Reporting to Mr. Parvey are Michal Fuhrman, Principal and business development leader; Stephen Weber, Vice President of Engineering, and Samuel Cubberley, Project/Construction Manager. Mr. Fuhrman leads the marketing and business development team, Mr. Weber manages the engineering and project development team, and Mr. Cubberley leads the teams overseeing project construction and execution.

A graphic of Blue Sky Power, LLC Corporate Structure is provided on the following page.

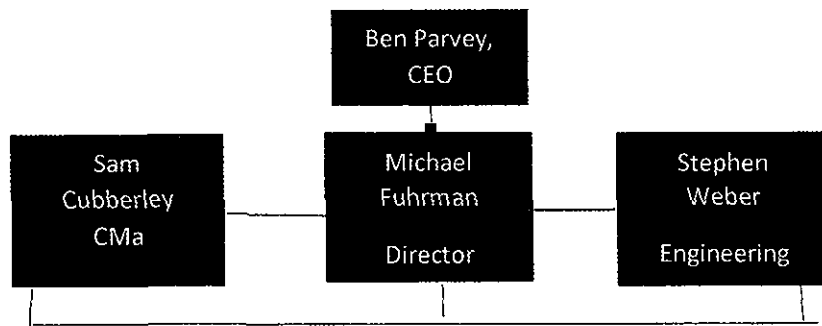




Exhibit A-13 Company History



Established in October 2008, Blue Sky Power is centrally headquartered in Haddonfield, New Jersey, 15 minutes outside of Philadelphia and is an experienced energy consultant, currently engaged with multiple governmental entities and institutions throughout the region and across the country. Blue Sky is also an innovative and well-respected clean energy infrastructure development firm, which develops, operates and advises on productive, institutional-scale clean energy projects for public and private entities, doing so with a high level of professionalism and integrity. The company has built a reputation for breaking through barriers and overcoming even the most complex financial, technical and legal obstacles to bring projects to fruition. Projects and systems are optimized and fully integrated into each institution's energy infrastructure operations.

For its consulting and advisory business, Blue Sky Power works with different entities including, counties, municipalities, school districts, municipal utility authorities, utilities, senior living facilities, universities, student housing and private corporations. In this role, it helps to identify the types of energy projects that are appropriate for the individual entity and provides analysis, advice and training required for efficient implementation of these projects. Past and current projects include work on energy procurement, energy efficiency, energy education and training, renewable energy, distributed generation, cogeneration, and other sustainability initiatives.

Services

Blue Sky Power is an institutional clean energy project developer and system owner-operator. In addition to developing and financing clean energy capital projects, we integrate the following related services into the *Energy Infrastructure Operations (EIO)* platform:

- Project Development & Management
- Project Financing & Structuring
- Energy Management Systems, Monitoring & Verification
- Planning & Design
- Energy Master Planning
- Energy Transfer & Trading
- Demand Response & Energy Procurement
- Energy Engineering & Auditing
- Permitting & Regulatory Compliance

Sectors

Governments, businesses, and institutions are eager to reduce energy costs to aid tightening budgets. Blue Sky Power works with your organization, counsel, design professionals, and other stakeholders to form a working group to move your project forward from concept to funding, installation and operation. Sectors we service include:

- Municipal Governments & School Districts
- Utilities
- Higher Education
- Health Care
- Continuing Care Retirement Communities
- Water & Wastewater Treatment Plants
- Ports & Airports
- Industrial Facilities
- Commercial Facilities



Exhibit A-14
Articles of Incorporation and Bylaws

Attached is a copy of Blue Sky Power, LLC's Operating Agreement and proof of registration with the State of New Jersey.

01/20/10

Taxpayer Identification# 263-567-458/000

Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

Additionally, please note that State law requires all contractors and subcontractors with Public agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.

If you have any questions or require more information, feel free to call our Registration Hotline at (809)292-9292.

I wish you continued success in your business endeavors.

Sincerely,



James J. Fruscione
Director
New Jersey Division of Revenue

STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE

DEPARTMENT OF TREASURY/
DIVISION OF REVENUE
PO BOX 252
TRENTON, N J 08646-0252

TAXPAYER NAME:

BLUE SKY POWER LLC

ADDRESS:

200 FEDERAL ST, STE 243
CAMDEN NJ 08103

EFFECTIVE DATE:

12/19/08

TRADE NAME:

SEQUENCE NUMBER:

1455925

ISSUANCE DATE:

01/20/10



Director
New Jersey Division of Revenue

FORM-BRC

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

(04-007) 02036407

BLUE SKY POWER LLC

A New Jersey Limited Liability Company
Third Amended and Restated Operating Agreement

Entered into as of January 1, 2015

THE LIMITED LIABILITY COMPANY INTERESTS ("INTERESTS") REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, THE SECURITIES LAWS OF ANY STATE OR OF ANY OTHER JURISDICTION. THE INTERESTS MUST BE ACQUIRED FOR INVESTMENT PURPOSES ONLY, AND NEITHER THE INTERESTS NOR ANY PART THEREOF MAY BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT OF 1933, AS AMENDED AND ANY OTHER APPLICABLE SECURITIES LAWS PURSUANT TO REGISTRATION THEREUNDER OR EXEMPTION THEREFROM OR OTHERWISE AND (II) THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE INTERESTS SHALL NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH THOSE LAWS AND THIS AGREEMENT.

**THIRD AMENDED AND RESTATED OPERATING
AGREEMENT OF
BLUE SKY POWER LLC**

THIS THIRD AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") of Blue Sky Power LLC, a New Jersey limited liability company (the "Company"), is made and entered into as of January 1, 2015 (the "Effective Date"), by and among the members identified on Exhibit A hereto, as amended from time to time (collectively, the "Members").

EXPLANATORY STATEMENT

WHEREAS, the Company was formed on October 20, 2008 (the "Formation Date") by the filing of a Certificate of Formation with the New Jersey Department of Treasury pursuant to the relevant provisions of the Act, as amended by filing of Certificate of Amendment on September 9, 2009;

WHEREAS, the initial Members of the Company entered into a Limited Liability Company Operating Agreement, dated as of July 27, 2009 (the "Prior Agreement");

WHEREAS, the Members amended and restated the Prior Agreement in its entirety by entering into the Amended and Restated Operating Agreement, dated as of February 1, 2010 (the "First Amended Prior Agreement") and such agreement was amended and restated on August 1, 2011 (the "Second Amended Prior Agreement" or the "Amended Prior Agreement");

WHEREAS, the Members desire to amend and restate the Amended Prior Agreement in its entirety by entering into this Agreement and to agree to the matters set forth herein related to the Company; and

WHEREAS, the Members deem it desirable to enter into this Agreement in order to set forth certain agreements among themselves relating to the governance of the Company and granting certain rights and imposing certain restrictions on themselves and the Units now or at any time held by the Members or issuable to the Members or other persons.

TERMS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members, intending to be legally bound hereby amend and restate the Prior Agreement in its entirety as follows and further agree as follows:

**ARTICLE 1
THE COMPANY**

1.1 Formation. The Company was formed by the agreement of the Members on October 20, 2008 as a limited liability company under and pursuant to the provisions of the New Jersey Limited Liability Company Act, N.J.S.A. 42:2B-1, *et seq.* (as amended

from time to time, the “Act”). The fact that the Certificate of Formation (the “Certificate”) is on file in the office of the New Jersey Department of Treasury constitutes notice that the Company is a limited liability company. The rights and liabilities of the Members shall be as provided under the Act, the Certificate and this Agreement.

12 Name. The name of the Company is “Blue Sky Power LLC.” The business of the Company shall be conducted under that name or under such other name as may from time to time be selected by the Company.

13 Purpose. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company, engaging in any lawful act or activity for which limited liability companies may be formed under the Act.

14 Location. The principal place of business of the Company shall be located at such address as the Board may determine from time to time. The Company may establish other places of business when and where required by or advisable to the Company’s business.

15 Registered Office and Registered Agent. The registered office of the Company required to be maintained in the State of New Jersey is as provided in the Certificate or such other registered office (which shall not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law.

16 Term. The Company will have perpetual existence unless dissolved in accordance with the terms of this Agreement.

17 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms used in this Agreement shall have the meanings specified below. Unless the context otherwise requires, capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Act.

(a) “Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation §§1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in §1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of “Adjusted Capital Account Deficit” is intended to comply with the provisions of §1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

(b) “Affiliate” means, with respect to any Person, (a) any person directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities of that person, (b) any person ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by that person, (c) any person directly or indirectly controlling, controlled by or under common control with that person, and (d) any officer, director, partner or manager of any person described in subsection (a), (b) or (c) of this paragraph, and the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, activities or policies of any person whether through the ownership of voting securities, by contract, employment or otherwise.

(c) “Board” shall have the meaning set forth in Section 3.1.

(d) “Capital Account” shall have the meaning set forth in Section 5.1.

(e) “Capital Contribution” means, with respect to any Member and a Unit in the Company held or purchased by such Member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company (net of liabilities assumed or taken subject to by the Company) with respect to such Unit.

(f) “Capital Account Excess” shall mean, with respect to a Member, the excess (if any) of such Member’s Capital Account over such Member’s Targeted Account.

(g) “Capital Account Shortfall” shall mean, with respect to a Member, the excess (if any) of such Member’s Targeted Account over such Member’s Capital Account.

(h) “Capital Proceeds” means any and all proceeds (whether in the form of cash or property) received by the Company or receivable by its Members from a Capital Transaction, reduced by expenses incurred by the Company in connection with such Capital Transaction, liabilities of the Company which are repaid out of the proceeds from such Capital Transaction, and such reserves as the Board may determine to be necessary for the needs of the Company.

(i) “Capital Transaction” means a sale or disposition of all, or a significant portion of, the Company’s business. The Board’s determination of whether a transaction encompasses a significant portion of the Company’s business will be conclusive.

(j) “Code” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Agreement. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

- (k) “Common Units” shall have the meaning set forth in Section 2.1.
- (l) “Company Minimum Gain” has the meaning set forth in sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.
- (m) “Company Options” shall have the meaning set forth in Section 2.7(b).
- (n) “Company Warrant” means a warrant or option to acquire Units issued by the Company other than in exchange for services.
- (o) “Convertible Securities” shall mean any evidence of indebtedness, units or other securities directly or indirectly convertible into, or exercisable or exchangeable for, Common Units.
- (p) “Depreciation” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year or other period bears to such beginning adjusted tax basis. In the event that the federal income tax depreciation, amortization, or other cost recovery deduction is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method.
- (q) “Disabled” shall mean a Member that is unable to perform the normal full-time services such Member was performing prior to the onset of any sickness, injury or disability for a period of 360 days with no reasonable prospect of returning to normal full-time service.
- (r) “Equity Incentive Plan” shall mean the Blue Sky Power LLC 2010 Equity Compensation Plan.
- (s) “Exempted Securities” shall mean all Units issued by the Company:
- (i) as a distribution on Units;
 - (ii) pursuant to an acquisition approved by the Board, of another corporation by merger, consolidation, purchase of substantially all of the assets or equity securities or other reorganization;
 - (iii) pursuant to a lease line, equipment financing, bank financing, corporate partnering arrangement, joint venture or similar arrangement that is not intended to serve as an equity financing to the extent approved by the Board;

(iv) pursuant to the issuance of options or Units upon exercise thereof or other equity compensation, in each case, to the extent approved by the Board;

(v) pursuant to a bona fide, firm commitment public offering; or

(vi) upon the conversion, exercise or exchange of Options and Convertible Securities outstanding on the Effective Date.

(f) “Fair Market Value” shall have the meaning set forth in Section 3.10.

(u) “Formation Date” has the meaning set forth in the preamble to this Agreement.

(v) “Fiscal Year” means the taxable year which, unless the Code requires a different period, is (i) the calendar year, or (ii) any portion of the period described in clause (i) of this sentence for which the Company is required to allocate Profit, Loss and other items of Company income, gain, loss or deduction pursuant to Article 6.

(w) “Gross Asset Value” means, with respect to any asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset, as determined pursuant to Section 3.10 hereof.

(ii) The Gross Asset Value of any Company property distributed to a Member shall be the gross Fair Market Value of such asset on the date of distribution as determined pursuant to Section 3.10 hereof.

(iii) The Gross Asset Values of all the Company assets shall be adjusted to equal their respective gross Fair Market Values (taking Code Section 7701(g) into account), as determined by the Board in accordance with Section 3.10 as of the following times: (A) the acquisition of an additional Unit in the Company by any new or existing Member; (B) the distribution by the Company to a Member of more than a *de minimis* amount of property with respect to a Unit; (C) the liquidation of the Company within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g), provided that an adjustment described in clauses (A) and (B) of this paragraph shall be made only if the Board determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company.

(iv) The Gross Asset Value of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code should the Company make an election under Section 754 of the Code, but only to the extent that such adjustments are taken into

account in determining Capital Accounts pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(m).

(v) If the Gross Asset Value of an asset has been determined or adjusted pursuant to this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(x) “Member Nonrecourse Debt” has the meaning set forth in section 1.704-2(b)(4) of the Treasury Regulations.

(y) “Member Nonrecourse Debt Minimum Gain” means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with section 1.704-2(i)(3) of the Treasury Regulations.

(z) “Member Nonrecourse Deductions” has the meaning set forth in sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Treasury Regulations.

(aa) “Net Cash Flow” means, for each Fiscal Year or other period of the Company, the gross cash receipts of the Company from all sources except Capital Transactions, but excluding any amounts, such as gross receipts taxes, that are held by the Company as a collection agent or in trust for others or that are otherwise not unconditionally available to the Company, less all amounts paid by or for the account of the Company during the same Fiscal Year or other period (specifically including payments of principal and interest on any Company indebtedness and expenses reimbursed to the Members), and less any amounts determined by the Board to be necessary to provide a reasonable reserve for working-capital needs or any other contingencies of the Company. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, depletion, similar allowances or other non-cash items, but shall be increased by any reduction of reserves previously established.

(bb) “New Securities” shall mean (i) securities of any kind or class issued by the Company after the date hereof and (ii) rights of any kind to acquire, directly or indirectly (including, without limitation, by conversion, exchange or exercise) any securities described in clause (i).

(cc) “Nonrecourse Deductions” has the meaning set forth in sections 1.704-2(b)(1) and 1.704-2(c) of the Treasury Regulations.

(dd) “Nonrecourse Liability” has the meaning set forth in section 1.704-2(b)(3) of the Treasury Regulations.

(ee) “Option” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Units or Convertible Securities.

(ff) “Option Exercise Date” shall have the meaning set forth in Section 6.6(a).

(gg) “Option Grant Letter” shall mean an agreement between the Company and a Company service provider, authorized by the Equity Incentive Plan or otherwise by the Board, which grants a Company Option or in exchange for services to the Company service provider and sets forth certain terms concerning the acquisition, holding, exercise, and disposition of such Company Option by the Company service provider.

(hh) “Option Holder” shall have the meaning set forth in Section 6.6(b).

(ii) “Option Income” shall have the meaning set forth in Section 6.6(d).

(jj) “Option Units” shall have the meaning set forth in Section 2.7(b) hereof.

(kk) “P-Series” shall have the meaning set forth in Section 2.8.

(ll) “Percentage Interest” means, as to a Member, the percentage determined by dividing the number of Common Units held by such Member by the number of Common Units outstanding, all as set forth next to such Member’s name on Exhibit A hereto, as amended from time to time.

(mm) “Permitted Transferee” shall mean (1) with respect to a Member who is a natural person, (i) the spouse or lineal descendants (but not minor children) of such Member, (ii) any trust created solely for the benefit of such Member, the spouse or lineal descendants of such Member, or such Member’s estate, (iii) any corporation or partnership or other entity in which such Member, or the spouse or lineal descendants of such Member, are the direct and beneficial owners of all of the equity interests (provided such Member, spouse and lineal descendants agree in writing to remain the direct and beneficial owners of all such equity interests), or (iv) the personal representatives of such Member upon such Member’s death for the purposes of administration of such Member’s estate or upon such Member’s adjudicated incapacity for purposes of the protection and management of the assets of such Member; and (2) with respect to a Member that is not a natural person, (i) any Affiliate of such Member or (ii) its stockholders, members or partners in proportion to their ownership interests in such Member.

(nn) “Person” shall mean natural persons, corporations, limited partnerships, general partnerships, limited liability companies, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof.

(oo) “Profits” and “Losses” shall mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all

items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) Income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss.

(ii) Expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as such expenditures pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss.

(iii) Gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

(iv) In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses.

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period.

Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Sections 6.2, 6.3, 6.5, 6.6, 6.7, and 10.2 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 6.2, 6.3, 6.5, 6.6, 6.7 and 10.2 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (v) above.

(pp) “Regulations” means the Treasury Regulations promulgated under the Code, as from time to time in effect.

(qq) “Retained Earnings Threshold” shall have the meaning set forth in Section 2.8(d)(ii).

(rr) “Super-Majority Vote” shall mean the vote or consent of the Members holding at least (i) 75% of the outstanding Percentage Interests in the Company

in connection with the approval by Members of an Approved Sale; and (ii) 67% of the outstanding Percentage Interests in the Company in all other cases.

(ss) “Target Account” shall mean, with respect to any Member for any Fiscal Year or other period, an amount equal to the hypothetical distribution such Member would receive if all assets of the Company, including money at the end of such period: (a) were sold for cash equal to their Gross Asset Value (taking into account any adjustments to Gross Asset Value for such period); (b) all liabilities allocable to such assets were then due and were satisfied according to their terms; (c) all Minimum Gain chargebacks required by this Agreement were made; (d) and all obligations of Members to contribute additional capital to the Company were satisfied; and (e) all remaining proceeds from such sale were distributed to the Members pursuant to Section 7.1(b).

(tt) “Threshold Amount” shall have the meaning set forth in Section 2.8(d)(i).

(uu) “Treasury Regulations” means the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(vv) “Unit” or “Units” means an equity ownership interest in the Company (which shall be considered personal property for all purposes) which shall entitle any record owner who is validly admitted as a Member of the Company as provided herein to the rights and privileges (and subject its holder to the burdens) associated with such Unit as set forth herein.

(ww) “Warrant Exercise Date” shall have the meaning set forth in Section 6.5(a).

(xx) “Warrant Holder(s)” shall mean the record owner(s) of the Company Warrants.

ARTICLE 2

CAPITAL MATTERS

21 Classes of Units. The Company shall initially have one class of membership interests in the form of uncertificated voting common units (the “Common Units”), with the rights and privileges as are specified in this Agreement. The Company is authorized to issue up to 10,000,000 Common Units (and each record owner of such Common Units, in such capacity, being a “Common Member”).

22 Ownership Exhibit, Initial Capital Contributions.

(a) The name, present mailing address and taxpayer identification or social security number of each Member and the number of Units held by each Member, as of the Effective Date are as set forth next to each Member’s respective name on Exhibit A attached hereto. The Company will maintain in its books and records an

updated schedule of the aggregate Capital Contributions of each Member, the current Capital Accounts of each Member and the Percentage Interest of each Member, as well as any changes thereto.

(b) Exhibit A may be amended from time to time by the Board (as defined in Section 3.1, or its authorized designee) to reflect, the admission of additional Members to the Company, changes in the number of issued and outstanding Units, and changes in the ownership of Units.

(c) The Company shall be entitled to treat the person in whose name any Unit(s) stand on the books of the Company as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such Unit or Units on the part of any other person.

23 Additional Capital Contributions. No Member shall be obligated to make any additional Capital Contribution or advance to the Company.

24 Interest on Capital. No interest shall be payable with respect to any Capital Contributions made to the Company.

25 Limited Liability of Members. Except as and to the extent required under the Act or this Agreement, no Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company.

26 Loans to the Company. Without in any way limiting the authority of the Board to cause the Company to borrow funds from an unaffiliated third party (instead of, or in addition to, any loan(s) of the type contemplated by this Section 2.6), any Member or Affiliate of a Member may, with the consent of the Board, lend or advance money to the Company; provided, that such a loan shall be on terms and conditions not less favorable than those available from unaffiliated third parties for similar loans. If a Member, with the consent of the Board, shall make any loan or loans to the Company or advance money on its behalf, the amount of such loan or advance shall not be treated as a Capital Contribution to the Company and shall not increase such Member's Capital Account but shall instead be treated as a debt due from the Company to a creditor as to all parties and as for all purposes to the fullest extent permitted by law. Any such loan shall be a debt of the Company to such Member and shall be payable or collectible only out of the Company property in accordance with the terms and conditions upon which such loan was made and shall bear interest at a rate at least equal to the applicable federal rate as defined in Section 1274(d) of the Code unless such requirement is waived by the Board. Any such loan shall be subject to the highest priority permitted by law as to the creditors of the Company.

27 Unexercised Warrants and Options.

(a) Warrant Holders shall be treated as Members with respect to the Units underlying their respective Company Warrants (the "Warrant Units") for the purposes of this Agreement only if, when, and to the extent such Company Warrants are exercised in accordance with the terms of the Company Warrants, the applicable Units are issued by the Company, and the applicable Warrant Holder is admitted as a Member

of the Company, provided that the date upon which a Warrant Holder is treated as a Member with respect to such Warrant Units shall be no later than the date upon which the Company is obligated to issue such Warrant Units pursuant to the terms of such Company Warrant.

(b) Persons issued options to acquire Common Units pursuant to Option Grant Letters authorized by the Equity Incentive Plan or otherwise by the Board ("Company Options") shall be treated as Members with respect to the Common Units underlying such Company Options (the "Option Units") for the purposes of this Agreement only if, when, and to the extent such Company Options are exercised in accordance with the terms of the Option Grant Letters pursuant to which the Company Options were issued, the applicable Option Units are issued by the Company pursuant to the applicable Option Grant Letter, and the applicable person complies with the terms of admission as a Member of the Company pursuant to this Agreement. The allocation and Capital Account treatment of the exercise of a Company Option shall be governed by the terms of this Agreement.

28 Compensatory Issuance of Common Units as Profits Interests.

(a) Subject to Section 2.1 and upon the terms and conditions set forth in the unit grant agreements approved by the Board, the Company may issue one or more series of profits interest in Common Units as equity compensation for services provided or to be provided to the Company by employees, officers, consultants, independent contractors, or advisors of the Company or its Affiliate. Such series of Common Units are intended to constitute "profits interests," as such term is used by Rev. Proc. 93-27. Issuances of any series of Common Units pursuant to this Section 2.8 are intended to be nontaxable to their recipients to the fullest extent permitted by law, although neither the Board, the Members, nor the Company makes any representation as to the tax consequences of the issuance of Common Units pursuant to this Section 2.8.

(b) Immediately prior to each issuance of a series Common Units pursuant to this Section 2.8 (each, a "P Series" of Common Units, to be consecutively designated as "Series P-1," "Series P-2," etc.), the Gross Asset Value of all Company property shall be adjusted to equal their respective gross Fair Market Values (taking Section 7701(g) of the Code into account) as determined by the Board in its sole discretion. On the date hereof, the Company has issued a series of Common Units designated as "Series P-1." The name, present mailing address and taxpayer identification or social security number of each Member who has been issued Series P-1 Common Units and the number of Common Units held by each such Member is set forth on Exhibit A attached hereto.

(c) Except as set forth in the following sentence, and in Section 7.2(b) hereof, each Member holding a P-1 Series of Common Units shall be entitled to all of the benefits and privileges of other Members holding Common Units under this Agreement. Each P Series of Common Units shall entitle its record owner to share in the appreciation in the Fair Market Value of the Company from the date of issuance of such P Series of Common Units with respect to amounts distributable pursuant to Section 7.1(b) in

proportion to the Percentage Interest applicable to such P Series of Common Units and not in any Fair Market Value of the Company accrued prior to the issuance of such P Series of Common Units.

(d) Other than with respect to the P-1 Series of Common Units issued on the date hereof, in connection with the issuance of each additional P Series of Common Units pursuant to this Section 2.8 using the Fair Market Value of the Company determined above in Section 2.8(b), the Board (or its authorized designee) shall promptly thereafter:

(i) amend Section 7.1(b) (through attachment of a completed Exhibit C to this Agreement approved by the Board and executed by the Board or any authorized designee of the Board) to provide for a subsection corresponding to each P Series of Common Units and establishing the then Fair Market Value of the Company as the minimum aggregate Capital Proceeds distribution amount that must be made pursuant to Section 7.1(b) with respect to the Units of the Company issued and outstanding prior to the issuance of such P Series of Common Units before such P Series of Common Units shall share in Capital Proceeds distributions made pursuant to Section 7.1(b) (the "Threshold Amount" of such P Series of Common Units); and

(ii) amend Section 7.1(a) (through attachment of a completed Exhibit C to this Agreement) to provide for a subsection corresponding to each P Series of Common Units and establishing the then retained Net Cash Flow of the Company as the minimum aggregate distribution amount that must be made pursuant to Section 7.1(a) with respect to the Units of the Company issued and outstanding prior to the issuance of such P Series of Common Units before such P Series of Common Units shall share in distributions of Net Cash Flow pursuant to Section 7.1(a) (the "Retained Earnings Threshold" of such P Series of Common Units).

29 Purchase Right

(a) Subject to the terms and conditions of this Section 2.9, the Company hereby grants to each Member who is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act, a right of first offer to purchase up to its Percentage Interest of all New Securities that the Company may, from time to time, propose to sell and issue after the date of this Agreement, other than Exempted Securities.

(b) If the Company proposes to issue any New Securities (other than Exempted Securities), it shall first offer to sell to each such Member its Percentage Interest of such New Securities in accordance with the procedure set forth below:

(i) The Company shall give each such Member a written notice (the "Offer Notice"). The date on which the Company gives the Offer Notice is hereinafter referred to as the "Notice Date." The Offer Notice shall describe (A) its bona fide intention to offer such New Securities, (B) the number of New Securities to be offered, (C) the price and a summary of the terms and conditions upon which it proposes

to offer such New Securities, and (D) with respect to each such Member, such Member's Percentage Interest of the New Securities.

(ii) For a period of 30 days following the Notice Date (the "Acceptance Period"), each such Member shall have the right to purchase (which right may be assigned in whole or in part to one or more Affiliates of the Member who is an "accredited investor," within the meaning of Regulation D promulgated under the Securities Act) (the "Purchase Right"), at the price and on the terms and conditions stated in the Offer Notice, up to such Member's Percentage Interest of the New Securities. Any such Member who desires to exercise such Member's Purchase Right shall give written notice (the "Acceptance Notice") to the Company within the Acceptance Period. The Acceptance Notice shall state that such Member (and/or one or more of its Affiliates) desires to exercise such Member's Purchase Right and the number of New Securities that such Member elects to purchase upon exercise of such Purchase Right up to such Member's full Percentage Interest. Failure by a Member to give the Acceptance Notice within the Acceptance Period shall be deemed, without any further action by the Company or the Member, the irrevocable waiver of such Member's Purchase Right with respect to the New Securities set forth in the Offer Notice and any other securities issuable, directly or indirectly, upon conversion, exercise or exchange of such New Securities.

(iii) Each such Member or its Affiliates may, in such Member's Acceptance Notice, offer to purchase more than such Member's Percentage Interest of the New Securities (any such Member, an "Oversubscribing Investor"). If less than all of the Members elect to purchase their Percentage Interest of the New Securities (the "Unsubscribed New Securities"), the Unsubscribed New Securities shall be allocated pro rata (based on the number of Units owned by each Oversubscribing Investor) among the Oversubscribing Investors up to the number of New Securities specified in such Member's Acceptance Notice or on such other basis as such Oversubscribing Investors may agree.

(iv) Following the expiration of the Acceptance Period, the Company shall be entitled, during the period of 90 days following the expiration of the Acceptance Period (the "Unrestricted Period"), to sell to any person(s) or entity(s) at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice up to the full amount of the New Securities set forth in the Offer Notice on the terms set forth in the Offer Notice, less the number of New Securities, if any, which the Members have elected to purchase upon exercise of their Purchase Rights in accordance with this Section 2.9 (the "Remainder Securities"). At and upon the closing, which shall include full payment to the Company, of the sale of such Remainder Securities, the Members (and/or their respective Affiliates) shall purchase from the Company, and the Company shall sell to the Members, the New Securities elected to be purchased pursuant to this Section 2.9 on the terms specified in the Offer Notice. If the Company does not complete the sale of the Remainder Securities within the Unrestricted Period, the Purchase Right provided hereunder shall be deemed to be revived and such Remainder Securities shall not be offered unless first reoffered to the Members in accordance herewith.

(c) The Purchase Rights set forth in this Section 2.9 may be amended and the observance of any term of set forth in this Section 2.9 may be waived (either generally or in a particular instance, and either retroactively or prospectively) with respect to all Members upon receiving a Super-Majority Vote.

ARTICLE 3

MANAGEMENT OF THE COMPANY

31 Board of Managers. Management of the Company shall be vested in a Board of Managers (the "Board") consisting of one or more managers (each a "Manager" and collectively, the "Managers"), with such number fixed by the Board or by a majority of the outstanding Percentage Interests in the Company (a "Majority Vote"). The Managers need not be Members or residents of the State of New Jersey. The Board shall have full, plenary, exclusive and complete power and authority to manage and control the Company. The Board shall function in substantially the same manner as the board of directors of a New Jersey corporation. All actions by the Company that would require the approval of the board of directors of a New Jersey corporation under the New Jersey Business Corporations Act, or for which it would be customary using good practice to obtain such approval, shall require approval by the Board. Except as otherwise provided in this Agreement, whenever any Company action is to be taken by vote of the Board, the Board shall act by vote of at least a majority of the Managers then in office; provided that at anytime there are only two Managers on the Board, the Board shall act only upon the vote of both Managers and; provided, further that should the Board consist of an even number of Managers, upon any vote of such Managers that results in a tie, the affirmative vote or written consent of a Majority Vote shall constitute the deciding vote in such matter or action.

32 Appointment and Resignation and Removal of Managers; Term of Office. The initial Managers are identified as such on Exhibit B hereto. A Manager may resign at any time. A resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. A Manager shall remain in office until such Manager (i) is removed in accordance with this Article 3, (ii) resigns in a written instrument delivered to the Board or (iii) dies or is otherwise unable to serve (as determined by either the Board or the vote or consent of the Members holding at least a Majority Vote, or until as otherwise provided in this Article 3. Notwithstanding the other provisions of this Section 3.2, Benjamin S. Parvey II shall not be removed as a Manager for so long as he holds Units in the Company.

33 Board Chair. The Board shall select the Manager that will act as Chair of the Board (the "Chair"). The initial Chair shall be Benjamin S. Parvey II.

34 Performance of Duties. Each Manager shall perform his or her duties as such in good faith, in a manner he or she reasonably believes to be in the best interests of

the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

35 Officers. In performing its duties, the Board is authorized to delegate responsibility to such officers (the “Officers”) or other delegates or agents as the Board sees fit. Every Manager and Officer shall have the authority to bind the Company by entering into contracts and incurring obligations in the Company’s name, but solely to the extent such authority is delegated by the Board to such Manager or Officer.

36 Indemnification of the Managers and Officers.

(a) The Company shall indemnify, save harmless and pay all judgments and claims against any Manager or Officer relating to any liability or damage incurred by reason of any act performed or omitted to be performed by such Manager or Officer in connection with the Company’s business, including reasonable attorneys’ fees and costs incurred by such Manager or Officer in connection with the defense of any action based on any such act or omission, which attorneys’ fees and costs may be reimbursed as incurred.

(b) Notwithstanding any provision of this Agreement or the Act to the contrary, (i) the Company shall not indemnify or pay the expenses of any Manager or Officer (including attorneys’ fees and costs) in a suit or claim brought by such Manager or Officer or any Member affiliated with such Manager, and (ii) the Company shall not indemnify or pay the expenses of any Manager or Officer (including attorneys’ fees and costs) unless such Manager or Officer has (A) acted in good faith, (B) acted in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and (C) in the case of a criminal proceeding, had no reasonable cause to believe that the conduct at issue was unlawful.

(c) No Manager shall be liable, in damages or otherwise, to the Company or to any Member for any loss or liability that arises out of any act performed or omitted to be performed by such Manager pursuant to the authority granted by this Agreement, other than any loss or liability that results from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

(d) This Section 3.6 shall survive the termination of this Agreement for any reason.

37 Rights and Powers of the Members. Except to the extent expressly provided herein, including but not limited to Section 3.8, or otherwise required by the Act or the Certificate, the Members shall (a) not have any right or power to take part in the direct management or control of the Company or its business operations and (a) shall have no right to vote on or approve any Company matter or transaction, or to exercise any other powers or privileges under the Act.

38 Board and Manager Restrictions. Notwithstanding the powers and authority conferred upon the Board and Managers pursuant to the Act or this Agreement, so long as there are any Common Units outstanding, the Company shall not, without the

prior affirmative vote or written consent of the Super-Majority Vote, either directly or indirectly by amendment of the Certificate or this Agreement, merger, consolidation or otherwise:

- (a) effect any sale of all or substantially all of the Company's assets;
- (b) merge or consolidate the Company with any other entity (other than any internal reorganization conducted with an affiliate); or
- (c) liquidate, dissolve or otherwise wind-up the business affairs of the Company.

39 Insurance. The Company shall maintain in effect a "directors and officers" liability insurance policy covering the Managers and Officers of the Company, with coverage on customary terms and at customary levels for businesses of the size of the Company, all as determined by the Board.

3.10 Determination of Fair Market Value. Valuations of the Company or Company property and the determination of "Fair Market Value" shall be conducted at such times as required by this Agreement or as otherwise deemed appropriate by the Board. Except as otherwise provided herein, such determinations of Fair Market Value shall be made by the Board in their sole discretion (and with the aid of a formal third party valuation report when deemed necessary or advisable by the Board in its sole discretion in order to apply the terms of this Agreement or comply with applicable laws).

ARTICLE 4

MEETINGS

4.1 Board Meetings. The Board shall meet at such time and place within or outside the State of New Jersey as shall be designated from time to time by the Board. Each Manager shall be given at least two (2) days' prior written notice of any meeting of the Board and will be permitted to participate in any meeting of the Board by telephone or similar communications equipment. Any Manager may call a meeting of the Board.

4.2 Member Meetings.

(a) Meetings of the Members, for any purpose or purposes, unless otherwise prescribed by applicable law, may be called by the Board, Chair or by a Majority Vote.

(b) The Chair, the Board or the Members calling a meeting pursuant to this Section 4.2 may designate any place as the place for any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Company.

(c) Each Member shall be given at least two (2) days' prior written notice of any meeting of the Members and shall be permitted to participate in any such meeting of the Members by telephone or similar communications equipment.

(d) For the purpose of determining the Members entitled to notice of, or to vote at, any meeting of the Members or any adjournment of the meeting, or the Members entitled to receive payment of any distribution, or to make a determination of the Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring the distribution or relating to such other purpose is adopted, as the case may be, shall be the record date for the determination of the Members. Only the Members of record on the date fixed shall be so entitled notwithstanding any permitted transfer of a Member's Units after any record date fixed as provided in this Section 4.2. When a determination of the Members entitled to vote at any meeting of the Members has been made as provided in this Section 4.2, the determination shall apply to any adjournment of the meeting.

(e) A meeting of the Members duly called shall not be organized for the transaction of business unless a quorum is present. The presence of the Members who own a majority of the outstanding Percentage Interests represented in person or by proxy shall constitute a quorum at any meeting of the Members.

(f) Except as otherwise provided in the Act, the Certificate or this Agreement, whenever any Company action is to be taken by vote of the Members, it shall be authorized upon receiving the Majority Vote.

(g) At all meetings of the Members, a Member entitled to vote may vote in person or by proxy executed in writing by such Member or by a duly authorized attorney-in-fact. The proxy shall be filed with the Board before or at the time of the meeting.

(h) Where two (2) or more proxies of a Member are present, the Company shall, unless otherwise expressly provided in the proxy, accept as the vote of the Member represented thereby, the vote cast by a majority of them, and, if a majority of the proxies cannot agree whether to vote or upon the manner of voting, the voting shall be divided equally among those persons.

(i) A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until written notice thereof has been given to the Secretary of the Company or, in the case of a vacancy in the office or absence of the Secretary, one (1) of the following persons present at the meeting of the Members (the "Meeting Supervisor") in the order stated: (i) the Chair, (ii) the Manager or Officer supervising the meeting of the Members, or (iii) such person as shall be designed by a Majority Vote of the Members. An unrevoked proxy shall not be valid after three (3) years from the date of its execution unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the Secretary of the Company or, in the case of a vacancy in the office or absence of the Secretary, to the Meeting Supervisor, as set forth herein.

43 Notice of Meeting; Waiver.

(a) Whenever any written notice is required to be given under the provisions of the Act, the Certificate or this Agreement, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Attendance of a person at any meeting shall constitute a waiver of notice of the meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

44 Consent in Lieu of Meeting. Any action required or permitted to be taken at a meeting of the Board or the Members may be taken without a meeting if, prior to the action, written consents describing the action to be taken are signed by the minimum number of Managers or Members that would be necessary to authorize the action at a meeting at which all Managers or Members entitled to vote thereon were present and voting. Any such written consent made pursuant to this Section 4.4 shall be filed with the Board. Prompt notice of the taking of the Company action without a meeting by less than unanimous written consent shall be given to those Managers or Members who have not consented in writing.

ARTICLE 5

CAPITAL ACCOUNTS AND RELATED MATTERS

5.1 Capital Accounts.

(a) A single, separate capital account shall be maintained for each Member in accordance with the Regulations issued under Section 704(b) of the Code (each such account, a “Capital Account”) and this Section 5.1.

(i) To each Member’s Capital Account there shall be credited the amount of cash and the Gross Asset Value of any asset transfer by the Member to the Company as a Capital Contribution, such Member’s allocated share of Profits, any items in the nature of income or gain which are specially allocated pursuant to this Agreement and which would otherwise be included in the computation of Profits and Losses, and the amount of any Company liabilities assumed by such Member or which are secured by any property of the Company distributed to such Member.

(ii) From each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property of the Company distributed to such Member pursuant to any provision of this Agreement, such Member’s allocated share of Losses, any items in the nature of expenses or losses which are specially allocated pursuant to this Agreement and which would otherwise be included in the computation of Profits and Losses, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(b) In determining the amount of any liability for purposes of this Section 5.1, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(c) Upon a transfer of any Unit in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Unit.

(d) The foregoing provisions of this Section 5.1 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations §1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. The Board shall (i) make any adjustments that are necessary or appropriate to maintain equality between the aggregate Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations §1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations §1.704-1(b). In the event that the Board shall determine that it is prudent to modify the manner in which Capital Accounts or any debits or credits thereto are computed in order to comply with such Regulations, the Board may make such modifications.

5.2 Revaluations. The Capital Accounts of the Members shall be adjusted to reflect each revaluation of Company assets made pursuant to the definition of Gross Asset Value; provided that any adjustments hereunder shall be made in accordance with and to the extent provided in Regulations §§1.704-1(b)(2)(iv)(f) and (g) and taking into account Proposed Regulation Section 1.704-1(b)(2)(iv)(h).

5.3 No Deficit Funding Obligation. Except as otherwise expressly required by law or this Agreement, no Member shall be required to reimburse the Company for any negative balance in such Member's Capital Account or restore any negative Capital Account of another Member.

5.4 Withdrawal and Return of Capital. Except as otherwise expressly provided herein, no Member shall have the right to withdraw capital from the Company or to receive any distribution of or return on such Member's Capital Contributions, or to voluntarily retire, withdraw or otherwise cease to be a Member of the Company.

ARTICLE 6

ALLOCATIONS

6.1 Allocations. After giving effect to the special allocations set forth in Sections 6.2, 6.3, 6.5, 6.6, 6.7, and 10.2, Profits or Losses for any Fiscal Year shall be allocated to the Members as follows:

(a) The Company's Profits for any Fiscal Year shall be allocated to the Members having Capital Account Shortfalls for such Fiscal Year (as determined after taking into account all contributions, distributions, and special allocations during such Fiscal Year) in proportion to their respective Capital Account Shortfalls.

(b) The Company's Losses for any Fiscal Year shall be allocated to the Members having Capital Account Excesses for such Fiscal Year (as determined after taking into account all contributions, distributions, and special allocations during such Fiscal Year) in proportion to their respective Capital Account Excesses.

6.2 Regulatory Allocations. Notwithstanding the provisions of Section 6.1, the following special allocations shall be made in the following order and priority:

(a) *Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations § 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 6.2, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations §1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations §1.704-2(f) (6) and §1.704-2(j) (2). This Section 6.2(a) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations §1.704-2(f) and shall be interpreted consistently therewith.

(b) *Member Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations § 1.704-2(i) (4), notwithstanding any other provision of this Section 6.2, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations §1.704-2(i) (5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treasury Regulations §1.704-2(i) (4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(i) (4) and 1.704-2(j) (2) of the Regulations. This Section 6.2(b) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations §1.704-2(i) (4) and shall be interpreted consistently therewith.

(c) *Qualified Income Offset.* If any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations §§1.704-1(b)(2)(ii)(d)(4), (5), or (6), which create or increase an Adjusted Capital Account Deficit for such Member for any Fiscal Year, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit so created as quickly as possible. It is the intent that this Section 6.2(c) be interpreted as a "qualified income

offset” and as otherwise necessary to comply with the alternate test for economic effect set forth in Treasury Regulations §1.704-1(b)(2)(ii)(d).

(d) *Loss Allocation Limitation.* Notwithstanding anything to the contrary in this Agreement, the Losses allocated pursuant to Section 6.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event that some, but not all, of the Members would have an Adjusted Capital Account Deficit as a consequence of an allocation of Losses pursuant to Section 6.1 hereof, the limitation set forth in the preceding sentence shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member consistent with Treasury Regulations §1.704-1(b)(2)(ii)(d). If any Member would have a Adjusted Capital Account Deficit at the end of any Fiscal Year which is in excess of the sum of any amount, if any, that such Member is obligated to restore to the Company under Treasury Regulations §1.704-1(b)(2)(ii)(c) and such Member’s share of Company Minimum Gain as defined in Treasury Regulations §1.704-2(g)(1) and Member Minimum Gain as determined pursuant to Treasury Regulations §1.704-2(i) (which are also treated as obligations to restore in accordance with Treasury Regulations §1.704-1(b)(2)(ii)(d)), the Capital Account of such Member shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(e) *Nonrecourse Deductions.* Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.

(f) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations §1.704-2(i) (1).

(g) *Section 754 Adjustments.* To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(m)(2) or Treasury Regulations §1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member’s interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Treasury Regulations §1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations §1.704-1(b)(2)(iv)(m)(4) applies.

63 Curative Allocations. The allocations set forth in Section 6.2 (the “Regulatory Allocations”) are intended to comply with certain requirements of the

Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 6.3. Therefore, notwithstanding any other provision of this Article 6 (other than the Regulatory Allocations), the managing Members shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 6.1.

64 Other Allocation Rules.

(a) Profits, Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Article 6 as of the last day of each Fiscal Year; provided that Profits, Losses and such other items shall also be allocated at such times as the Gross Asset Values of Company property are adjusted pursuant to the definition of Gross Asset Value.

(b) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Company using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

65 Treatment of Company Warrant Exercise. For all purposes of this Agreement, to the extent consistent with the Code and/or Regulations, any exercise of a Company Warrant shall be treated as follows:

(a) Upon exercise of a Company Warrant (a "Warrant Exercise Date") and after issuance or deemed issuance of the underlying Warrant Unit(s) pursuant to Sections 2.1 and 2.7 hereof, the applicable Warrant Holder shall become a Member with respect to the Warrant Unit(s) underlying the exercised Company Warrant;

(b) Any amount paid or deemed paid (including the fair market value of any property transferred or deemed transferred to the Company) by the Warrant Holder to purchase or exercise a Company Warrant shall be deemed to be a Capital Contribution made with respect to the corresponding Warrant Unit(s) received as of the Warrant Exercise Date and the Capital Account shall be adjusted accordingly;

(c) Consistent with the provisions of Proposed Treasury Regulation §1.704-1(b), the Company shall revalue the Gross Asset Values of its property and adjust the Capital Accounts of its Members upon any exercise of a Company Warrant. The Company shall specially allocate items of gain and loss otherwise includable in the computation of Profit and Loss and attributable to such revaluation (and, if necessary, Company gain and loss not attributable to such revaluation) to a Warrant Holder receiving Warrant Unit(s) on a Warrant Exercise Date in a manner that eliminates (to the fullest extent possible) the Capital Account Shortfall or Capital Account Excess

associated with the applicable Warrant Unit(s) received on the exercise of a Company Warrant. It is understood and agreed that the provisions of this Section 6.5 shall be applied (a) whether or not the proposed Regulations referred to above are adopted and become part of the Regulations and (b) if the final Regulations adopted differ materially from the provisions applied by this Section 6.5, the Managers may recommend such amendments to this Agreement as they believe to be required to satisfy the Regulations as adopted, which amendments shall require the affirmative approval of the Members, which approval shall not be unreasonably withheld.

(d) In the event the Capital Account adjustments made pursuant to Section 6.5(c) hereof are insufficient to eliminate the Capital Account Shortfall or Capital Account Excess associated with the applicable Warrant Unit(s), such Capital Account Shortfall or Capital Account Excess shall be eliminated by direct adjustments among the Capital Accounts of the Members.

6.6 Allocation Treatment of Company Options. For all purposes of this Agreement, to the extent consistent with the Code and/or Regulations, any exercise of a Company Option to purchase an Option Unit in accordance with the terms of the corresponding Option Grant Letter shall be treated as follows:

(a) Immediately prior to and as of the date of the exercise of a Company Option (an "Option Exercise Date") and consistent with the provisions of Proposed Treasury Regulation §§1.706-3; 1.83-3; 1.83-6; 1.704-1; 1.707-1; 1.721-1 and 1.761-1, relating to the tax treatment of certain transfers of partnership equity in connection with the performance of services, the Gross Asset Value of all Company Property shall be revalued and the Capital Accounts of the Members adjusted. The Company shall specially allocate items of gain and loss otherwise includable in the computation of Profit and Loss and attributable to such revaluation to the Members in a manner that eliminates (to the fullest extent possible) the Capital Account Shortfalls or the Capital Account Excesses of the Members;

(b) Upon exercise of a Company Option and after the revaluation and allocation made pursuant to Section 6.6(a) hereof and the issuance of the underlying Option Unit(s) pursuant to Section 2.1 and 2.7 hereof, the holder of such Company Option (an "Option Holder") shall become a Member with respect to the Option Unit(s) underlying the exercised Company Option;

(c) Any amount paid or deemed paid (including the fair market value of any property transferred or deemed transferred to the Company) by the Option Holder to purchase or exercise a Company Option shall be deemed to be a Capital Contribution made with respect to the corresponding Option Unit(s) received as of the Option Exercise Date and the Capital Account of the Option Holder shall be adjusted accordingly;

(d) The Company shall be deemed to have paid compensation income to the Option Holder immediately after the exercise of the Company Option and receipt of an Option Unit in an amount equal to the Capital Account Shortfall (if any) of the

Option Holder attributable to such Option Unit, calculated immediately after the application of Section 6.6(c) hereof ("Option Income");

(e) Option Income shall be deemed paid to the Option Holder with respect to services rendered to the Company and shall be treated as such by the Company and the Option Holder for all tax and financial accounting purposes;

(f) Option Income shall be credited to the Capital Account of the Option Holder with respect to the applicable Option Unit(s) immediately after the application of Section 6.6(d) hereof;

(g) The Company compensation deduction associated with the Option Income shall be specially allocated to the Members of the Company in such a manner so as to eliminate (to the fullest extent possible) the then Capital Account Excesses of the Members, calculated immediately after the application of Section 6.6(f) hereof, in proportion to such Capital Account Excesses.

(h) It is understood and agreed that the provisions of this Section 6.6 shall be applied (a) whether or not the proposed Regulations referred to above are adopted and become part of the Regulations and (b) if the final Regulations adopted differ materially from the provisions applied by this Section 6.6, the Managers may recommend such amendments to this Agreement as they believe to be required to satisfy the Regulations as adopted.

67 Allocations in the Event of Forfeiture. In the event that any Member is issued Units for services, and such Units are forfeited, then for the Fiscal Year in which such forfeiture occurs:

(a) except as provided in this Section 6.7, with respect to such forfeited Units, such Member's allocable portion of all items of Company income, gain, loss or deduction for the Fiscal Year in which the forfeiture occurs shall be zero; and

(b) the Company shall make such allocations with respect to the forfeiture of such Units as are required under the Treasury Regulations then in force.

68 Tax Allocation. For each Fiscal Year, items of taxable income, deduction, gain, loss or credit shall be allocated for income tax purposes among the Members in the same manner as their corresponding book items were allocated pursuant to Sections 6.1, 6.2, 6.3, 6.5, 6.6, and 6.7 and 10.2 for such Fiscal Year, as modified by the following principles:

(a) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the

traditional allocation method of Treasury Regulation §1.704-3(b) unless the record owners of a majority of the Common Units elect to use a different method.

(b) If the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Unless otherwise provided herein, any elections or other decisions relating to allocations under this Section 6.8 shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement.

(d) With respect to any forfeited Units, all modifications required under the Treasury Regulations then in force.

(e) Allocations pursuant to this Section 6.8 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

69 Binding Effect. The Members are aware of the income tax consequences of the allocations made by this Article 6 and hereby agree to be bound by the provisions of this Article 6 in reporting their shares of Company income, gain, loss and deduction for federal income tax purposes.

610 Amendment. The Members shall consent to any amendment to this Article 6 proposed by the Board which the Board reasonably determine to be in the best interests of the Company and to be necessary or advisable to comply with the requirements of the Code or the Regulations regarding the allocation of Profits and Losses and all tax items including items of income, gain, deduction, loss or credit.

ARTICLE 7

DISTRIBUTIONS

7.1 Generally.

(a) **Distributions of Net Cash Flow.** After providing for any reserves that it may deem appropriate, the Board may make distributions of Net Cash Flow to the Members; provided, however, if the Board makes any such distributions, such distributions shall be in accordance with the Members' Percentage Interests.

(b) **Distributions of Capital Proceeds.** Capital Proceeds shall be distributed to the Members in accordance with the Members' Percentage Interest (but subject to the limitations set forth in Section 2.8(c) with respect to the Common Units issued in P Series of profits interests) within a reasonable time following the Capital Transaction to which the Capital Proceeds relate to Members.

(c) **Distributions to Pay Taxes.** To the extent that Net Cash Flow is available for distribution and the Board so determines, the Company shall distribute to each Member in cash, within thirty (30) days of the incurrence of any tax liability by each Member as a result of such Member's ownership of Units (to the extent not otherwise distributed pursuant to Section 7.1), an amount equal to the aggregate state and federal income tax liability such Member would have incurred as a result of such Member's ownership of Units calculated (i) as if such Member's income were taxable at the maximum marginal income tax rates provided for with respect to natural persons (or, if higher, with respect to taxable corporations) under the federal, state and local income tax laws applicable to the Member with the highest such tax rate, as determined by the Company in its sole discretion, (ii) as if allocations from the Company pursuant to Section 6.8 hereunder were, for such year, the sole source of income and loss for such Member, and (iii) by taking into account the carryover of items of loss, deduction and expense previously allocated by the Company to such Member (such distributions, "Tax Distributions"). Any Tax Distributions will be deemed to be an advance distribution of amounts otherwise distributable to the Members pursuant to Sections 7.1(a) and 7.1(b) and will reduce the amounts that would subsequently otherwise be distributable to the Members pursuant to Sections 7.1 (a) and 7.1(b).

(d) **Unvested Common Units.** Notwithstanding any provision of this Agreement to the contrary, if the Company makes a distribution, then any cash or property that is otherwise distributable with respect to any Common Units issued that have not yet become vested (the "Unvested Common Units"), less any corresponding Tax Distributions, shall instead be set aside in a trust maintained by the Company (and in the case of cash, shall be placed by the Company in a separate interest-bearing account) for the benefit of the holder of such Unvested Common Units until such time as the holder's Unvested Common Units vest in accordance with their respective terms. As a holder's Unvested Common Units become vested in accordance with their respective terms (the "Vested Common Units"), the Company shall promptly distribute to the holder the portion of the amount of cash or other property set aside in trust (together with accrued interest thereon in the case of cash held in trust) that is attributable to the newly Vested Common Units. If any such Unvested Common Units fail to become Vested Common Units and are forfeited to or acquired by the Company, then the cash or other property otherwise distributable with respect to the Unvested Common Units shall revert to the Company and shall become available for distribution to all of the other Members in accordance with this Article 7.

(e) **Member Payments Constituting Distributions.** This Article 7 does not govern payments made by the Company to the Members to the extent such payments constitute either non-partner capacity payments within the meaning of Code Section 707(a)(1) or otherwise or guaranteed payments within the meaning of Code Section 707(c).

7.2 Withholding. Any amount paid by the Company for or with respect to any Member on account of any withholding tax or other tax payable with respect to the income, profits or distributions of the Company pursuant to the Code, the Treasury Regulations, or any state or local statute, regulation or ordinance requiring such payment

(each a "Withholding Tax Act") shall be treated as a Tax Distribution to the Member for all purposes of this Agreement. To the extent that the amount required to be remitted by the Company under a Withholding Tax Act exceeds the amount then otherwise distributable to the Member, the excess shall constitute a loan from the Company to the Member (a "Tax Payment Loan"). Each Tax Payment Loan shall be payable upon demand and shall bear interest, from the date that the Company makes the payment to the relevant taxing authority, at the applicable Federal short-term rate under Code section 1274(d)(1), determined and compounded semiannually. So long as any Tax Payment Loan or the interest thereon remains unpaid, the Company shall make future distributions due to the Member under this Agreement by applying the amount of any such distribution first to the payment of any unpaid interest on all Tax Payment Loans of the Member and then to the repayment of the principal of all Tax Payment Loans of the Member. The Members shall take all actions necessary to enable the Company to comply with the provisions of any Withholding Tax Act applicable to the Company and to carry out the provisions of this subsection.

ARTICLE 8
ASSIGNMENTS OF COMPANY INTERESTS; COMPANY SALE;
CONVERSION TO CORPORATE FORM

81 Representations and Warranties. Each Member hereby represents and warrants to the Company and to each of the other Members that: (i) the Member is maintaining its Units for such Member's own account and without an intent to distribute such Units, and (ii) the Member acknowledges that the Units have not been registered under the Securities Act or any state securities laws and, notwithstanding any other provision of this Article 8, may not be resold or Transferred by the Member without appropriate registration or the availability of an exemption from such registration requirements. For the purposes of this Agreement, the term "Transfer" or "Transferred" shall mean any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any Units.

82 Transfers. Transfers.

(a) *Generally.* No Member shall Transfer any Units without first complying with the terms of this Agreement.

(b) *Prohibited Transfers.* No Member shall Transfer any Units other than (i) to a Permitted Transferee or (ii) in the manner provided in Section 8.3. Any attempt by a Member to Transfer Units in violation of this Agreement shall be void and of no force and effect, and the Company agrees that it will not recognize any such Transfer nor will it treat any transferee in any such Transfer as the holder of such Units.

(c) *Exempt Transfers.* The Rights of First Refusal and Co-Sale Rights set forth in Section 8.3 shall not apply to any Transfer by a Member to any Permitted Transferee of such Member.

(d) *Transferee as Member.*

(i) Any Person who acquires ownership of a Unit (whether by virtue of a voluntary assignment or any other transfer by operation of law) in accordance with the terms of this Agreement (each a “Transferee”) shall be admitted as and become a substituted Member in the Company, entitled to all the rights and benefits under this Agreement of the transferor or assignor of such Unit (including the portion of the transferor’s or assignor’s Capital Contribution attributable to such Unit). The Members hereby consent and agree to the admission of any such Transferee as a substituted Member.

(ii) Each Transferee, as a condition to his, her or its admission as a substituted Member, shall execute and acknowledge such instruments (including a counterpart to this Agreement), in form and substance satisfactory to the Board, as the Board shall deem necessary or desirable to effectuate such admission and to confirm the agreement of such Transferee to be bound by all the terms and provisions of this Agreement. Such Transferee shall bear all reasonable expenses, including attorneys’ fees, incurred by the Company in connection with such admission.

(iii) Each Transferee, by acquisition of ownership of any Units and admission as a substituted Member, hereby represents and warrants as follows: (1) such Transferee has all necessary power and authority to execute and deliver the instruments described in clause (ii) above and to carry out the provisions thereof and of this Agreement; (2) all action on such Transferee’s part required for the execution and delivery of the instruments described in clause (ii) has been taken; (3) the execution and delivery by such Transferee of the instruments described in clause (ii) and the performance by such Transferee of his, her or its obligations thereunder and under this Agreement have been duly authorized by all necessary action, and do not and will not violate such Transferee’s articles or certificate of incorporation, operating agreement, partnership agreement, by-laws, shareholders’ agreement (each as applicable to such Transferee) or any other of such Transferee’s governing or constituent documents; (4) upon their execution and delivery, instruments described in clause (ii) and this Agreement will be valid and binding obligations of such Transferee, enforceable in accordance with their respective terms; (5) such Transferee is an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act; (6) such Transferee is acquiring the Units for his, her or its own account, for investment purposes only, and not with a view to, or for resale in connection with, any “distribution” thereof within the meaning of the Securities Act or any state securities law; (7) such Transferee has no current arrangements or understandings for the resale or distribution to others; (8) such Transferee acknowledges that the Units are “restricted securities” under applicable U.S. federal and state securities laws and must be held indefinitely and cannot be disposed of unless they are subsequently registered under the Securities Act and any applicable state laws or an exemption from such registration is available.

83 Rights of First Refusal and Co-Sale Rights.

(a) *Right of First Refusal.*

(i) If any Member proposes to Transfer any Units (the "Transferring Member"), then the Transferring Member shall promptly give written notice (the "Transfer Notice") of such proposed Transfer simultaneously to the Company and to the Members. The Transfer Notice shall describe in reasonable detail the proposed Transfer, including, without limitation, the number of Units to be Transferred (the "Transfer Units"), the nature of such Transfer, the consideration to be paid per Unit (the "Purchase Price Per Unit"), and the name and address of each prospective purchaser or transferee (each, a "Proposed Transferee"). The Transferring Member shall enclose with the Transfer Notice a copy of a written offer, letter of intent or other written document signed by the Proposed Transferee(s) setting forth the proposed terms and conditions of the proposed Transfer.

(ii) The Company shall have fifteen (15) days after receipt of such Transfer Notice to agree to purchase all or a portion of the Transfer Units for the Purchase Price Per Unit and upon the terms and conditions specified in the Transfer Notice. Such agreement to purchase shall be indicated by the Company giving written notice to the Transferring Member and stating therein the quantity of Transferred Units to be purchased.

(iii) If the Company fails to purchase any, or purchases less than all of the Transfer Units, and for a period of 30 days following receipt of the Transfer Notice (the "ROFR Acceptance Period"), each Member that is not a Transferring Member or any of its Affiliates, shall have the right to purchase its pro rata share of the Transfer Units not purchased by the Company on the same terms and conditions as set forth in the Transfer Notice (except as provided below with respect to non-cash consideration). Each Member's pro rata share of such remaining Transfer Units shall be equal to a fraction, the numerator of which is the number of Units owned by the Member on the date of the Transfer Notice and the denominator of which is the total number of Units owned by all of the Members on the date of the Transfer Notice (excluding the Units, if any, owned by the Transferring Member and any of its Affiliates). If the consideration payable in such proposed Transfer is in a form other than cash, the Members shall have the right to pay such consideration in an amount of cash equal to the Fair Market Value of such non-cash consideration.

(iv) If any Member desires to exercise its right to purchase all or any portion of its pro rata share of the Transfer Units, it shall give written notice (the "ROFR Notice") to the Transferring Member, with a copy to the Company, no later than the expiration of the ROFR Acceptance Period. The ROFR Notice shall state that the Member desires to purchase all of its pro rata share of the Transfer Units or, if the Member desires to purchase less than all of its pro rata share of the Transfer Units, the number of Transfer Units the Member desires to purchase. Each Member may, in such Member's ROFR Notice, offer to purchase more than such Member's pro rata share of the Transfer Units (any such Member, an "Oversubscribing ROFR Member"). If less than

all of the Members elect to purchase their pro rata share of the Transfer Units (the "Unsubscribed ROFR Units"), the Unsubscribed ROFR Units shall be allocated pro rata among the Oversubscribing ROFR Members (based on the number of Units owned by each Oversubscribing ROFR Member) up to the number of Units specified in such Oversubscribing ROFR Member's ROFR Notice or on such other basis as such Oversubscribing ROFR Members may agree.

(v) The closing of the purchase and sale of any Transfer Units to the Company and Members pursuant to this Section 8.3(a) shall occur at such time and place as may be agreed upon by the Transferring Member, the Company and the purchasing Member(s), but in no event shall such closing occur more than 15 days after the expiration of the ROFR Acceptance Period (unless governmental regulatory approvals are required in connection with such closing, in which case the closing shall occur three days after such approvals are obtained). At such closing, (A) the Transferring Member shall (1) execute and deliver such documents as shall be reasonably requested by the Company and the purchasing Member(s) in order to vest in the Company and/or such Member(s) full beneficial and record ownership of the respective number of Transfer Units being sold hereunder, and (2) make customary transactional representations and warranties to the Company and/or such purchasing Member(s) with respect to the Transferring Member's legal capacity and existence, ownership, due authorization and absence of conflicts and that such Transfer Units are being transferred to the Company and/or purchasing Member(s) free and clear of all liens, encumbrances and interests or rights of other persons or entities, and (B) the Company and/or each purchasing Member shall remit to the Transferring Member, by wire transfer of immediately available funds, the purchase price for the Transfer Units being purchased by the Company and/or such Member (which purchase price shall be equal to the product of the number of Transfer Units that the Company and/or such Member is purchasing and the Purchase Price Per Unit).

(b) *Right of Co-Sale.*

(i) If the Company and/or the Members do not purchase all of the Transfer Units, the Transferring Member, promptly following the expiration of the ROFR Acceptance Period, shall deliver to each Member not purchasing any of the Transfer Units pursuant to Section 8.3(a), with a copy to the Company, a written notice (the "Co-Sale Notice") that each such Common Member shall have the right (the "Co-Sale Right"), in accordance with the terms and conditions set forth in this Section 8.3(b), to participate with the Transferring Member in the Transfer of the Transfer Units not purchased by the Members pursuant to Section 8.3(a) (the "Available Units") on the terms and conditions set forth in the Transfer Notice described in Section 8.3(a) (except as provided below). The Co-Sale Notice shall set forth the date of closing of the proposed sale of the Available Units by the Transferring Member to the Proposed Transferee, which date shall not be earlier than 10 days or later than 30 days following the date on which the Co-Sale Notice is given. To the extent one or more of the Members exercise their Co-Sale Right, the number of Available Units that the Transferring Member may sell to the Proposed Transferee shall be correspondingly reduced. Notwithstanding the terms of the proposed Transfer as set forth in the Transfer Notice,

(A) if the consideration payable in such proposed Transfer is in a form other than cash, the Members shall have the right to receive consideration for their Units in cash in an amount equal to the Fair Market Value of such non-cash consideration, and (B) in no event shall any Member be required to (1) make any representations or warranties with respect to the Company's business or with respect to the Transferring Member or any other Member, but rather shall only be required to make customary transactional representations and warranties with respect to such Member's legal capacity and existence, ownership, due authorization and absence of conflicts and that its Units are being transferred to the Proposed Transferee free and clear of all liens, encumbrances and interests or rights of other Persons, or (2) indemnify the Proposed Transferee with respect to any matter other than a breach of such Member's representations and warranties as described in the foregoing clause (1), and in no event in an amount in excess of the net after-tax proceeds of the consideration received by such Member for its Units.

(ii) If any Member desires to exercise its Co-Sale Right, such Member shall give written notice (the "Inclusion Notice") to the Transferring Member, with a copy to the Company, within five business days after the Co-Sale Notice is given (the "Co-Sale Election Period"). The Inclusion Notice shall indicate the number of Units such Member wishes to sell under its Co-Sale Right. The maximum number of Units that each Member may sell under its Co-Sale Right shall be equal to the product obtained by multiplying (i) the aggregate number of Available Units covered by the Co-Sale Notice by (ii) a fraction, the numerator of which is the number of Units owned by such Member on the Transfer Notice Date and the denominator of which is the total number of Units owned by the Transferring Member and all Members on the Transfer Notice Date (such Units with respect to each Member, the "Co-Sale Right Units"). Any Member who delivers an Inclusion Notice to the Transferring Member, with a copy to the Company, within the Co-Sale Election Period is referred to hereinafter as a "Co-Sale Participant."

(iii) At the closing of the sale of Available Units by the Transferring Member to the Proposed Transferee, the Proposed Transferee shall remit to each Co-Sale Participant, by wire transfer of immediately available funds, the purchase price of the Co-Sale Right Units (which purchase price, with respect to each Co-Sale Participant, shall be equal to the product of the number of Co-Sale Right Units that such Co-Sale Participant has elected to sell and the Purchase Price Per Unit). To the extent that any Proposed Transferee refuses to purchase Co-Sale Right Units from a Co-Sale Participant, the Transferring Member shall not sell to such Proposed Transferee any Available Units unless and until, simultaneously with such sale, such Transferring Member purchases the Co-Sale Right Units from the Co-Sale Participant on the same terms and conditions specified in the Transfer Notice.

(iv) To the extent that the Members do not exercise their Co-Sale Right, then the Transferring Member may Transfer all of such remaining Available Units to the Proposed Transferee on the terms and conditions set forth in the Transfer Notice. Any proposed Transfer on terms and conditions materially more favorable to the Proposed Transferee than those described in the Transfer Notice shall again be subject to the Rights of First Refusal and Co-Sale Rights described in this Section 8.3.

84 Company Sale.

(a) In the event of an Approved Sale (as defined below), each Member agrees (i) to vote their Percentage Interest at any regular or special meeting of the Members (or consent pursuant to a written consent in lieu of such meeting) in favor of such Approved Sale, and to raise no objections against the Approved Sale or the process pursuant to which the Approved Sale was arranged, (ii) to waive any and all dissenters', appraisal or similar rights with respect to such Approved Sale, and (iii) if the Approved Sale is structured as a sale of equity securities by the Members of the Company, to sell the Units then owned by Member on the terms and conditions of such Approved Sale. "Approved Sale" means (i) a transaction or series of transactions with a third party on an arm's length basis (including by way of merger, consolidation or sale of equity securities to a third party by one or more Members), the result of which is that the holders of the Company's voting securities immediately prior to such transaction or series of transactions own less than a majority of the combined voting power of the outstanding voting securities of the Company or the surviving or resulting entity, as the case may be, following the transaction or series of transactions, and (ii) a sale of all or substantially all of the Company's assets (each of the transactions in clauses (i) and (ii), a "Sale Transaction"), which, in each case, has been approved by (x) the Board and (y) a Super-Majority Vote (the "Approving Members"). Each Member will take all necessary and desirable actions in connection with the consummation of the Sale Transaction, including, without limitation, entering into an agreement reflecting the terms of the Approved Sale, surrendering unit certificates, giving customary and reasonable representations and warranties, executing and delivering customary certificates or other documents and taking all other actions deemed necessary or appropriate by the Board and Approving Members in connection with the Approved Sale.

(b) As security for the performance of each Member's obligations pursuant to this Section 8.4, each Member hereby grants to the Board, with full power of substitution and re-substitution, an irrevocable proxy to vote all Percentage Interests, at all meetings of the Members held or taken after the date of this Agreement with respect to an Approved Sale, or to execute any written consent in lieu thereof, and hereby irrevocably appoints the Board, with full power of substitution and re-substitution, as the Member's attorney-in-fact with authority to sign any documents with respect to any such vote or any actions by written consent of the Members taken after the date of this Agreement. This proxy shall be deemed to be coupled with an interest and shall be irrevocable. This proxy shall terminate upon the consummation of a firm commitment underwritten public offering pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission.

85 Conversion to Corporate Form.

(a) In the event Board shall determine that it is desirable or helpful for the business of the Company to be conducted as a corporation rather than as a limited liability company to facilitate a public offering or private placement of securities of the Company or for other reasons as determined by the Board to be in the best interests of the Company, the Board, in its sole discretion, shall have the power to incorporate the Company, whether through a conversion, merger, reorganization or other transaction (a "Corporate Conversion" and such new corporation, the "Issuer Corporation"). In connection with any such Corporate Conversion, the Members shall receive, in exchange for their Percentage Interests, shares of capital stock of such Issuer Corporation having the same relative economic interest (as determined by the Board in its sole discretion) as such Members have in the Company immediately prior to the Corporate Conversion, subject to such modifications as the Board deems necessary or appropriate to ensure an equitable distribution to all equity holders in the Company, including, without limitation, those holders of Options and/or Profits Interests, or to take into account the change in form from a limited liability company to a corporation. In consummating a Corporate Conversion, the Board shall have the power to prepare, as appropriate, the certificate of incorporation, by-laws, stockholders agreement, voting agreement, investor rights agreement and/or any other governing documents or equity holder agreements as the Board, in its sole discretion, deems to be necessary or appropriate in consummating the Corporate Conversion (collectively, the "Corporate Governing Documents").

(b) In the event of a Corporate Conversion, each Member agrees (i) to, if necessary, vote their Percentage Interest at any regular or special meeting of the Members (or consent pursuant to a written consent in lieu of such meeting) in favor of such Corporate Conversion, and to raise no objections against the Corporate Conversion or the process pursuant to which the Corporate Conversion was arranged, (ii) to waive any and all dissenters', appraisal or similar rights with respect to such Corporate Conversion, (iii) to execute and deliver to the Company any counterpart signature pages to the Corporate Governing Documents as are necessary to be executed by the Members in order to consummate the Corporate Conversion; (iv) deliver and surrender to the Company any certificates issued to such Member representing such Member's Units; and (i) to otherwise take all actions in connection with the consummation of the Corporate Conversion as are deemed necessary or appropriate by the Board in connection with such Corporate Conversion. As soon as practical after taking the necessary actions to consummate the Corporate Conversion, the Board shall provide to each Member share certificates representing the class and/or series of capital stock into which their Units were converted. The Board may make such provision as shall be reasonably necessary to ensure compliance with the Securities Act and other securities laws in connection with any Corporate Conversion and subsequent issuances of stock.

(c) As security for the performance of each Member's obligations pursuant to this Section 8.5, each Member hereby grants to the Board, with full power of substitution and re-substitution, an irrevocable proxy to vote, if necessary, all Percentage Interests, at all meetings of the Members held or taken after the date of this Agreement with respect to a Corporate Conversion, or to execute any written consent in lieu thereof,

and hereby irrevocably appoints the Board, with full power of substitution and resubstitution, as the Member's attorney-in-fact with authority to sign any documents with respect to any such vote or any actions by written consent of the Members taken after the date of this Agreement. This proxy shall be deemed to be coupled with an interest and shall be irrevocable. This proxy shall terminate immediately prior to the consummation of a firm commitment underwritten public offering pursuant to a registration statement filed with the Securities and Exchange Commission (unless the Corporation Conversion is in connection with an initial public offering in which case the proxy shall not terminate until immediately after the consummation of such initial public offering).

86 Death, Dissolution or Termination of a Member; Disability of the Member; Key-Man Life Insurance.

(a) In the event of (i) the death of a Member, in the case of an individual (the "Deceased Member"), or (ii) the dissolution of a Member, in the case of a corporation, limited liability company, trust or other entity (the "Dissolved Member"), or (iii) the termination of a Member (the "Terminated Member") for Cause (as that term is defined in such Member's Restricted Unit Grant Agreement (each, a "Restricted Unit Grant Agreement")) at any time after the first twelve (12) months following the Company's initial grant of any P-1 Series Common Units to the Terminated Member, or (iv) the termination of a Member without Cause at any time, the Company shall purchase, and the Deceased Member's estate or legal representative, the Dissolved Member's legal representative or successor, or the Terminated Member, as the case may be, shall sell, at a purchase price equal to the Fair Market Value, any Units held by the Deceased Member, or his or her estate, spouse or lineal descendants, legal representative or Affiliate, or by the Dissolved Member, its legal representative or successor, if any, or Terminated Member, as the case may be; provided, however, that this Section 8.6 shall not apply if all the Members die or are dissolved or terminated, as the case may be, within 30 days of one another, in which case, the estates of each Member (and spouse or lineal descendants and Affiliates) and the legal representatives or successors, as the case may be, shall keep both the Units and any insurance proceeds from key-man life insurance policies maintained by the Company on the lives of individual Members. If key-man life insurance has been maintained for the life of a Deceased Member, the proceeds from such key-man life insurance policy shall be applied towards the purchase price, with the excess paid to the estate or legal representative of the Deceased Member in equal monthly installments over a maximum of five years, the term of such payment be determined by the Board in its sole discretion, with the unpaid amount earning interest at a rate per annum equal to the Applicable Federal Rate, compounded annually. If (x) key-man life insurance has not been maintained for the life of a Deceased Member, (y) the proceeds for such insurance policy are insufficient to purchase of all such Deceased Member's Units or (z) the Member is a corporation, limited liability company, trust or other entity and is dissolved or terminated, in each such case, the purchase price shall be paid in equal monthly installments over a maximum of five years, the term of such payment to be determined by the Company in its sole discretion, with the unpaid amount earning interest at a rate per annum equal to the Applicable Federal Rate, compounded annually.

(b) If any Member becomes Disabled, the Company shall have the right, but not the obligation, to purchase, and such Member shall sell, at a price equal to the Fair Market Value, the Units then held by such Member. The purchase price for the Units shall be paid in equal monthly installments over a maximum of five years, the term of such payment to be determined by the Company in its sole discretion, with the unpaid amount earning interest at a rate per annum equal to the Applicable Federal Rate, compounded annually.

(c) The Company shall have the right to assign its repurchase obligations/rights as set forth in Sections 8.6(a) and (b) to the remaining Members in such proportions as the Board shall deem appropriate.

(d) The Company may, but shall not be required, to maintain key-man life insurance on the life of individual Members, in such amounts and upon such terms, as to be determined from time to time by the Board.

ARTICLE 9

ACCOUNTS

91 Books, Records and Financial Statements. At all times during the continuance of the Company, the Company shall maintain books of account, in each case, that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operations of the Company's business in accordance with generally accepted accounting principals. Such books of account shall be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by the Members and any duly authorized representatives for any purpose reasonably related to the Members' interest in the Company, subject in each case to such limitations, exclusions and procedures as the Board determines.

92 Bank Accounts. All funds of the Company will be deposited in its name in an account or accounts maintained with such bank or banks as selected by the Company. The funds of the Company shall not be commingled with the funds of any other person. Checks will be drawn upon the Company account or accounts only for the purposes of the Company and shall be signed by the Manager or Officers.

93 Other Information. The Board and the Officers of the Company may release such information concerning the operations of the Company to such sources as is customary in the industry or required by law or regulation or by order of any regulatory body. The Board shall use commercially reasonable efforts to cause to be maintained and preserved all books of account and other relevant records for such periods as are customary in the industry; required by law, regulation or any regulatory body; and for such other periods where the Board determines retention to be necessary or appropriate for their continued business or historical value.

ARTICLE 10

DISSOLUTION

101 Events of Dissolution. The Company shall be dissolved upon the occurrence of any of the following events (each a “Dissolution Event”): (i) a Super-Majority Vote that it is no longer in the best interests of the Company to continue the business of the Company, or (ii) the entry of an order of judicial dissolution under the Act.

102 Application of Proceeds. Upon a Dissolution Event, the Board shall wind up the business of the Company after a final allocation of profits and losses in accordance with Article 5, the proceeds arising from such dissolution of the Company shall be distributed or used as follows and in the following order of priority: (i) for payment of the Company’s liabilities and obligations to its creditors (including creditors who are also Members), and the expenses of such dissolution, (ii) to the setting up of any reserves that the Board may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, and (iii) to the Members in the order and priority set forth in Section 7.1(a) (the “Final Distribution”). Immediately prior to the Final Distribution, the Capital Account balances of the Members shall be adjusted, taking into account all contributions, distributions, and allocable items for the Fiscal Year of the Final Distribution and all other accounting periods of the Company, such that the Capital Account of each Member prior to the Final Distribution equals (to the fullest extent possible) the distribution to be received by such Member pursuant to the Final Distribution. The Company may specially allocate items otherwise included in the computation of Profits and Losses in making such adjustments to the Capital Accounts of the Members.

ARTICLE 11

CONFIDENTIALITY

11.1 Confidentiality. Each Member shall keep confidential and shall not, without prior written consent of the Board, disclose any information with respect to the Company or its Affiliates or use any such information other than for a Company purpose or a purpose reasonably related to protecting such Member’s interest in the Company. However, a Member may disclose any such information (a) as has become generally available to the public other than as a result of the breach of this Section 11.1 by such Member or any agent or Affiliate of Member, (b) as may be required to be included in any report, statement or testimony required to be submitted to any municipal, state or national regulatory body having jurisdiction over such Member, (c) as may be required in response to any summons or subpoena or in connection with any litigation or any reasonable inquiry or request for information by a governmental authority, (d) to the extent necessary in order to comply with any law, order, regulation or ruling, or request of any court or other governmental authority, (e) to its investment committees, oversight boards, investors, employees and professional advisors (including, but not limited to, such Member’s consultants, auditors and counsel), so long as such persons are advised of the confidentiality obligations contained herein, and (f) as may be required in connection with an audit or review by any taxing authority or other governmental authority. Notwithstanding any other provision of this Agreement, the Board shall have the right to

keep confidential from all or some of the Members (and specifically from Members who are subject to freedom of information acts, public records laws or similar laws) for such period of time as the Board determines is reasonable (i) any information that the Board reasonably believes to be in the nature of trade secrets and (ii) any other information (A) the disclosure of which the Board in good faith believes is not in the best interest of the Company or could damage the Company or its investments or (B) that the Company is required by law or by agreement with a third Person to keep confidential. The Board may disclose any information concerning the Company or the Members necessary to comply with applicable laws and regulation, including any money laundering or anti-terrorist laws or regulations, and each Member shall provide the Board, promptly upon request, all information that the Board reasonably deems necessary to comply with such laws and regulations.

ARTICLE 12

MISCELLANEOUS

121 Amendments. Notwithstanding any provision of this Agreement or the Act, the Board does not have the authority to amend, modify or waive this Agreement except by approval of the Board and with the consent of the Members by Majority Vote; provided, however, that Exhibit A and Exhibit B shall be amended from time to time by the Board (or its authorized designee) to reflect, to the extent required in accordance with the terms of this Agreement, the admission of Members to or the removal of Members from the Company, changes in the number of issued and outstanding Units, changes in the ownership of Units and the appointment of managers to or the resignation or removal of managers from the Board. Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Member without the written consent of such Member, unless such amendment, termination, or waiver applies to all Members in the same fashion (it being agreed that a waiver of the provisions of Section 2.9 with respect to a particular transaction shall be deemed to apply to all Members in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Members may nonetheless, by agreement with the Company, purchase securities in such transaction).

122 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed duly given or made (i) when personally delivered to the intended recipient (or an officer of the intended recipient) or sent by telecopy or facsimile followed by the mailing of a confirmation copy as set forth in clause (ii) or (iii) below, provided that if notice is delivered or sent after 5:00 p.m. US Eastern Time or on a Saturday, Sunday or legal holiday in jurisdiction to which such notice is sent or delivered, notice shall be effective on the business day after the date such notice is delivered or sent, (ii) on the business day after the date sent when sent by a nationally recognized overnight courier service, or (iii) four (4) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid if to the Company, to its address and, if to a Member, to the address set forth on Exhibit A hereto. Any party may change the address to which notices, requests, demands, claims and other

communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

123 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior agreement or understanding among the parties hereto with respect to the subject matter hereof.

124 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of New Jersey, without regard to conflicts of laws principles.

125 Designation of Tax Matters Partner.

(a) To the extent necessary, the Member designated by the Board (provided such person agrees to so serve) shall serve as the "Tax Matters Partner" of the Company as defined by Code Section 6231(a)(7). In that capacity, the Tax Matters Partner is authorized and empowered to act and represent the Company and each of the Members before the Internal Revenue Service in any audit or examination of any Company tax return and before any court selected by the Tax Matters Partner for judicial review of any adjustments assessed by the Internal Revenue Service. By the execution of this Agreement, each of the Members consents and acknowledges that each person (provided such person agrees to so serve) designated by the Managers shall be the Tax Matters Partner, and that each Member agrees to be bound by, and agrees not to take any action inconsistent with, the actions or inaction of the Tax Matters Partner, including, but not limited to, the extension of the statute of limitations or any contest, settlement or other action or position that the Tax Matters Partner deems proper under the circumstances. Each Member agrees to notify the Tax Matters Partner of any such action to be taken by the Member, in violation of this Agreement or otherwise, at least ten (10) days prior to the date the Member takes the action. The Tax Matters Partner shall notify each Member in writing of all administrative and judicial proceedings for the adjustment of Company items and shall include in periodic reports to the Members information it deems appropriate in its discretion to keep the Members informed of the status of the proceedings. The Tax Matters Partner shall have the authority to take all actions necessary or desirable in its discretion to accomplish the matters set forth in this Section 12.5.

(b) The Company shall bear all expenses, including legal and accounting fees, claims, liabilities, losses and damages, incurred by the Tax Matters Partner in connection with any administrative or judicial proceeding with respect to the tax liability of the Members. The Members shall have no obligation to provide funds for such purpose. The taking of any action and the incurring of any expense by the Tax Matters Partner in its discretion and the provisions regarding limitation of liability and indemnification of Managers and Officers set forth in this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such.

(c) The Tax Matters Partner is authorized to make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (i) to make the election provided for in Section 6231(a)(1)(B)(ii) of the Code; (ii) to adjust the basis of Company property pursuant to Sections 754, 734(b), and 743(b) of the Code, or comparable provisions of state, local, or foreign law, in connection with transfers of Company interests and Company distributions; (iii) to extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal, state, local, or foreign tax returns; and (iv) to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members.

12.6 Code § 83 Safe Harbor Election.

(a) By executing this Agreement, each Member authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "Notice") apply to any Unit in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services provided to the Company. For purposes of making such Safe Harbor election, the Board shall designate the Tax Matters Partner as the "Member who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by such Member or the Tax Matters Partner shall constitute execution of a "Safe Harbor Election" in accordance with Section 4.04(1) of the Notice. The Company and each Member hereby agrees to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Member shall prepare and file all federal income tax returns reporting the income tax effects of each Safe Harbor Company Unit issued by the Company in a manner consistent with the requirements of the Notice.

(b) The Company and any Member may pursue any and all rights and remedies it may have to enforce the obligations of the Company and the Members (as applicable) under this Section 12.6, including, without limitation, seeking specific performance and/or immediate injunctive or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of this Section 12.6. A Member's obligations to comply with the requirements of this Section 12.6 shall survive such Member's ceasing to be a Member of the Company or the termination, dissolution, liquidation, and winding up of the Company, and, for purposes of this Section 12.6, the Company shall be treated as continuing in existence.


(c) Each Member authorizes the Tax Matters Partner to amend subsections (a) and (b) of this Section 12.6 to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to

the Company as set forth in Section 4 of the Notice (e.g., to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to any Member (as compared with the after-tax consequences that would result if the provisions of the Notice applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company).

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Amended and Restated Operating Agreement to be executed as of the date first stated above.

BLUE SKY POWER LLC

By: 

Name: Benjamin S. Parvey

Title: Chief Executive Officer

Exhibit A

MEMBERS

As of January 1, 2015

Member Name and Address	SS# or TIN	Common Units	Percentage Interest
Benjamin S. Parvey II 650 Garwood Road Moorestown, NJ 08033	415-39-2662	9,900,000	99%
Frederic C. Parvey 326 8 th Street Atlantic Beach, FL 32233	261-08-0898	100,000	1.00%

*** Subject to vesting and other restrictions as provided in the Restricted Unit Grant Agreement.**

° P Series Common Units are intended to be classified as a profits interest for federal income tax purposes pursuant to Internal Revenue Service Revenue Procedure 93-27 and Section 2.8 of this Agreement and as reflected in the Restricted Unit Grant Agreement and the Company's books and records.

Exhibit B

BOARD OF MANAGERS

Benjamin S. Parvey II
Frederic C. Parvey



Exhibit A-15
Secretary of State Registration

Attached is a copy of Blue Sky Power LLC's registration with the Ohio Secretary of the State. Also attached is a copy of Blue Sky Power, LLC's registration in its home state, New Jersey.



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
08/08/2016	201621802522	REGISTRATION OF FOREIGN FOR PROFIT LLC (LFP)	99.00	0.00	0.00	0.00	0.00

Receipt

This is not a bill. Please do not remit payment.

BLUE SKY POWER, LLC
BENJAMIN S. PARVEY
21 TANNER STREET, SUITE 103
HADDONFIELD, NJ 08033

STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jon Husted
3927635

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

BLUE SKY POWER, LLC

and, that said business records show the filing and recording of:

Document(s)

REGISTRATION OF FOREIGN FOR PROFIT LLC

Effective Date: 07/28/2016

Document No(s):

201621802522



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio this
8th day of August, A.D. 2016.

Jon Husted

Ohio Secretary of State

12/19/08

Taxpayer Identification# 283-567-458/000

Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

Additionally, please note that State law requires all contractors and subcontractors with Public agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.


If you have any questions or require more information, feel free to call our Registration Hotline at (609)292-1730.

I wish you continued success in your business endeavors.

Sincerely,



James J. Fruscione
Director
New Jersey Division of Revenue

STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE		DEPARTMENT OF TREASURY/ DIVISION OF REVENUE PO BOX 252 TRENTON, N J 08646-0252
TAXPAYER NAME: BLUE SKY POWER LLC	TRADE NAME:	
ADDRESS: 132 HADDON AVENUE HADDONFIELD NJ 08033	SEQUENCE NUMBER: 1455925	
EFFECTIVE DATE: 12/19/08	ISSUANCE DATE: 12/19/08	
 Director New Jersey Division of Revenue		
FORM-BRC This Certificate is NOT assignable or transferable. It must be conspicuously displayed at the business address.		



B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

Exhibit B-1

Jurisdictions of Operation

Blue Sky Power at the date of filing of this application, currently provides retail electric energy brokerage services in New York and Texas. Concurrently with filing this application, Blue Sky Power is filing energy brokerage applications in Pennsylvania, Maryland and Illinois and is already bonded to provide such services in those jurisdictions.



Exhibit B-2 Experience & Plans

Set forth below is a description of Blue Sky Power, LLC's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4928.10 of the Revised Code.

As a marketer/broker (and entity not taking possession of the energy), BSP intends to market its energy consulting and project development services to institutional, governmental, and commercial clients, including energy management and procurement/brokering services. Using its existing network of clients and BSP's internal workforce and business development team, BSP will perform direct marketing to potential target CEO, COOs, and CFOs. Once engaged, the parties jointly develop a support program which specifically suits each client's needs and budget. The scope of the marketing effort will be to major organizations/institutions throughout the State. BSP is offering, as part of its services, energy brokering and procurement services to clients.

To memorialize the BSP-Customer relationship, BSP will enter into consulting services or project development agreements with customers which will delineate the rights and responsibilities of both parties, including scope of services, duration, compensation, insurance, remedies and termination, and other terms. BSP responds to customer inquiries via the terms of the contract.



Exhibit B-3
Summary of Experience

Set forth below is a concise summary of Blue Sky Power's experience in providing aggregation service(s) including contracting with customers to combine electric load and representing customers in the purchase of retail electric services. (e.g. number and types of customers served, utility service areas, amount of load, etc.):

Blue Sky Power is not an aggregator. BSP performs energy advisory and clean energy project development activities for its clients. Set forth below are a representative sample of these projects.

Project Name	Project Size/Type	Type of customer	Project Description
Georgian Court University	392kW Solar	Higher Ed	Through an RFP process, Blue Sky Power was selected to design, build, own, operate, finance and maintain the system. The project provides 38% annual energy savings to the University. It was commissioned in December of 2010 and is currently operational.
Richard Stockton College	900kW Solar	Higher Ed	Through a competitive bidding process, BSP was chosen to develop, construct, own, operate and maintain a 900kW Solar Parking Canopy, a 21,000BTUh Solar Thermal system, and an energy management system with 256 remote control thermostats. In addition, the project received a \$3.2 million grant from the US DOE to help offset the cost of the project. Completed in Spring 2012, the PV project saves the College 75% on their
Cathedral Village (Presbyterian Senior Living)	Electric & Gas Procurement 260kW Cogeneration Efficiency Lighting	Senior Living	BSP developed, financed and constructed a 265 kW Combined Heat and Power (CHP) Plant, upgraded existing electrical infrastructure, replaced existing, rooftop air-handling units, and retrofitted lighting fixtures and related sensors/controls. Construction was completed in March 2016. Blue Sky Power developed the projects at no cost to Cathedral Village, including engineering, securing \$500,000 state clean energy grant, financier and contractor selection and management, utility interconnection design and approvals and negotiations of the 20 year Energy Services Agreement, a site lease agreement and other related agreements for the CV Board of Directors. The project replaced failing equipment that reached the end of its useful life, saving the facility on its capital and operating budget.

Project Name	Project Size/Type	Type of customer	Project Description
Masonic Charity Foundation Masonic Home CCRC	1.2MW Solar 500kW Cogen Efficiency	Senior Living	BSP performed project development, energy analysis, prepared bid specifications, drafted the RFP, interviewed prospective PPA providers, assisted with PPA negotiations and oversaw all phases of project development and execution. This solar project was completed and commissioned in March 2011. The Cogen and efficiency projects were completed in 2015. The system offsets 12% of the electricity usage and saves the Foundation close to 38% annually on the electricity generated.
Simpson House (Simpson Senior Services)	260kW Cogeneration Efficiency Lighting	Senior Living	Simpson House in Philadelphia, PA is the nation's oldest senior living facility. Blue Sky Power developed, financed and is constructing a 265 kW Combined Heat and Power (CHP) Plant, upgrading existing electrical infrastructure, installing a building management system, and retrofitting lighting fixtures and related sensors/controls. Construction commenced in March 2016. Blue Sky Power developed the projects at no cost to Simpson Senior Services, including engineering, securing \$400,000 state clean energy grant, financier and contractor selection and management, utility interconnection design and approvals and negotiation of the 20-year Energy Services Agreement, a site lease agreement and other related agreements for the Simpson Senior Services Board of Directors. The project will replace failing equipment that reached the end of its useful life, saving the facility on its capital and operating budget.
EdR Education Realty Trust	Electric & Gas Procurement Energy Auditing DG Projects	Higher Education REIT	A leader in the collegiate housing industry since 1964, EdR is one of the largest developers, owners and managers of collegiate housing communities. EdR is a self-administered and self-managed real estate investment trust (REIT) publicly traded on the New York Stock Exchange (NYSE: EDR). Blue Sky Power serves as EdR's Energy Project Developer and Consultant. Blue Sky Power manages the procurement of all deregulated energy markets for EdR at its properties across the country located on the nation's leading colleges and universities. Blue Sky Power also develops and manages clean energy projects at EdR's properties and handles various other energy matters for the nation's 2 nd largest collegiate housing REIT.

Project Name	Project Size/Type	Type of customer	Project Description
Central Regional School District	1.5MW Solar	School District	Blue Sky Power (BSP) developed the school district's Solar Energy Project, implemented a Clean Energy Project Development and Management Plan, assisted with PPA negotiations and finance structuring, coordinating the working group and oversaw the project to ensure timely "placed in service operation." The project was completed in September 2011, and is actively generating electricity. The project will save the district close to 44% on their electric expense over the next 15 years.
Gloucester Township Energy Master Plan	Energy Master Planning	Municipality	Under a U.S. Department of Energy grant, developed Clean Energy Master Plan for 25 municipal and community buildings, brownfields, superfund sites, for the purpose of creating clean energy zones to produce power locally to support local community power demands, save taxpayer dollars and generate revenue for the Township.
Gloucester Township Landfill Solar Project	3.1MW Solar	Municipality	As part of its Energy Master Planning for Gloucester Township (GT), BSP identified opportunities for the productive reuse of a closed corporate landfill to be owned by the Township. BSP has guided the project and drafted the RFP for the lease of this site for the purpose of a utility scale solar facility. The project was awarded and is currently being designed and permitted. The Township will receive lease payments, and a portion of
Gloucester Township Shared Services GT Public Schools Black Horse Pike Regional School District	6.1MW Solar	Municipality	BSP established the project with a shared services agreement between GT, Township Public Schools, and the Black Horse Pike Regional School District for a solar power purchase agreement project. BSP designed the project and drafted the RFP, spearheaded the bid process, provided analysis on the bids and provided recommendations. This project will save the entities annually on their electricity costs over the next 15 years. Construction was completed December 2013.

Project Name	Project Size/Type	Type of customer	Project Description
Cherry Hill Township	100kW Solar	Municipality	BSP developed bid specifications, advised the Township in awarding the project, oversaw installation and regulatory compliance and monetized the SRECs. This project was commissioned in October 2010.
AQUA	750kW Solar	Utility	BSP served the water utility as a clean energy project development advisor. BSP developed the Solar Energy Project Feasibility Report, drafted the RFP, ran the bid process, assisted in the award of project and provided ongoing project management. These projects were completed in Winter of 2011.
Pingry School	392kW Solar	School	BSP structured the financing for a clean energy project at the 100+ year-old institution. In this role, BSP was able to implement an innovative structure that involved an operating lease from Bank of America. In addition, BSP obtained a 10-year SREC contract for \$450/SREC. To date, this is the only completed operating lease for a solar project that Bank of America implemented for a non-profit in New Jersey.
Kingsway Regional School District	2.25MW Solar	School District	BSP developed the Solar Energy Project Feasibility Report and solar RFP, ran the bid process and assisted in the award of project. BSP implemented its Clean Energy Project Development and Management Plan and the project went out for bid in July 2011. The project is on a contaminated deldran site and has received NJDEP approval for solar installation on the site. The project was awarded in 2012 and the District stands to save more than 40% on their electricity for the next 15 years. Construction was completed in 2014.
Clayton Regional School District	750kW Solar	School District	BSP developed the Solar Energy Project Feasibility Report and the solar RFP, ran the bid process and assist in the award of project. The project was awarded in December 2011. BSP successfully assisted in negotiating the PPA, and the project was completed in early 2013 and the District is saving more than originally projected.

Project Name	Project Size/Type	Type of customer	Project Description
Atlantic County Improvement Authority	1.85MW Solar	Municipal Government	BSP was the selected advisory firm through an RFP process to assist the Atlantic County Improvement Authority in creating two clean energy projects at the Atlantic County Special Services School and Atlantic County Institute of Technology. BSP prepared and delivered a feasibility study. In addition, BSP submitted the electrical interconnection applications to the utility on behalf of the districts. The project completed in 2015.
Southern Regional School District	2.5MW Solar	School District	BSP drafted a Solar Energy Project Feasibility Report and a solar RFP, took the school district through the interconnection process through the local utility, and drafted the solar RFP for competitive bidding.
Neptune Township & Neptune Board of Education	2MW	Municipal Government	Selected through an RFP process to provide a feasibility study, for 15 Township and School District facilities. Following the feasibility study BSP will draft the RFP and manage the bid process.
Trump Entertainment Resorts	1MW	Hospitality	Retained to perform an Economic and Engineering feasibility report for the purpose of evaluating and installing a solar project on the Taj Mahal Casino resort and the warehouse facility.
Lower Providence Township	1.3MW	Municipal Government	Under a USDOE grant, Blue Sky is performing a feasibility study for clean energy projects including the Moyer Landfill. BSP also drafted the RFP, and assisted the Township in taking the municipal solar project at the municipal complex out to bid, and drafted a clean energy curriculum for the local school district. The municipal solar project completed construction in early 2014.



Exhibit B-4

Disclosure of Liabilities and Investigations

Blue Sky Power, LLC does not have any pending or past rulings, judgments, contingent liabilities, revocation of authority, regulatory investigations, or any other matter that could adversely impact Blue Sky Power, LLC's financial or operational status or ability to provide the services it is seeking to be certified to provide.



Exhibit B-5
Disclosure of Conviction of Fraud/Violations

Neither Blue Sky Power, LLC, its predecessor (none), nor any principal officer of Blue Sky Power, LLC have ever been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws within the past five years.

X No Yes



Exhibit B-6 License Disclosures

Neither Blue Sky Power, LLC or its predecessor (none) has had any certification, license, or application to provide retail or wholesale electric service including aggregation service denied, curtailed, suspended, revoked, or cancelled within the past two years.

X No ☐ Yes



C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE



Exhibit C-1
Annual Reports

Blue Sky Power, LLC is a Limited Liability Company and is privately held and is not required to prepare Annual Reports to Shareholders.



Exhibit C-2
SEC Filings

Blue Sky Power, LLC is a New Jersey Limited Liability Company and is privately held and consequently does not submit SEC filings. Blue Sky Power, LLC has no parent company or affiliates.



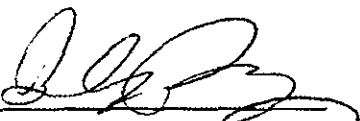
Exhibit C-3
Financial Statements

Enclosed are copies of Blue Sky Power, LLC's two most recent years' summary compilation financial statements (balance sheet - income statement). Audited financial statements are not available and the Blue Sky Power, LLC Chief Executive Officer has certified the truth and accuracy of the summary financial statements.

OFFICER'S CERTIFICATE

I, the undersigned, Benjamin S. Parvey, II, Chief Executive Officer of Blue Sky Power, LLC ("BSP"), hereby certify that the accompanying balance sheets of BSP as of December 31, 2015, and the summary statements of income and cash flows for the 12-month period ended December 31, 2015, have been compiled from figures shown in the records of BSP and fairly present the financial position of BSP as of December 31, 2015, and the results of operations and cash flows of BSP for the period presented, subject to year-end audit adjustments, all in conformity with generally accepted accounting principles consistently applied during the periods.

This report is intended solely for the use of the BSP's application for a power brokerage application and should not be used for any other purpose.

By: 
Benjamin S. Parvey, II
Chief Executive Officer

Haddonfield, NJ
October, 2016

Blue Sky Power LLC
Profit and Loss - Tax Basis
January - December 2015 and 2014

	Total	
	Jan - Dec 2015	Jan - Dec 2014
Income		
Total Income	\$463,460	\$405,445
Expenses		
Marketing and PR	\$7,250	\$8,645
Automobile Expense	\$12,553	\$2,279
Bank Charges	\$305	\$788
Charitable Contributions	\$2,100	\$2,681
Conference Fee	\$0	\$313
Consulting Fee	\$121,086	\$0
Dues & Subscriptions	\$0	\$1,802
Engineering Costs	\$0	\$16,000
Project Costs	\$3,579	\$22,682
Guaranteed Payment to Partner	\$213,560	\$191,808
Insurance	\$10,746	\$13,053
Interest Expense	\$2,905	\$18,002
Internet Costs	\$960	\$38
IT Costs	\$3,938	\$4,570
Legal & Professional Fees	\$500	\$850
Meals and Entertainment	\$5,332	\$1,954
Membership Fee	\$0	\$9,326
Office Expenses	\$19,418	\$8,320
Other General and Admin Expenses	\$1,721	\$6,828
Client Reimbursement	\$1,300	\$0
Rent or Lease	\$5,000	\$9,008
Shipping, Freight & Delivery	\$525	\$712
Taxes & Licenses	\$430	\$2,422
Travel	\$11,559	\$3,201
Utilities	\$3,481	\$2,617
Telephone	\$1,691	\$3,018
Total Expenses	\$429,939	\$330,917
Net Operating Income	\$33,521	\$74,528
Other Expenses		
Depreciation	\$1,055	\$0
Total Other Expenses	\$1,055	\$0
Net Income	\$32,466	\$74,528

Internally Prepared - For Management Purposes Only

Blue Sky Power LLC
Balance Sheet - Tax Basis
As of December 31, 2015 and 2014

	Total	
	As of Dec 31, 2015	As of Dec 31, 2014
ASSETS		
Current Assets		
Bank Accounts	\$44,261	\$43,521
Current assets		
Loan Receivable	\$131,247	\$0
Total Current Assets	\$131,247	\$0
Fixed Assets		
Intangible Assets	\$8,192	\$8,192
Accum Amort	-\$8,192	-\$8,192
Total Intangible Assets	\$0	\$0
Furniture & Fixtures	\$3,611	\$2,556
Accum Depn	-\$3,397	-\$2,342
Total Furniture & Fixtures	\$214	\$214
Total Fixed Assets	\$214	\$214
TOTAL ASSETS	\$175,722	\$43,735
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Notes Payable	\$0	\$111,643
Deposits on Contract	\$203,166	\$0
Total Current Liabilities	\$203,166	\$111,643
Total Liabilities	\$203,166	\$111,643
Equity		
Retained Earnings	-\$27,444	-\$67,908
Total Equity	-\$27,444	-\$67,908
TOTAL LIABILITIES AND EQUITY	\$175,722	\$43,735

Internally Prepared - For Management Purposes Only



Exhibit C-4
Financial Arrangements

Blue Sky Power, LLC does not have any third party arrangements to conduct CRES as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.).



Exhibit C-5
Forecasted Financial Statements

Enclosed are two years of forecasted financial statements (income statement and cash flow statement) for Blue Sky Power, LLC. The name, address, email address, and telephone number of the point of contact is: Benjamin Parvey, CEO, Blue Sky Power, LLC, 21 Tanner Street, Suite 103, Haddonfield, New Jersey 08033.

Blue Sky Power LLC		
2016 and 2017 Budget and Projection		
	2016 Total	2017 Total
Income		
Development	\$ 169,000.00	\$754,000.00
Advisory	\$ 311,250.00	\$ 258,900.00
Total Income	\$ 649,250.00	\$1,766,900
Expenses		
9002 Marketing and PR	\$ 3,600.00	\$ 3,600.00
9020 Automobile Expense		
Ben Auto	\$ 7,512.00	\$ 7,512.00
9030 Bank Charges	\$ 240.00	\$ 240.00
9040 Charitable/Political Contributions	\$ 2,400.00	\$ 2,400.00
9060 Conference Fee	\$ 6,100.00	\$ 6,100.00
Consulting Fee - MCFA		
9080 Dues & Subscriptions	\$ 600.00	\$ 600.00
9090 Engineering Costs	\$ -	\$ -
9095 Project Costs	\$ -	\$ -
ACIA		
9110 Guaranteed Payment to Partner	\$ 168,000.00	\$ 168,000.00
9120 Health Insurance	\$ 8,700.00	\$ 8,700.00
9140 Insurance - Errors & Omissions	\$ 840.00	\$ 840.00
9150 Insurance - Liability	\$ 2,820.00	\$ 2,820.00
Loans Payable - Principal and Interest	\$ -	\$ -
9190 IT Costs	\$ 2,227.00	\$ 2,227.00
9200 Legal & Professional Fees	\$ 1,500.00	\$ 1,500.00
9210 Meals and Entertainment	\$ 2,400.00	\$ 2,400.00
9220 Membership Fee	\$ -	\$ -
9230 Office Expenses	\$ 1,800.00	\$ 1,800.00
9240 Other General and Admin Expenses	\$ 2,400.00	\$ 2,400.00
9280 Rent or Lease		
Tanner	\$ 12,000.00	\$ 12,000.00
DCM	\$ -	\$ -
9300 Shipping, Freight & Delivery	\$ 1,200.00	\$ 1,200.00
Miscellaneous	\$ 1,800.00	\$ 1,800.00
9340 Travel	\$ 4,200.00	\$ 4,200.00
9380 Utilities	\$ 1,800.00	\$ 1,800.00
Monthly Expenses before Taxes	\$ 232,139.00	\$ 232,139.00
Monthly Cash Flow Before Taxes	\$ 248,111.00	\$ 780,761.00
Taxes	\$ 162,160.00	\$ 276,160.00
Monthly Cash Flow after Taxes	\$ 85,951.00	\$ 504,601.00
Cumulative Cash Flow		



**Exhibit C-6
Credit Rating**

Blue Sky Power, LLC's credit score as determined by Equifax is 497. A copy of the credit report is attached as Exhibit C-7.



**Exhibit C-7
Credit Report**

A copy of Blue Sky Power, LLC's credit report is enclosed.



Small Business Credit Report

August 1, 2016

Best Match For Inquiry

Company Profile:

BLUE SKY POWER
21 TANNER ST
HADDONFIELD, NJ 08033-2403
(856) 888 - 1311

EFX ID®: 726639914

Registered Site

Company Profile:

BLUE SKY POWER LLC
200 FEDERAL ST STE 243
CAMDEN, NJ 08103-1084
(856) 479 - 9095
(856) 225 - 6683
(865) 479 - 9095

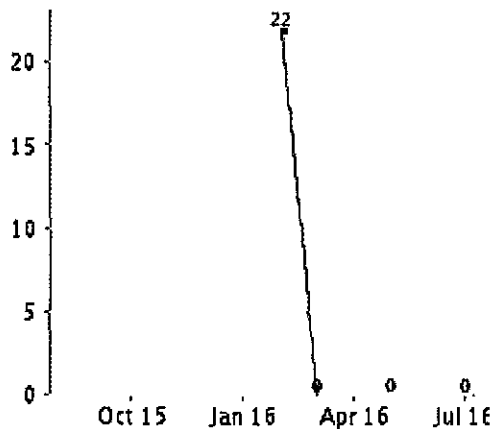
EFX ID®: 635946982

Credit Utilization

Credit Utilization information unavailable

Days Beyond Terms

Average days beyond terms by date reported
(non-financial accounts only)



Recent Trend: 0 Days Beyond Terms

Credit Risk Score

497

101

992

Key Factor(s)

- Years Firm has Been in Business in Database Suggests Lower Risk
- Company Size (Number of Employees) Suggests Lower Risk
- 100 Percent of Non-Financial Payment Experiences Reported as Current in Last 3 Months

Payment Index

Insufficient data available to calculate Payment Index.
Suggest careful review.

Business Failure Score

1,396

1,000

1,880

Key Factor(s)

- Years Firm has Been in Business in Database Suggests Higher Risk



Small Business Credit Report

August 1, 2016

Bureau Summary Data

	Financial	Non-Financial
Number of accounts	NR	1
Credit Active Since	NR	01/09/2012
Number of Charge-Offs	NR	0
Total Past Due	NR	\$0
Most Severe Status in 24 Months	NR	Current
Single Highest Credit Extended	NR	\$237
Total Current Credit Exposure	NR	\$237
Median Balance	NR	NR
Average Open Balance	NR	NR

Recent Activity (Since 05/01/2016)

Number of Accounts Delinquent	NR	0
New Accounts Opened	NR	0
Inquiries	0	0
Accounts Updated	NR	1

NR = None Reported

Inquiries

No inquiries on file

Bureau Messages

1. Insufficient Data Available to Calculate Credit Utilization
2. Legal entity has more than one site
3. Additional information was limited to inquired and headquarters site aliases/akas and corresponding ID information.



Small Business Credit Report

August 1, 2016

Public Records

Summary

Type Status	Number	Dollar	Most Recent Date Filed
Bankruptcies	0	\$0	None Reported
Judgments	0	\$0	None Reported
Satisfied	0	\$0	
Liens	0	\$0	None Reported
Filed and Open	0	\$0	
Released	0	\$0	

NR = None Reported

Details



Small Business Credit Report

August 1, 2016

Additional Information

Alternate Company Names and DBA's

No Alternate Company Information available.

Owners and Guarantor Names

No Owner and Guarantor Names available.

Business and Credit Grantor Comments

No comments available.

Report Details

Report Generated on 08/01/2016



Small Business Credit Report

August 1, 2016

Location(s)

Best Match for Inquiry

Provides the business name and address on the file which most closely matches your inquiry information.

Registered Site

If present, this is the site registered with the Secretary of State.

Scores

Credit Risk Score

The Small Business Credit Risk Score™ for Financial Services is designed to assist credit grantors in improving risk assessment throughout a small business's account life cycle, reducing delinquency rates and improving profitability. The score utilizes unique bank loan, credit card, and lease information, as well as supplier, telco and utility credit history, public records, and firmographic data from the Equifax Commercial database.

The score predicts the likelihood of a small business incurring greater than 90 days severe delinquency or charge-off over the next 12 months.

Score range is 101 - 992, with the lower score indicating higher risk. A score equal to 0 indicates a bankruptcy on file. Up to four reason codes may be returned which indicate the top factors influencing the score.

Payment Index

A dollar-weighted indicator of a business's past and current payment performance based on the total number of financial and non-financial payment experiences in the Equifax Commercial database. The median Payment Index for the inquired business's industry is also shown for benchmark purposes, provided there is enough information in the Equifax Commercial database on that particular industry to ensure a statistically valid value. The chart shown provides a suggested interpretation of the Payment Index value.

Business Failure Score

The Business Failure Risk Score™ is designed to predict the likelihood of a business failure through either formal or informal bankruptcy within a 12-month period.

Score range is 1,000 - 1,880, with the lower score indicating higher risk. A score equal to 0 indicates a bankruptcy on file. Up to four reason codes may be returned which indicate the top factors influencing the score.

Bureau Data

Credit Utilization

Illustrates available credit line dollars which could be used for meeting other financial obligations. Credit line dollars based on revolving financial accounts; excludes term loans, leases, and charged-off accounts; includes open, revolving accounts and closed accounts still owing a balance.

Days Beyond Terms

Displays the dollar-weighted average days beyond terms on non-financial accounts within the last 12 months from the date of the inquiry. If no information was reported for a given month within the 12-month period, no line will appear in the graph for that month.

The 'Recent Trend' is the Average Days Beyond Terms calculated within the last 120 to 150 days from the date of inquiry.

Inquiries

Shows recent inquiries on the company.

Bureau Messages

Messages regarding the credit report or on events that may warrant additional attention.

Bureau Summary Data

Summarizes credit data into financial and non-financial segments and allows you to quickly assess the risk level of the business by providing key summary attributes. The 'Recent Activity' section highlights recent key activities that have occurred on the file within the last 120 to 150 days from the date of the inquiry.

Public Record Information

Summary and detailed information for any bankruptcies, judgments or liens on file for the business; also includes business registration information obtained from Secretary of State Office or other trusted sources.

Additional Information

Alternate company information including DBA names, addresses, phone numbers and, if applicable, the parent company; includes owner/guarantor information and comments from business owners or credit grantors.



Small Business Credit Report

August 1, 2016

Dispute Information

THANK YOU FOR PURCHASING YOUR EQUIFAX SMALL BUSINESS CREDIT REPORT.

The business report contains financial and non-financial information reported by third parties relating to your business. Equifax has taken great care to report this information correctly. The business report is designed to capture the complete history of the business including payment performance and public record information. A change of ownership, a change of legal entity type (for example, sole proprietor to LLC), a change of location, an expansion to additional locations, or other common business events do not eliminate historical data regarding the business.

Equifax provides your business with a dispute process to address any perceived inaccuracies on the report. Only the business owner or registered corporate officers of the company may dispute a report on their company. If you are not the owner / officer or the business report in question is not your business then you cannot file a dispute.

The dispute process is not intended to provide the business an opportunity to dispute and request the removal of accurate historical information (positive or negative) about the business. Additionally, only that information contained in the Public Records and Bureau Data sections of the report may be changed as a result of a dispute. However, your business does have the opportunity to provide a statement of explanation that can be added as a comment to other sections of the report. The comment may be reviewed and/or used by recipients of a business report to help understand your business's past history. Depending on the nature of the statement, Equifax may require supporting documentation.

If you believe there is any inaccuracy with the report's information, please email us at customerservice@equifaxsmallbusiness.com. We will work with you to determine the details of the dispute and supply you with a Research Request form. Once you know the details of your dispute you will need to complete the Research Request Form and send it to us. Upon receipt of the completed Research Request Form, Equifax will forward a request for verification to the reporting entity. After completion of the verification process, Equifax will notify you in writing of the results.

Please refer to the Equifax Small Business web site for additional details on how your business information is gathered and reported by Equifax. If you have any further questions about your Equifax Small Business Report, feel free to contact the Customer Service department.

Thank you for the opportunity to serve you.

EQUIFAX SMALL BUSINESS TEAM

This information is provided in confidence for your exclusive use for legitimate business purposes. This information shall not be reproduced. Equifax and its sources do not warrant this information and shall not be liable for your use or dependence upon it.



Exhibit C-8
Bankruptcy Information

Blue Sky Power, LLC, its affiliates (none), and its guarantors (none) have no reorganizations, protection from creditors or any other form of bankruptcy filings made in the current year or within the two most recent years preceding the application.



Exhibit C-9
Merger Information

Blue Sky Power, LLC has not been involved in any merger, consolidation, dissolution, or sale with any other firm.