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18-1552-EL-AGG

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Ohio | Public Utilities Commission

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Date Received	Case Number	Version
18-1552	EL-AGG	May 2016

INITIAL 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-12 Company History). 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.

RECEIVED
OCT 15 2018
DOCKETING DIVISION
PUCO

A. APPLICANT INFORMATION

A-1 Applicant intends to be certified as: (check all that apply)

☑ Power Broker ☐ Aggregator

A-2 Applicant's legal name, address, telephone number and web site address

Legal Name Energy Auction Exchange LLC
Address 893 W. Baxter Dr. South Jordan, UT. 84095
Telephone # (801) 826-4888 Web site address (if any) www.energyaex.com

A-3 List name, address, telephone number and web site address under which Applicant will do business in Ohio

Legal Name Energy Auction Exchange LLC
Address 893 W. Baxter Dr. South Jordan, UT. 84095
Telephone # (801) 826-4888 Web site address (if any) www.energyaex.com

A-4 List all names under which the applicant does business in North America

Energy Auction Exchange
Energy AEX

A-5 Contact person for regulatory or emergency matters

Name Kelly Curtis
Title Director

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician DMM Date Processed 10/16/18

Business address 893 W. Baxter Dr. South Jordan, UT. 84095
Telephone # (801) 826-4888 Fax # (801) 838-7707
E-mail address kelly@energyaex.com

A-6 Contact person for Commission Staff use in investigating customer complaints

Name Kelly Curtis
Title Director
Business address 893 W. Baxter Dr. South Jordan, UT. 84095
Telephone # (801) 826-4888 Fax # (801) 838-7707
E-mail address kelly@energyaex.com

A-7 Applicant's address and toll-free number for customer service and complaints

Customer Service address 893 W. Baxter Dr. South Jordan, UT. 84095
Toll-free Telephone # (877) 671-7751 Fax # (801) 838-7707
E-mail address kelly@energyaex.com

A-8 Applicant's federal employer identification number # 455020473

A-9 Applicant's form of ownership (check one)

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Limited Liability Partnership (LLP)
- ☑ Limited Liability Company (LLC)
- ☐ Corporation
- ☐ Other _____

A-10 (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).

☑ **First Energy**				
☑ **Ohio Edison**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **Toledo Edison**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **Cleveland Electric Illuminating**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **Duke Energy**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **Monongahela Power**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **American Electric Power**				
☑ **Ohio Power**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **Columbus Southern Power**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial
☑ **Dayton Power and Light**	☑ Residential	☑ Commercial	☑ Mercantile	☑ Industrial

A-11 Provide the approximate start date that the applicant proposes to begin delivering services

October 1, 2018

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED:

A-12 **Exhibit A-12 "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-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. (This is generally only applicable to publicly traded companies who publish annual reports)

C-2 **Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If the applicant does not have such filings, it may submit those of its parent company. An applicant may submit a current link to the filings or provide them in paper form. 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. If the applicant does not have a balance sheet, income statement, and cash flow statement, the applicant may provide a copy of its two most recent years of tax returns (with social security numbers and account numbers redacted).

C-4 **Exhibit C-4 "Financial Arrangements,"** provide copies of the applicant's financial to satisfy collateral requirements to conduct retail electric/gas business activity (e.g., parental or third party guarantees, contractual arrangements, credit agreements, etc.,).

Renewal applicants can fulfill the requirements of Exhibit C-4 by providing a current statement from an Ohio local distribution utility (LDU) that shows that the applicant meets the LDU's collateral requirements.

First time applicants or applicants whose certificate has expired as well as renewal applicants can meet the requirement by one of the following methods:

1. The applicant itself stating that it is investment grade rated by Moody's, Standard & Poor's or Fitch and provide evidence of rating from the rating agencies.

2. Have a parent company or third party that is investment grade rated by Moody's, Standard & Poor's or Fitch guarantee the financial obligations of the applicant to the LDU(s).

3. Have a parent company or third party that is not investment grade rated by Moody's, Standard & Poor's or Fitch but has substantial financial wherewithal in the opinion of the Staff reviewer to guarantee the financial obligations of the applicant to the LDU(s). The guarantor company's financials must be included in the application if the applicant is relying on this option.

4. Posting a Letter of Credit with the LDU(s) as the beneficiary.

If the applicant is not taking title to the electricity or natural gas, enter "N/A" in Exhibit C-4. An N/A response is only applicable for applicants seeking to be certified as an aggregator or broker.

C-5 **Exhibit C-5 "Forecasted Financial Statements,"** provide two years of forecasted income statements for the applicant's **ELECTRIC related business activities in the state of Ohio Only**, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer. The forecasts should be in an annualized format for the two years succeeding the Application year.

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. If an applicant or its parent does not have such a credit rating, enter "N/A" in Exhibit C-6.

C-7 **Exhibit C-7 "Credit Report,"** provide a copy of the applicant's credit report from Experion, Dun and Bradstreet or a similar organization. An applicant that provides an investment grade credit rating for Exhibit C-6 may enter "N/A" for Exhibit C-7.

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 two most recent years preceding the application.

C-10 **Exhibit C-10 "Corporate Structure,"** provide a description of the applicant's corporate structure, not an internal organizational chart, 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 in North America. If the applicant is a stand-alone entity, then no graphical depiction is required and applicant may respond by stating that they are a stand-alone entity with no affiliate or subsidiary companies.

CFO

Signature of Applicant & Title

Notary Public - State of Utah
PAULINE M. FISHER
Comm. #698147
My Commission Expires
November 15, 2021

Sworn and subscribed before me this 1 **day of** OCT, 2018
Month Year

Pauline M. Fisher

Signature of official administering oath

Kelly Curtis CFO

Print Name and Title

My commission expires on 11-15-21

AFFIDAVIT

State of Utah :

South Jordan ss.
(Town)

County of Salt Lake :

Kelly Curtis, Affiant, being duly sworn/affirmed according to law, deposes and says that:

He/She is the Partner (Office of Affiant) of Energy Auction Exchange 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.

CFO
Signature of Affiant & Title

Sworn and subscribed before me this 1 day of October 2018
Month Year

Pauline M. Fisher
Signature of official administering oath

Kelly Curtis CFO
Print Name and Title

Notary Public - State of Utah
PAULINE M. FISHER
Comm. #698147
My Commission Expires
November 15, 2021

My commission expires on 11-15-21

A. APPLICANT INFORMATION

A-12 Principal Officers

Kelly Curtis and Gunther Fischli

893 West Baxter Drive
South Jordan, UT 84095

(801) 826-4880

A-13 Company History

Since 2000, Discovery Energy Utility Audits has conducted over 10,000 utility audits on companies from every state in the U.S., making it one of the largest utility auditors in the country.

During Discovery's audit process we are intimately involved with all aspects of the companies energy use. A cornerstone of this process is also analyzing the energy supply cost. In the past Discovery would advise the companies on how to save on energy procurement; leaving the implementation to an energy broker. Energy Auction Exchange was formed based on the natural progression of expanding the Energy-related services that we offer as a whole.

Energy AEX is the energy procurement arm of Discovery Energy, a nationwide utility bill audit firm. Discovery Energy has been in the utility bill auditing business for over 15 years, performing audits on thousands of electricity and natural gas accounts all across the United States.

Energy AEX is an organization focused on bringing our procurement customers a platform in which they will be able to receive expert energy advice regarding all of their energy procurement needs and multiple options of how to implement a sound Energy Implementation strategy tailored to their specific company needs.

The founding of Energy AEX was inspired by identifying a need to incorporate Energy expertise and efficiency into the procurement process and focusing on improving upon industry standard practice. Currently the vast majority of energy procurement is done by entering into a supply contract directly with an energy supplier or indirectly through an energy consultant who presents a single supplier.

The goal of Energy AEX is to offer our customers a process that takes advantage of competitive bidding and leveraging our years of experience in the Energy Industry to provide a unique product suited to a wide variety of customer needs. Every customer has the ability to witness directly which suppliers are bidding for their account. The advantage of a transparent bidding process is that the customer enjoys a process where the suppliers "compete" to win their account and a level playing field is created without any preference towards any one supplier.

Energy Auction Exchange will offer the most effective solution to energy procurement in the industry. The absolute best procedure to get our customers the lowest possible procurement rates with the best possible contract terms.

A-14 Articles of Incorporation and Bylaws Attached

A-15 Secretary of State Attached

B. APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

B-1 Jurisdictions of Operations

As of the date of this application Energy AEX has a license in IL, MA, NJ, NY, MD, CT and PA but not licensed in any other jurisdiction.

B-2 Experience & Plans

As the founders of Discovery Energy Utility Audits; a company that has analyzed over 10,000 utility bills since 2000, we are intimately involved with all aspects of our companies energy use. A cornerstone of this process is also analyzing the energy supply cost. Discovery has become well know as a company that can assist with any size company in reducing their energy cost. Energy AEX will allow us to more fully develop that expertise.

In addition we have founded a Construction Loan Management Company (Construction Capital Source) with footprint in Utah, Idaho, Colorado and Arizona. Construction Capital Source was positioned as the largest non-bank construction lender in the Intermountain West, with annual revenues of over $2 Million and a servicing portfolio of over $100 Million.

More importantly Construction Capital Source allowed us to gain valuable experience in working effectively with multiple service companies and establishing long standing relationships with multiple suppliers to effectively process contracts and offer our customers the broadest range of suppliers. This experience and skill is necessary to run an efficient energy consulting operation.

The founding of Energy AEX was inspired by merging the experience of these two companies and by doing thing better. Currently the vast majority of energy procurement is done by entering into a supply contract directly with an energy supplier or indirectly through an energy consultant who presents a single supplier.

Energy AEX will offer the most effective solution to energy procurement in the industry. The absolute best procedure to get our customers the lowest possible procurement rates with the best possible contract terms.

The Energy AEX system will innovatively harness the power of the auction marketplace to create transparency, competition, and efficiency that provides the rock bottom price to our customers.

B-3 Summary of Experience

In our positions as founders of Discovery Energy we became intimately involved with all aspects our customers energy use and efficiency. We have become known as a firm that can assist with any size company in reducing their energy cost. The movement of our organization into Energy AEX is a natural progression of our expertise and will allow us to offer more value to our existing and future clients. Discovery Energy has a current customer audit base of over 10,000 businesses that we have built over the last 12 years. These businesses are from every state in the country, but of course the focus with Energy AEX will be the deregulated markets including Ohio. Additional experience for our principals is listed below.

C. APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

C-1 Annual Reports

Energy AEX does not have shareholders to issue an annual report for.

C-2 SEC Filings

Energy AEX is not required to file with the SEC since it is has not or will issue publicly traded stock shares.

C-3 Financial Statements

Please see attached

C-4 Financial Arrangements

N/A

C-5 Forecasted Financial Statements

Please see attached

C-6 Credit Rating

Energy AEX does not have a credit rating from Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody's Investors Service, Standard & Poors, or a Similar organization. Energy AEX was started by the directors of Discovery Energy but does not have a parent organization.

C-7 Credit Report

Energy AEX does not have a credit report from Experion, Dun and Bradstreet or any other similar organization.

C-8 Bankruptcy Information

Energy AEX has not had any reorganization, protection from creditors or any other form of bankruptcy filings made by itself or by 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 Merger Information

Energy AEX has not had dissolution or been involved with a merger or acquisition within the five most recent years preceding the application.

C-10 Corporate Structure

Energy AEX is a limited liability company registered in the state of Utah. Its founders (Kelly Curtis and Gunther Fischli) are also principals at Discovery Energy Utility Audits.

A-12

Management Team

Kelly Curtis

Director
Discovery Energy Utility Audits
Privately Held; 11-50 employees; Accounting industry
October 2009 – Present (9 Years)
Discovery Energy is a utility auditing firm. We audit billing practices, consumption rates, classification schedules, and all charges from utility providers to recover overcharges and reduce ongoing utility expenses. Most services are provided on a contingency basis, charging only a percentage of funds recovered or savings recognized.

CFO
Solaroo Energy
Privately Held; 11-50 employees; Energy industry
June 2015 – Present (3 Years, 3 Months)
Solaroo Energy is a Solar company. Solaroo specializes in the sales and installation of residential and commercial solar panels primarily in the UT and CO markets.
Interpreter -- Slovak
LDS Church
Nonprofit; 5001-10,000 employees; Religious Institutions industry
October 2004 – Present (14 Years)
Coordinate the interpretation services for church assignments into the Slovak language

President & CFO
Construction Capital Source
Privately Held; 1-10 employees; Financial Services industry
August 2003 – Present (15 Years, 2 Months)
Construction Capital Source is a construction lender serving the Utah and Idaho residential construction markets. We lend on new build, rehab/additions, half-built projects, and owner/builder projects. Disbursements are done locally, and CCS has an excellent reputation for construction loan servicing work.

Gunther Fischli

Director
Discovery Energy Utility Audits
Privately Held; 11-50 employees; Accounting industry
October 2009 – Present (9 Years)
Discovery Energy Utility Audits is a utility auditing firm. We audit billing practices, consumption rates, classification schedules, and all charges from utility providers to recover overcharges and reduce ongoing utility expenses. Most services are provided on a contingency basis, charging only a percentage of funds recovered or savings recognized.
www.deaudits.com
CEO
Solaroo Energy
Privately Held; 11-50 employees; Energy industry
June 2015 – Present (3 Years, 3 Months)
Solaroo Energy is a Solar company. Solaroo specializes in the sales and installation of residential and commercial solar panels primarily in the UT and CO markets.

Chief Executive Officer
Construction Capital Source
Privately Held; 1-10 employees; Financial Services industry
August 2003 – Present (15 Years, 2 Months)
• Founded a Construction Loan Management Company with footprint in Utah, Idaho, Colorado and Arizona. Developed the strategic plan that positioned the company as the largest non-bank construction lender in the Intermountain West, with annual revenues of over $2 Million and a servicing portfolio of over $100 Million.
• Managed all marketing functions, including advertisement, branding and sales presentations in mortgage trade associations. Worked closely with account reps to maximize new relationship/repeat business ratios, set production goals and create unique marketing strategies tailored to the needs of each specific market.
• Performed employee recruiting functions in association with the opening of the Boise, Denver and Phoenix offices. Also performed periodic HR skill based analysis companywide in order to maximize productivity and employee contribution.
• Implemented strategic maps that incorporated current efforts into long term goals. As result of such efforts CCS maintained a good balance of innovation in product development and portfolio risk, while respecting the brand placement as a high performance specialty lender.
• Architect of the ConstructionLynx™ software platform, a proprietary application that integrates all areas of construction lending. By providing instant feedback on Marketing, Underwriting, Servicing and Quality Control, the platform brings a level of controlled scalability unseen in the industry.
• Managed the growth of the Information Systems department from basic support to 4 employees at the start of the company to a robust and redundant system that integrated all locations in a virtual network that included paperless document tracking, digital phone systems and real time data sharing between all departments.

Energy AEX

Company Overview

Energy AEX is the energy procurement arm of Discovery Energy, a nationwide utility bill audit firm. Discovery Energy has been in the utility bill auditing business for over 15 years, performing audits on thousands of electricity and natural gas accounts all across the United States.

Energy AEX is an organization focused on bringing our procurement customers a platform in which they will be able to receive expert energy advice regarding all of their energy procurement needs and multiple options of how to implement a sound Energy Implementation strategy tailored to their specific company needs.

The founding of Energy AEX was inspired by identifying a need to incorporate Energy expertise and efficiency into the procurement process and focusing on improving upon industry standard practice. Currently the vast majority of energy procurement is done by entering into a supply contract directly with an energy supplier or indirectly through an energy consultant who presents a single supplier.

The goal of Energy AEX is to offer our customers a process that takes advantage of competitive bidding and leveraging our years of experience in the Energy Industry to provide a unique product suited to a wide variety of customer needs. Every customer has the ability to witness directly which suppliers are bidding for their account. The advantage of a transparent bidding process is that the customer enjoys a process where the suppliers "compete" to win their account and a level playing field is created without any preference towards any one supplier.

Products and Services

Products and Services

"The Energy Exchange"

The core of what Energy AEX will offer to it's customers is the ability to participate in a competitive bidding process for their supply account. Simply the most powerful way to procure energy

For the Buyer:

Since energy is a true commodity the only thing that matters form the buyers prospective is who can get me the best contract terms at the best price. Current data shows an auction can bring down the cost as much as 15% to 20%.

1. By utilizing a competitive bidding platform, you are able to push to true market prices on any given day and accomplish this in the most transparent manner possible for the buyer.
2. This is really the only transparent effective way to keep your current supplier "honest" and force them to compete for your business every cycle your contract is up.
3. By buyer witnessing the auction they are assured everything has been done to get the most suppliers to "compete" to win his account and a level playing field was created without any preference towards one supplier.
4. Buyer can set contract terms *before* procurement process has begun rather than *after* a price was received from a supplier. Energy Auction Exchange "project manager" will guide customer with contract review and negotiation.
5. The platform has is the flexibility to customize the bidding process depending on the customer needs.
6. Customer will be assigned a "project manager" to assist with every auction who can guide company with contract terms etc..

Project managers:

The project manager will be the person who will "design" the auction to get the best possible price. For the company a project manager will be the person who guides them

A-14

ARTICLES OF ORGANIZATION
OF
ENERGY AUCTION EXCHANGE, LLC

The undersigned, by executing and delivering to the Division of Corporations and Commercial Code of the Department of Commerce of the State of Utah the following Articles of Organization, hereby forms a Utah limited liability company in accordance with the Utah Revised Limited Liability Company Act, as amended, U.C.A. § 48-2c-101 *et seq.* (the "*Act*"):

ARTICLE I
NAME

The name of the limited liability company is "Energy Auction Exchange, LLC" (the "*Company*").

ARTICLE II
DURATION

The period of the Company's duration will be ninety-nine (99) years, unless earlier dissolved and terminated pursuant to the provisions of the Act or the Company's Operating Agreement.

ARTICLE III
BUSINESS PURPOSE

The Company is organized to, and may, conduct any and all legal and lawful business purposes for which a limited liability company may be formed pursuant to the Act, subject to the terms, requirements, restrictions and limitations set forth in the Company's Operating Agreement, as in effect from time to time.

ARTICLE IV
REGISTERED AGENT

The name and address of the Company's initial registered agent is Christopher Scharman, 3165 E. Millrock Dr. Suite 400, Salt Lake City, Utah, 84121.

ARTICLE V
DESIGNATED OFFICE

The street address of the Company's designated office is 3557 West 9800 South Suite 250, South Jordan, Utah, 84095.

ARTICLE VI
DESIGNATION OF DIRECTOR AS AGENT

The Director of the Division of Corporations and Commercial Code is appointed as the registered agent of the Company for service of process if the Company's registered agent has resigned, such registered agent's authority has been revoked, or such registered agent cannot be found or served with the exercise of reasonable diligence.

ARTICLE VII
MANAGEMENT BY MANAGERS

The Company is to be managed by one or more managers. The name of the initial manager is Gunther Fischli. The address of each initial manager of the Company is 3557 West 9800 South Suite 250, South Jordan, Utah, 84095.

ARTICLE VIII
LIMITATION OF LIABILITY; INDEMNIFICATION

Except as set forth in the Company's Operating Agreement, the personal liability of the managers and officers of the Company to the Company or its members, and as to any third person, will be eliminated or limited to the fullest extent permitted by the Act or any other applicable law as now in effect or as it may hereafter be amended.

Except as set forth in the Company's Operating Agreement, the Company will indemnify and advance expenses to its managers and officers (and their respective estates or personal representatives) to the fullest extent permitted by the Act or any other applicable law as now in effect or as it may hereafter be amended.

Any repeal or modification of this Article VIII or the Company's Operating Agreement will not adversely affect any right or protection of any person existing at the time of such repeal or modification.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Organization effective as of April 10, 2012.

Manager

By: _____
Gunther Fischli

A-14

OPERATING AGREEMENT

OF

ENERGY AUCTION EXCHANGE, LLC

Dated effective as of May 1, 2013

TABLE OF CONTENTS

OPERATING AGREEMENT
OF
ENERGY AUCTION EXCHANGE, LLC

(A Utah Limited Liability Company)

THIS OPERATING AGREEMENT (this "*Agreement*"), is effective as of May 1, 2013 (the "*Effective Date*"), and is entered into by and among Energy Auction Exchange, LLC, a Utah limited liability company (the "*Company*"), and the Members and the Board. Certain capitalized terms used in this Agreement are defined in Section 12.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. ORGANIZATION.

1.1 Formation. The Members have caused the formation of the Company as a limited liability company pursuant to the Utah Revised Limited Liability Company Act, U.C.A. § 48-2c-101 et seq. (the "*Act*") by filing Articles of Organization on April 10, 2012 (the "Articles") with the Division of Corporations and Commercial Code of the Department of Commerce of the State of Utah (the "*Division*") and are entering into this Agreement to establish certain terms and conditions for the governance of the Company. To the fullest extent permitted by the Act, this Agreement shall control as to any conflict between this Agreement and the Act or as to any matter provided for in this Agreement that is also provided for in the Act.

1.2 Name. The name of the Company shall be Energy Auction Exchange, LLC or such other name or names as may be selected by the Board from time to time, and its business shall be carried on in such name with such variations and changes as the Board deems necessary to comply with the requirements of the jurisdictions in which the Company's operations are conducted.

1.3 Purpose. The business purpose or purposes for which the Company is organized is to engage in any lawful business activity permitted under the laws of the State of Utah, and any other purposes as are necessary to protect or enhance the assets of the Company (the "Business").

1.4 Principal Place of Business. The location of the principal place of business of the Company shall be 893 W. Baxter Drive, South Jordan, Utah 84095, or at such other place as the Board from time to time may select. Subject to the other provisions of this Agreement, the Company may maintain additional offices, within or outside the State of Utah, designated from time to time by the Board for the purpose of carrying out the business of the Company.

1.5 Registered Office and Agent. The location of the initial registered office of the Company in the State of Utah shall be 6995 Union Park Center, Suite 400, Cottonwood Heights, Utah 84095. The Company's registered agent at such address shall initially be Christopher

Scharman. The Board may change the Company's registered agent and/or registered office at any time in accordance with the requirements of the Act.

1.6 Fiscal Year. The fiscal year of the Company shall end on the 31st day of December in each year. The Board shall have authority to change the ending date of the fiscal year to any other date required or allowed under the Code if the Board shall determine such change to be necessary or appropriate. The Board shall promptly give notice of any such change to the Members.

2. MEMBERS.

2.1 Members. The Company shall consist of those initial Members made a party hereto and such additional and substituted Members as shall be admitted to the Company pursuant to Section 9. *Schedule A* shall be amended from time to time to reflect the admission of any Member or the removal, withdrawal, expulsion, retirement or death of any Member or the receipt by the Company of notice of any change of name of a Member. The Board may amend *Schedule A* without the consent of the Members as the information on *Schedule A* changes in accordance with the terms of this Agreement. *Schedule A*, as maintained and amended from time to time by the Board, shall be deemed accurate in all respects absent manifest error.

2.2 Membership Units. A Member's Interest in the Company shall be represented by Units. The Company shall initially be authorized to issue up to 200 Units (subject to increase pursuant to Section 7.2(p)) (the "*Units*"). Units may be issued in fractional interests and shall be represented by certificates in the form attached hereto as Exhibit A.

2.3 Liability of Manager. In carrying out their duties hereunder, the Directors shall not be liable to the Company or to any Member for their good faith actions, or failure to act, nor for any errors of judgment, nor for any act or omission believed in good faith to be within the scope of authority conferred by this Agreement, but shall be liable for fraud, willful misconduct or gross negligence in the performance of their duties under this Agreement.

2.4 Company Property; Company Interest. No real or other property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title thereto shall be vested solely in the Company. The Interests of the Members in the Company shall constitute personal property.

2.5 Member Representations and Warranties. Each Member represents and warrants to each of the other Members, the Directors and the Company as follows:

(a) With respect to individuals, such Member has the full power and legal capacity to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby in the manner herein provided. With respect to Members that are not individuals, such Member is duly organized and in good standing under the laws of the jurisdiction of its organization and is qualified to do business and is in good standing in those jurisdictions where necessary in order to carry out the purposes of this Agreement;

(b) With respect to Members that are not individuals, the execution, delivery and performance by it of this Agreement and all transactions contemplated herein are within its entity powers and have been duly authorized by all necessary entity actions;

(c) This Agreement constitutes each Member's valid and binding obligation, enforceable against such Member in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;

(d) The execution, delivery and performance by such Member of this Agreement will not conflict with, result in a breach of or constitute a default under any of the terms, conditions or provisions of (i) any applicable law, rule, regulation, order, writ, injunction or decree of any court or Governmental Authority, (ii) in the case of any Member that is not an individual, its governing documents, or (iii) any agreement or arrangement to which it or any of its Affiliates is a party or that is binding upon it or any of its Affiliates or any of its or their property or assets; and

(e) Each Member has reviewed this Agreement and understands and agrees that such Member's Interests are subject to significant Transfer restrictions and certain repurchase rights of the Company.

2.6 Investment Representations.

(a) In acquiring an Interest in the Company, each Member represents and warrants to the other Members that it is acquiring such Interest for its own account for investment and not with a view to its sale or distribution. Each Member recognizes that such Member's Interests are speculative and involve substantial risk. Each Member further represents and warrants that none of the other Members, the Company or Directors has made any guaranty, promise or representation upon which it has relied concerning the possibility or probability of profit or loss as a result of its acquisition of an Interest in the Company.

(b) Each Member recognizes that (i) the Interests in the Company have not been registered under the Securities Act or any state securities laws, in reliance upon an exemption from such registration, and covenants not to Transfer any part of its Interests in the Company in the absence of an effective registration statement covering such Interests under the Securities Act unless such Transfer is exempt from registration under the Securities Act, (ii) the Company has no obligation to register any Member's Interest for sale, or to assist in establishing an exemption from registration for any proposed sale, and (iii) the restrictions on Transfer contained in this Agreement and under the Securities Act may severely affect the liquidity of a Member's investment in the Interests.

(c) Each Member hereby: (a) acknowledges that it has received all the information it has requested from the Company and the Directors that it considers necessary or appropriate for deciding whether to acquire the Interests, (b) represents that it has had an opportunity to ask questions and receive answers from the Company and the Board regarding the terms and conditions of the offering of the Interests and to obtain any

additional information necessary to verify the accuracy of the information given such Member, (c) that it has a prior relationship with the Company and its Directors and did not receive any information regarding the Company on an unsolicited basis or by means of a general solicitation, and (d) further represents that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of acquiring an Interest in the Company. Each Member hereby acknowledges receipt of business plans, financial information and other information regarding the Company.

2.7 Survival. The representations and warranties set forth in Sections 2.5 and 2.6 hereof shall survive the execution and delivery of any documents of Transfer or conveyance provided under this Agreement.

3. CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; ALLOCATIONS.

3.1 Capital Contributions. As of the date hereof, the Members have made the Capital Contributions, as applicable, set forth in the Company's records. The Company shall maintain a record of all Capital Contributions by the Members.

3.2 Additional Capital Contributions. The Members may from time to time, as determined by the unanimous consent of the Members, in their sole discretion, elect to make additional Capital Contributions to the Company in proportion to their respective Sharing Ratios or in any other proportion as the Members unanimously may determine, in such amounts and in such a manner that the Members unanimously may determine. Once such additional Capital Contribution has been approved, each Member shall be liable for such contribution and shall indemnify the Company for the failure by such Member to make the approved Capital Contribution on the date specified.

3.3 Capital Accounts.

(a) The Company shall maintain a separate capital account (each, a "*Capital Account*") for each Member and such other Member accounts as may be necessary or desirable to comply with the requirements of applicable laws and regulations. Capital Accounts shall be maintained in accordance with the provisions of § 1.704-1(b)(2)(iv) of the Treasury Regulations and, among other adjustments, shall be: (i) increased by the amount of all cash capital contributions and the net agreed value of all capital contributions of property other than cash (with such net agreed value determined jointly by the Board and the contributing Member) made by such Member to the Company; (ii) increased by all Profit and other items of income allocated to such Member pursuant to Section 5; (iii) decreased by all items of Loss and other items of deduction allocated to such Member pursuant to Section 5; and (iv) decreased by the amount of all distributions of cash and the net agreed value of all distributions of property made to such Member pursuant to this Agreement.

(b) Consistent with and as permitted in the provisions of § 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, the Capital Accounts of all Members and the Carrying Values of all Company properties shall be adjusted upwards or downwards to reflect any unrealized gain or unrealized loss with respect to each Company property (as if such

unrealized gain or unrealized loss had been recognized upon an actual sale of each such property and had been allocated among the Members pursuant to Section 5), provided such adjustments shall be made only if the Board determines that it is reasonable to do so taking into account the provisions of this Agreement and the applicable Treasury Regulations. In determining such unrealized gain or unrealized loss, the aggregate fair market value of Company properties as of the date of determination shall be determined by the Board using such method of valuation as it deems appropriate, taking into account the provisions of § 1.704-1(b)(2)(iv)(f) of the Treasury Regulations.

(c) In accordance with § 1.704-1(b)(2)(iv)(e) of the Treasury Regulations, prior to the actual or deemed distribution of any Company property (other than cash), the Capital Accounts of all Members and the Carrying Values of the Company properties being distributed or deemed being distributed shall be adjusted immediately prior to such distribution (consistent with the provisions hereof) upward or downward to reflect any unrealized gain or unrealized loss attributable to such Company property (as if such unrealized gain or unrealized loss had been recognized upon an actual sale of each property at that time and had been allocated among the Members pursuant to this Agreement), provided such adjustments shall be made only if the Board determines that it is reasonable to do so taking into account the provisions of this Agreement and the applicable Treasury Regulations. In determining such unrealized gain or unrealized loss, the aggregate fair market value of Company properties as of any date of determination shall be determined by the Board using such reasonable methods of valuation as it deems appropriate taking into account the provisions of § 704-1(b)(2)(iv)(e) of the Treasury Regulations.

(d) The transferee of an Interest shall succeed to the Capital Account of the transferor with respect to the Interest transferred.

4. DISTRIBUTIONS.

4.1 No Right to Withdraw. No Member shall have the right to withdraw or demand distributions of any amount from its Capital Account, except as expressly provided in Section 10.6.

4.2 Distributions. Subject to the availability of any Cash Available for Distribution, on or before the date upon which the Members are required to make each quarterly payment of their federal estimated income taxes, the Company will distribute to the Members an amount with respect to the period covered by such required payment equal to the Profit allocated to the Members (up to a maximum amount of the Cash Available for Distribution) for the taxable period multiplied by the sum of the highest marginal federal income tax rate applicable to any Member plus the highest state income tax rate applicable to any Member for such taxable period (each, a "*Tax Distribution*"). Subject to the provisions of Section 4.4, the Board shall also cause all Cash Available for Distribution to be distributed hereunder no later than forty-five (45) days after the close of each quarterly period (March 31, June 30, September 30 and December 31). Except as provided in Section 10.2, all non-liquidating distributions made pursuant to this Section 4.2 shall be made in accordance with each Member's Sharing Ratio.

4.3 Distributions in Kind.

(a) General Rule. Subject to the provisions of Section 4.4 and the last sentence of this Section 4.3(a), in the event that at any time or from time to time the Board shall determine to make a distribution of property other than cash, the adjustments provided for in Section 3.3(c) shall be made and all such distributions shall be made (based on the net Fair Market Value of the property distributed in kind) in the same respective proportions as distributions would at the time be made pursuant to Section 4.2 or Section 10.2, as the case may be. Each Member may, with the written approval of the Board, elect to receive any distribution to be made to it in kind, provided that the Fair Market Value of any such distribution shall not exceed the amount that such Member would have been entitled to receive if the property so distributed had been sold for cash at such Fair Market Value.

(b) Legends on Certificates. The Board may cause certificates evidencing any securities to be distributed to be imprinted with legends as to such restrictions on transfer that it may deem necessary or appropriate, including legends as to applicable federal or state securities laws or other legal or contractual restrictions, and may require any Member to which securities are to be distributed to agree in writing (i) that such securities will not be transferred except in compliance with such restrictions and (ii) to such other matters as the Board may deem necessary or appropriate.

(c) Allocations as Between Cash and Non-Cash. Except as provided in this Section 4.3, distributions consisting of both cash and other property (including securities) shall be made, to the extent practicable, in equal proportions of cash and such other property as to each Member receiving such distributions.

4.4 Restrictions on Distributions. The foregoing provisions of this Section 4 to the contrary notwithstanding, no distribution shall be made (a) if such distribution would violate any contract or agreement to which the Company is then a party or any law, rule, regulation, order or directive of any Governmental Authority then applicable to the Company, (b) to the extent that the Board determines that any amount otherwise distributable should be retained by the Company to pay, or to establish a reserve for the payment of, any liability or obligation of the Company, whether liquidated, fixed, contingent or otherwise or (c) to the extent that the Board determines in its sole discretion that the cash available to the Company is insufficient to permit such distribution.

4.5 Withholding. Notwithstanding any other provision of this Agreement, the Board is authorized to take any action that it reasonably determines to be necessary or appropriate to cause the Company to comply with any foreign or United States federal, state or local withholding requirement with respect to any allocation, payment or distribution by the Company to any Member or any other Person. All amounts so withheld, and, in the manner determined by the Board, amounts withheld with respect to any allocation, payment or distribution by any Person to the Company, shall be treated as distributions to the applicable Members under Section 4.2, 4.3 or 10.2, as the case may be (and not as Capital Contributions). If any such withholding requirement with respect to any Member exceeds the amount distributable to such Member under Section 4.2, 4.3 or 10.2, as the case may be, or if any such withholding requirement was not

satisfied with respect to any amount previously allocated or distributed to such Member, such Member and any successor or assignee with respect to such Member's Interest in the Company hereby agrees to indemnify and hold harmless the other Members and the Company for such excess amount or such withholding requirement, as the case may be.

4.6 Record Holders. Any distribution of Company assets, whether pursuant to this Section 4 or otherwise, shall be made only to Persons who, according to the books and records of the Company, were the holders of record of Interests on the date determined by the Board as of which the Members are entitled to any such distribution.

4.7 Final Distribution. The final distributions following dissolution of the Company shall be made in accordance with the provisions of Section 10.

5. ALLOCATION OF PROFIT AND LOSS.

5.1 Determination of Profit and Loss. Profit or Loss shall be determined on an annual basis and for such other periods as may be required.

5.2 Loss Allocation. Subject to the provisions of Section 5.4, all Losses shall be allocated among the Members in accordance with the Members' respective Sharing Ratios.

5.3 Profit Allocation. Subject to the provisions of Section 5.4, all Profits shall be allocated among the Members in accordance with the Members' respective Sharing Ratios.

5.4 Regulatory Allocations and Curative Provision. Notwithstanding Sections 5.2 and 5.3:

(a) Loss Limitation. The Losses allocated to a Member pursuant to Section 5.2 shall not exceed the maximum amount of Losses that can be so allocated without causing the 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 Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 5.2, the limitation set forth in this Section 5.4(a) shall be applied on a Member-by-Member basis so as to allocate the maximum permissible Losses to each Member under § 1.704-1(b)(2)(ii)(d) of the Treasury Regulations. All Losses in excess of the limitations set forth in the foregoing provisions of this Section 5.4(a) shall be allocated to the Members in accordance with the Members' respective Sharing Ratios.

(b) Minimum Gain Chargeback. Except as otherwise provided in § 1.704-2(f) of the Treasury Regulations, if there is a net decrease in partnership minimum gain (as defined in §§ 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations) 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 and in the manner required by §§ 1.704-2(f) and 1.704-2(j)(2) of the Treasury Regulations.

(c) Member Minimum Gain Chargeback. Except as otherwise provided in § 1.704-2(i) of the Treasury Regulations, if there is a net decrease in partner nonrecourse debt minimum gain (as defined in §§ 1.704-2(i) of the Treasury Regulations) attributable

to a partner nonrecourse debt (as defined in § 1.704-2(b)(4) of the Treasury Regulations) during any fiscal year, each Member who has a share of the Member nonrecourse debt minimum gain attributable to such Member's nonrecourse debt, determined in accordance with § 1.704-2(i) of the Treasury Regulations, shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount and in the manner required by §§ 1.704-2(i) and 1.704-2(j) of the Treasury Regulations.

(d) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit, if any, of such Member as quickly as possible.

(e) Nonrecourse Deductions. Any non-recourse deduction (as defined in Treasury Regulations § 1.704-2(b)(1)) for any fiscal year shall be allocated to the Members in proportion to their respective Sharing Ratios.

(f) Member Nonrecourse Deductions. Any partner nonrecourse deductions (as defined in § 1.704-2(i) of the Treasury Regulations) for any fiscal year shall be specially allocated to the Member who bears the economic risk of loss with respect to the partner nonrecourse debt (as defined in § 1.704-2(b)(4) of the Treasury Regulations) to which such Member nonrecourse deductions are attributable in accordance with § 1.704-2(i) of the Treasury Regulations.

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset is required pursuant to Code Section 732(d), Code Section 734(b) or Code Section 743(b), the Capital Accounts of the Members shall be adjusted pursuant to § 1.704-1(b)(2)(iv)(m) of the Treasury Regulations.

(h) Curative Allocations. The allocations under Sections 5.4(a) through (g) (the "*Regulatory Allocations*") are intended to comply with certain requirements of the Treasury 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 5. Therefore, notwithstanding any other provision of this Section 5 (other than the Regulatory Allocations), the Board 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 this Agreement and all such items of Company income, gain, loss or deduction were allocated pursuant to Sections 5.2 and 5.3. In exercising its discretion under this Section 5.4(h), the Board shall take into account future Regulatory Allocations under Sections 5.4(a) through 5.4(g) that are likely to offset other Regulatory Allocations previously made.

5.5 Other Allocation Rules.

(a) The Board is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation or special allocation of items of Company income, gain, loss and deduction with respect to a newly-issued Interests, transferred Interests and redeemed Interests. A transferee of an Interest shall succeed to the Capital Account of the transferring Member to the extent it relates to the transferred Interest.

(b) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of § 1.752-3(a)(3) of the Treasury Regulations, the Members' interests in Profits shall be the Members' Sharing Ratios.

(c) Nonrecourse Deductions (as defined in § 1.704-2(b)(i) of the Treasury Regulations) shall be taken into account in calculating Profits and Losses.

6. ALLOCATION OF TAXABLE INCOME AND LOSS.

6.1 In General. Except as provided in Sections 6.2 and 6.3, each item of income, gain, loss and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as the corresponding item is allocated for book purposes under Section 5.

6.2 Recapture Income. To the extent of any Recapture Income (as defined below) resulting from the sale or other taxable disposition of a Company asset, the amount of any gain from such sale or disposition allocated to (or recognized by) a Member for federal income tax purposes pursuant to Sections 6.2 or 6.3 shall be deemed to consist of Recapture Income to the extent such Member has been allocated or has claimed any deduction directly or indirectly giving rise to the treatment of such gain as Recapture Income. For this purpose "*Recapture Income*" shall mean any gain recognized by the Company (but computed without regard to any adjustment required by Sections 734 and 743 of the Code) upon the disposition of any property or asset of the Company that does not constitute capital gain for federal income tax purposes because such gain represents the recapture of deductions previously taken with respect to such property or assets.

6.3 Allocation of Section 704(c) Items. The Members recognize that with respect to property contributed to the Company by a Member and with respect to property revalued in accordance with § 1.704-1(b)(2)(iv)(f) of the Treasury Regulations (referred to as "*Adjusted Properties*"), there will be a difference between the agreed values or Carrying Values, as the case may be, of such property at the time of contribution or revaluation, as the case may be, and the adjusted tax basis of such property at that time. All items of tax depreciation, cost recovery, amortization and gain or loss with respect to such contributed properties and Adjusted Properties shall be allocated among the Members to take into account the book-tax disparities with respect to such properties in accordance with the provisions of Sections 704(b) and 704(c) of the Code and the Treasury Regulations under those Sections. The Board is authorized to select the method under the applicable Treasury Regulations for making such allocations. Any gain or loss

attributable to a contributed property or an Adjusted Property (exclusive of gain or loss allocated to eliminate such book-tax disparities) shall be allocated in the same manner as such gain or loss would be allocated for book purposes under Section 5.

6.4 Integration with Section 754 Election. All items of income, gain, loss, deduction, credit and basis allocations recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code that may be made by the Company; provided, however, that such allocations, once made, shall be adjusted as necessary or appropriate to take into account the adjustments permitted by Sections 734 and 743 of the Code.

6.5 Allocation of Tax Credits. All tax credits with respect to the Company's property or operations shall be allocated in accordance with Treasury Regulation § 1.704-1(b)(4)(ii).

6.6 Tax Allocations Binding. The Members acknowledge that they are aware of the tax consequences of the allocations made by this Section 6 and hereby agree to be bound by the provisions of this Section 6 in reporting their respective shares of items of Company income, gain, loss and deduction.

7. MANAGEMENT OF COMPANY; MEMBERS COVENANTS AND RIGHTS.

7.1 Board.

(a) Establishment; Powers. The Company shall be managed by one or more managers (the *"Managers"*, and each individually a *"Manager"*), acting through a committee comprised, initially, of four Persons to manage the Company and its business and affairs (this committee is referred to as the "*Board*" and the Persons appointed to the Board are referred to as the "*Directors*"). The Directors shall be considered managers of the Company under the Act, and the terms Manager and Director are used interchangeably herein; *provided, however*, that no Director may act for the Company independently. The Directors are representatives of the Members and derive all of their right, power and authority under this Agreement as a result of a delegation of such right, power and authority by the Members to the Directors. Except as specifically provided in this Agreement, the Board may exercise all powers of the Company and may do all such lawful acts and things as are not specifically required by statute or by this Agreement to be exercised or done by the Members. The Board shall make all Board Decisions by a majority vote of the Directors.

(b) Election. The size of the Board shall be fixed from time to time by resolution of the Members. The current Board shall be comprised of four Directors. Directors shall be elected at each annual meeting of the Members, by a majority of the Voting Interests present in person or represented by proxy at the meeting and entitled to vote at the election of Directors. Each director shall hold office until his successor shall have been elected and qualified or until his earlier death, resignation or removal. Directors shall be natural persons, but Directors need not be residents of Utah or Members of the Company. The Directors of the Company are listed on the attached Schedule 7.1(b).

(c) Vacancies. In the event of a vacancy in the office of any Director, a successor shall be elected to hold office by a majority of Directors then in office, although less

than a quorum, or by Members holding a majority of the Voting Interests if there are no Directors remaining, and a Director so chosen shall hold office until the next annual election and until his successor is duly elected and qualified or until his earlier death, resignation or removal.

(d) Removal. A Director may be removed at any time by the vote of a majority of the Board or by a majority of the Voting Interests of the Members.

(e) Resignation. A Director may resign at any time by giving written notice to that effect to the Board. Any such resignation shall take effect at the time of the receipt of that notice or any later effective time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any vacancy caused by any such resignation or by the death of any Director or any vacancy for any other reason shall be filled as provided in Section 7.1(c) hereof, and any Director so elected to fill any such vacancy shall hold office until his successor is elected and qualified or until his earlier death, resignation or removal.

(f) Meetings of the Board. The Board shall meet at such time and at such place (either inside or outside the State of Utah) as the Board may designate; *provided*, that the Board shall meet not less than 4 times in any 12 month period. Meetings of the Board shall be held on the call of any Director upon at least five business days (if the meeting is to be held in person) or three business days (if the meeting is to be held by conference, telephone or similar communications) oral or written notice to the Directors, or upon such shorter notice as may be approved by all of the Directors. Any Director may waive such notice as to himself or herself. A record shall be maintained of each meeting of the Board.

(i) Conduct of Meetings. Any meeting of the Directors may be held in person and by means of a conference, telephone or similar communication equipment by means of which all Directors and other persons participating in the meeting can hear each other, and such telephone or similar participation in a meeting shall constitute presence in person at the meeting.

(ii) Quorum. A minimum of three Directors shall constitute a quorum of the Board for purposes of conducting business. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the Directors present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(iii) Voting. Any decisions to be made by the Board (including, without limitation, any Board Decision) must be approved by the affirmative vote of a majority of the Directors present at the meeting and entitled to vote on the subject matter thereof.

(iv) Attendance and Waiver of Notice. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the

purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting.

(v) Actions Without a Meeting. Notwithstanding any provision contained in this Agreement, any action of the Board may be taken by written consent without a meeting. Any such action taken by the Board without a meeting shall be effective only if the written consent or consents are in writing, set forth the action so taken, and are signed by a majority of the Directors then in office.

(vi) Substitute Appointment. Any Director, or in the case of any Director elected by one Member, the Member who elected such Director may designate in writing an individual to act as the temporary substitute for such Director at any meeting of the Board which such Director is unable to attend, and attendance at any meeting of the Board by any such designated individual shall be deemed to constitute attendance at such meeting by the Director for whom such individual is designated. Any such designated individual who attends a meeting of the Board as a temporary substitute as aforesaid shall have all the powers that the absent Director has in respect of that meeting.

(g) Compensation of the Directors. No Director shall be entitled to receive compensation from the Company for his or her services as a Director. Nothing contained in this Agreement shall be construed to preclude a Director from serving the Company in any other capacity and receiving compensation from the Company for such service.

(h) Chairman of the Board. The Board may elect any one of the Directors to be the chairman of the Board (the "*Chairman*") by the affirmative vote of a majority of the Directors present at the meeting and entitled to vote on the subject matter thereof. The Chairman, in his or her capacity as the Chairman of the Board, shall not have any of the rights or powers of an Officer of the Company or any special voting rights.

(i) Minutes. Minutes of all meetings of the Board shall be kept and distributed to each Director as soon as reasonably practicable following each meeting. If no objection is raised in writing following receipt of minutes or in any event at the next meeting of the Board of Directors, then such minutes shall be deemed to be accurate and shall be binding on the Directors and the Company with respect to the matters dealt with therein.

7.2 Board Decisions. No Officer, Director or any other Person shall have the authority to bind or take any action on behalf of the Company with respect to any Board Decision unless such Board Decision has been approved by the Board. Each of the following matters shall constitute a "*Board Decision*":

(a) any merger, reorganization, consolidation, dissolution or similar restructuring of the Company, including, without limitation, a sale Interests or a sale of all or substantially all of the assets of the Company, in each case (in each case, a "*Liquidation Event*");

(b) the sale, lease or other disposition of any assets of the Company other than (i) the sale of inventory in the ordinary course of business; or (ii) the sale, lease or other

disposition of Company assets other than inventory in any calendar year having an aggregate fair market value not in excess of the Board Decision Threshold;

(c) the purchase, lease or other acquisition of real property the cost of which exceeds the Board Decision Threshold;

(d) the incurrence of any indebtedness (including contractual vendor financing), other than trade payables incurred in the ordinary course of business in an aggregate amount of less than the Board Decision Threshold in any fiscal year;

(e) the creation of any Lien on any property or assets of the Company other than (i) purchase money security interests and other Liens created or existing at the time of acquisition of an asset, but only to the extent the aggregate indebtedness of the Company secured by all such purchase money security interests and such other Liens does not exceed at any time the Board Decision Threshold; and (ii) materialmans', mechanics', contractors', operators', tax and similar Liens or charges arising in the ordinary course of business or by operation of Law;

(f) the providing of any guaranty (or other obligations that, in economic effect, are substantially equivalent to a guaranty) of any amount owed by or any obligation of any Person;

(g) the settlement of any claim against the Company for a settlement in excess of the Board Decision Threshold;

(h) the commencement of any lawsuit, arbitration or other legal action against any Person, except a suit or legal action against a Member, other than actions to collect accounts receivable;

(i) the Company entering into a business or expanding the current business of the Company outside the scope of the Business;

(j) entering into any futures, swap or other hedging arrangements of any type, or financial derivative instruments or agreements of any type where the total potential liability exposure of the Company exceeds the Board Decision Threshold;

(k) the approval of any contract or transaction between the Company and any Member or Director or their respective Affiliates, or any amendment or modification of any such contract or transaction;

(l) the removal of a Director pursuant to Section 7.1(d), or the replacement of a Director pursuant to Section 7.1(c);

(m) any removal of or designation of a successor to the TMP;

(n) the designation, removal or replacement of any Officers of the Company and the approval of any compensation of any such Officers;

(o) the filing by the Company of any petition for relief under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar Law;

(p) admit any Additional Members to the Company, issue any Interests or authorized Units or increase the number of authorized Units; and

(q) making any other decision with respect to the Company that specifically requires the approval of the Board pursuant to this Agreement.

7.3 Officers.

(a) The Board shall, from time to time, designate one or more Persons to be officers of the Company ("*Officers*"). Any Officers so designated shall have such titles and authority and perform such duties as the Board may, from time to time, delegate to them. If the title given to a particular Officer is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such Officer, or restrictions placed thereon, by the Board. Each Officer shall hold office until his or her successor is duly designated, until his or her death or until he or she resigns or is removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the Officers of the Company shall be fixed from time to time by the Board.

(b) Any Officer may resign at any time by giving written notice thereof to the Board. Any Officer may be removed, either with or without cause, by the Board whenever in their judgment the best interests of the Company will be served thereby; *provided, however*, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an Officer shall not, by itself, create contract rights.

7.4 Duties. Each Director and Officer shall carry out their respective duties in good faith, in a manner that he 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. The Board shall devote such time to the business and affairs of the Company as it may determine, in its reasonable discretion, is necessary for the efficient carrying on of the Company's business.

7.5 Reliance by Third Parties. No third party dealing with the Company shall be required to ascertain whether an Officer is acting in accordance with the provisions of this Agreement. All third parties may rely on a document executed by an Officer as binding the Company. The foregoing provisions shall not apply to third parties who are Affiliates of a Member, Director or Officer. If an Officer acts without authority he or she shall be liable to the Members for any damages arising out of his or her unauthorized actions.

7.6 Information Relating to the Company. Upon request, the Officers shall supply to a Member or Director (i) any information required to be available to the Members under the Act, and (ii) any other information requested by such Member or Director regarding the Company or its activities, *provided* that obtaining the information described in this clause (ii) is not unduly burdensome to the Company. During ordinary business hours, each Member and Director and

their authorized representative shall have access to all books, records and materials in the Company's offices regarding the Company or its activities.

7.7 Insurance. The Company may maintain or cause to be maintained in force at all times, for the protection of the Company and the Members to the extent of their insurable interests, such insurance as the Board believes is warranted for the operations being conducted.

7.8 Exculpation and Indemnification.

(a) In carrying out his or her duties hereunder, the Directors and the Officers shall not be liable to the Company nor to any Member for their good faith actions, or failure to act, nor for any errors of judgment, nor for any act or omission believed in good faith to be within the scope of authority conferred by this Agreement, but shall be liable for fraud, willful misconduct or gross negligence in the performance of his or her duties under this Agreement.

(b) Subject to the limitations of the Act, the Company shall indemnify, defend, save and hold harmless the Directors and the Officers from and against third party claims arising as a result of any act or omission of any Director or any Officer believed in good faith to be within the scope of authority conferred in accordance with this Agreement, except for fraud, willful misconduct or gross negligence. In all cases, indemnification shall be provided only out of and to the extent of the net assets of the Company and no Member shall have any personal liability whatsoever on account thereof. Notwithstanding the foregoing, the Company's indemnification of the Directors and Officers as to third party claims shall be only with respect to such loss, liability or damage that is not otherwise compensated by insurance carried for the benefit of the Company.

7.9 Tax Matters.

(a) Tax Matters Partner. Kelly Curtis is designated as the "*Tax Matters Partner*" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, and to expend Company funds for professional services and all costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings. The Tax Matters Partner shall notify all Members of the commencement of any audit or other proceeding concerning tax items or issues of the Company and keep all Members reasonably informed of such proceedings. The Tax Matters Partners shall be authorized to enter into settlement agreements with respect to any administrative or judicial proceeding with respect to the tax matters of the Company and to extend any applicable statute of limitations.

(b) Notification by Partnership Members. Any Member that is a partnership (or that is treated as a partnership for federal income tax purposes) will promptly notify the Company and the Board in writing upon any of the following occurrences:

(i) any event that will result in an adjustment to the basis of the assets of such Member under Section 743(b) of the Code pursuant to an election under Section 754 of the Code;

(ii) any event, such as a distribution of cash or other property by such Member, that will result in an adjustment to the basis of such Member's assets under Section 734(b) of the Code pursuant to an election under Section 754 of the Code; or

(iii) any event that will result in the termination of such Member as a partnership pursuant to Section 708(b)(1)(B) of the Code.

(c) Notification by Indirect Foreign or Tax-Exempt Owners. In the event that any interest in a Member that is a partnership (or that is treated as a partnership for federal income tax purposes) is owned directly or indirectly by a tax exempt or foreign person or entity, such Member will promptly notify the Company and the Board in writing of such tax exempt or foreign person or entity's proportionate share of such Member's items of income and gain (determined as a percentage pursuant to Section 168(h)(6)(C) of the Code) and of any change in such proportionate share.

(d) Tax Elections. The Board is hereby authorized to make such elections under the tax laws of the United States, the several states and other relevant jurisdictions as to the treatment of items of Company income, gain, loss and deduction and as to all other relevant matters as it believes appropriate or desirable.

(e) Section 754 Election. The Board is hereby authorized to make or petition to revoke (as the case may be) the election referred to in Section 754 of the Code. Each Member agrees in the event of such an election to supply promptly to the Company the information necessary to give effect thereto.

(f) Audits. No Member, other than the Tax Matters Partner, shall have the right to participate in the audit of any Company tax records, participate in any administrative or judicial proceeding arising out of or in connection with any Company tax records or appeal, challenge or otherwise protest any adverse findings in any such audit or with respect to any such tax records or in any such administrative or judicial proceedings.

7.10 Expenses of the Company.

(a) Organizational Expenses. The Members shall, through a portion of their Capital Contributions, bear the legal, tax, accounting and other organizational, commitment and financial advisory fees and expenses incurred in connection with the formation of the Company and related entities. The Company shall reimburse the Managers for their direct costs in establishing the Company and in preparing this Agreement and related documents (collectively, the "*Organizational Expenses*").

(b) Operating Expenses. The Company shall pay all, and shall reimburse the Directors and each of their Affiliates for, any costs and expenses that, in the good faith

judgment of the Directors, are incurred in the operation of the Company; fees and expenses relating to the investigation and review of potential investments, including the acquisition, holding, restructuring and disposition thereof (including, without limitation, brokers' or finders' fees and commissions to third parties) or relating to proposed investments that are not consummated; reasonable premiums for insurance protecting the Company, the Board, any of their Affiliates and any of their respective employees and agents; legal, custodial and accounting expenses; auditing expenses; appraisal expenses; expenses incurred in maintaining the places of business of the Company; costs and expenses that are classified as extraordinary expenses under applicable accounting principles consistently applied; taxes or other governmental charges payable by the Company; costs and expenses incurred in connection with any actual or threatened litigation, and any judgments or settlements paid in connection with litigation involving the Company or a Person entitled to indemnification from the Company; costs of reporting to the Members; costs of Member meetings; costs incurred in valuing or appraising the assets of the Company; costs of winding up and liquidating the Company; expenses incurred in connection with the collection of any payment due to the Company; and any other indebtedness incurred by the Company (collectively, "*Operating Expenses*").

7.11 Limitation of Duties of Directors. The Directors shall devote such time to the business and operation of the Company as the Directors, in their reasonable discretion, deem necessary for the efficient carrying on of the Company's business and operation. Each Member and Director acknowledges and agrees that the other Members and Directors have professional pursuits beyond the Company and that such pursuits shall be unrestricted except as set forth in Sections 7.13 and 7.14. The limitations set forth in this Section 7.11 may be revised pursuant to a separate agreement between the Manager and the Company.

7.12 Investment Company Act, ERISA and Other Limitations. The Board is hereby authorized to take any action that they determine in good faith to be necessary, appropriate or desirable to ensure that: (i) the Company not be deemed to be an "investment company" required to register under the Investment Company Act; (ii) when appropriate, all Members constitute "qualified purchasers" as such term is used in Section 3(c)(7) of the Investment Company Act or "Knowledgeable Employees or Persons" referred to in paragraph (b) of Rule 3c-6 under the Investment Company Act; (iii) the assets of the Company are not deemed to be "plan assets" for purposes of ERISA; (iv) the Directors are not in violation of the Investment Advisers Act (to the extent applicable); (v) the Company is not a "publicly traded partnership" under Section 7704 of the Code and the regulations promulgated thereunder; or (vi) the Company or the Directors are not in violation of any law, regulation, rule or guideline applicable to any of them, the violation of which could have a material adverse effect on the Company or the Manager. The Members understand and acknowledge that the Company is not intended to be an "investment company" under the Investment Company Act by virtue of having met the requirements of Section 3(c)(1) of the Investment Company Act.

7.13 Company Opportunities; Conflicts of Interest. Any activity or proposed activity by or opportunity available to any Member involving matters of the Company's Primary Purpose or other operations or activities then engaged by the Company or incorporated in the Company's Annual Operating Plan (each, a "*Business Opportunity*"), either directly or indirectly, shall be

offered in writing to the Company for the purposes of allowing the Company to pursue and engage in such Business Opportunity should it elect to do so. The following procedures shall apply to the offer of each Business Opportunity to the Company:

(a) Within thirty (30) days after a Member (the "*Proposing Member*") or any of its Affiliates proposes to proceed with an activity that constitutes a Business Opportunity, the Proposing Member shall notify, by written notice, the Company and the other Members (collectively, the "*Non-Proposing Members*") thereof. The Proposing Member's notice shall describe in detail the Business Opportunity activities and facilities covered thereby, the cost thereof, and the reason, if any, why the Proposing Member believes that the activity is or is not in the best interests of the Members and the Company. In addition to such notice, the Proposing Member shall make any and all information concerning the Business Opportunity available for inspection by the Company and the Non-Proposing Members, including, without limitation, any proposed contracts, term sheets, letters of intent or other similar documents relating to the Business Opportunity.

(b) The Company shall have thirty (30) days after receiving the Proposing Member's notice pursuant to Section 7.13(a) hereof to notify the Proposing Member of the Company's election to accept the Business Opportunity. The Company shall elect to accept the Business Opportunity if Non-Proposing Members holding a majority of the Sharing Ratios of the Non-Proposing Members notify the Company to do so within thirty (30) days after receiving the Proposing Member's notice under Section 7.13(a) hereof. If the Company elects to accept the Business Opportunity, the Proposing Member shall convey to the Company all of the Proposing Member's interest in the Business Opportunity, free and clear of all encumbrances arising by, through or under the Proposing Member (or any Affiliate) other than those to which the Non-Proposing Members have agreed. The Company shall promptly pay to the Proposing Member the latter's actual out-of-pocket acquisition costs.

(c) If the Company does not give such notice within such thirty (30) day period set forth in Section 7.13(b) hereof or otherwise waives its right to accept the Business Opportunity, no Member (other than the Proposing Member) shall thereafter have any interest in the Business Opportunity.

7.14 Non-Compete. Each Member acknowledges that such Member will have access to and knowledge of the Company's customers, clients, business plans, lender contacts and other strategic, confidential and/or proprietary information. Each Member agrees that, other than in accordance with the terms of Section 7.13, during such time as the Member owns any Interest in the Company and for a period of three (3) years following the date such Member no longer owns any Interest in the Company, such Member will not (a) act as a partner, member, director, officer or employee of, or consultant to, or otherwise advise, consult with or participate in the management or control of, any Competing Person (as that term is defined below), (b) purchase the securities of, lend money to, or otherwise invest in or own, any Competing Person, (c) otherwise compete, directly or indirectly through an Affiliate of the Member, with the Company, or (d) interfere with, or otherwise disrupt the relationship between, the Company and any customer, client, lender contact, supplier, consultant, director, Member, Manager, Director,

Officer or employee of the Company, or solicit any such Person for any Competing Person. For purposes of this Section 7.14, "*Competing Person*" shall mean any Person that competes, directly or indirectly through an Affiliate of such Person or otherwise, with the Company in any business that would be deemed a Business Opportunity. Each Member acknowledges that the provisions of this Section 7.14 are reasonable and necessary for the Company's protection. The period, the geographical area and the scope of the restrictions on such Member's activities are divisible so that if any provision of this Section 7.14 is invalid or enforceable, that provision shall be automatically modified to the minimum extent necessary to make it valid and enforceable. Each Member also acknowledges that any breach of this Section 7.14 would injure the Company irreparably, the amount of damages being impossible to ascertain. The Company, therefore, may, in addition to pursuing any and all remedies provided by applicable law, obtain an injunction against the Member from any court having jurisdiction restraining any violation or further violation of this Section 7.14.

7.15 Non-Disparagement. No Member will, or will permit such Member's Affiliate or any other Person to, disparage the Company, its employees, Members, Managers, Directors, officers or Affiliates to any third party, including but not limited to clients or potential clients of the Company, individuals in any way associated with a news organization or entity, and individuals working for or with any investor or other financial-related entity, in any manner likely to be harmful to the Company, its business reputation, or the personal or business reputation of its employees, Members, Directors, Officers or Affiliates. For purposes of this Section 7.15, "*disparage*" shall mean any communication, written or oral, stating disapproval, contempt, lack of esteem or any other negative statement about the Company or its business practices, products, services, employees, Members, Managers, Directors, officers or Affiliates.

7.16 Assignment.

(a) The Members and Directors agree to assign and hereby assign to the Company all right, title and interest in and to all Company Inventions that would be used in connection with the Company's business that would be deemed a Business Opportunity under this Agreement, which shall be the sole and exclusive property of the Company whether or not subject to patent, copyright, trademark or trade secret protection.

(b) Each Member shall promptly execute, acknowledge and deliver to the Company all additional instruments and documents as the Company determines at any time to be necessary to carry out the intentions of this Section 7.16. Furthermore, whether during or after the period such Person is a Member, the Member hereby agrees to perform any acts deemed necessary or desirable by the Company to assist it in obtaining, maintaining, defending and enforcing any rights and/or assignments of Company Inventions.

(c) For purposes of this Section 7.16, "*Company Inventions*" means all ideas, processes, trademarks and service marks, trade secrets, copyrights, patents, inventions, discoveries, processes and improvements to any of the foregoing, that the Member learns of, conceives, develops or creates alone or with others after the Effective Date or that the Company uses during the time such Person is a Member of the Company that directly or

indirectly arise from or relate to: (i) the Company's business, financial products, software or services; (ii) work performed for the Company by any Company officer, Manager, Member, employee, agent, contractor or subcontractor; (iii) the use of the Company's products, equipment, software or time; or (iv) access to confidential information and/or confidential records belonging to the Company or a Company customer.

8. BOOKS OF ACCOUNT, RECORDS AND REPORTS.

8.1 Maintenance of Books and Records, Etc. The Company shall maintain books and records in such manner as is utilized in preparing the Company's United States federal information tax return in compliance with Section 6031 of the Code, and such other records as may be required in connection with the preparation and filing of the Company's required United States federal, state and local income tax documents and filings or other tax returns or reports of foreign jurisdictions, including, without limitation, the records reflecting the Capital Accounts and adjustments thereto specified in Section 3. All such books and records shall at all times be made available at the principal office of the Company and shall be open to the reasonable inspection and examination by the Members or their duly authorized representatives during normal business hours. The Company shall not be required to prepare or maintain the materials set forth in U.C.A. § 48-2c-112(8) of the Act or any other records that are not otherwise expressly required by the Act or this Agreement.

8.2 United States Federal, State and Local Income Tax Information. The Board will use its reasonable efforts to cause the Company to transmit, within ninety (90) days after the end of each fiscal year of the Company, to each Person who was a Member at any time during the fiscal year then ended (including any permitted assignee of a Member who so requests in writing) an Internal Revenue Service Schedule K-1 and such Company tax information as the Board reasonably believes shall be necessary for the preparation by such Person of his, her or its United States federal, state and local tax returns in accordance with any applicable laws, rules and regulations then prevailing. Such information shall include a statement showing such Person's share of distributions, income, gain, loss, deductions and credits and other relevant items of the Company for such fiscal year. Promptly upon the request of any Member, the Board will cause the Company to furnish such Member all United States federal, state and local income tax returns or information returns, if any, that the Company is required to file.

8.3 Financial Statements and Other Reports. Subject to the Board receiving all necessary information from third parties, within ninety (90) days after the end of each fiscal year of the Company, the Company shall send to each Person who was a Member of the Company at any time during the fiscal year then ended a statement of assets, liabilities and Members' capital as of the end of such fiscal year and related statements of income or loss and changes in assets, liabilities and Members' capital, all prepared on the same basis used for the computation of adjustments to Capital Accounts. The Company, upon the request of any Members holding the Required Interests, may prepare additional financial statements than those required by this Section 8.3.

9. TRANSFER OF INTERESTS; SUBSTITUTE MEMBERS.

9.1 Transfers. No Member may withdraw from the Company or make a demand for return of any Capital Contributions until the termination of the Company or as otherwise specifically set forth in this Agreement. No Member shall Transfer his, her or its Interests or any rights thereof, or permit any legal or beneficial interest in such Member itself to be Transferred, unless such Transfer is (a) a Family Transfer, as defined in Section 9.2, (b) otherwise carried out in accordance with this Section 9, or (c) authorized in writing by all the Board. All attempted Transfers in violation of the terms of this Agreement shall be void *ab initio*. Each Member and each assignee thereof hereby agrees that it will not effect any assignment of all or any part of its Interests (whether voluntarily, involuntarily or by operation of law) in any manner contrary to the terms of this Agreement or that violates or causes the Company or any of the Members to violate the Securities Act, the Securities Exchange Act, the Investment Company Act, or the laws, rules, regulations, orders and other directives of any Governmental Authority. "*Transfer*" or "*Transferring*" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance, or the act of making such a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition.

9.2 Family Transfer. Notwithstanding anything to the contrary contained in this Agreement, a Member, the estate of a deceased Member or an attorney-in-fact or guardian of a mentally incompetent Member, may Transfer any or all of his, her or its Interests to one or more of the Family Members of such Member (a "*Family Transfer*"); provided, however, that such Family Member shall not be admitted as a Member for purposes of governance or voting power unless and until such Person is approved by the Board and has executed and delivered an addendum to this Agreement in accordance with Section 9.7. In the event any such successor in interest is not approved as a Member or does not execute and deliver such addendum to this Agreement, such successor shall only be entitled to the economic rights attributable to the Transferred Interest as permitted hereunder.

9.3 Rights of First Refusal. Each of the following occurrences with respect to a Member shall constitute an "*Event of Offer*" (provided, with respect to divorce (or other similar legal separation resulting in the partitioning of assets), the Event of Offer shall only encompass the number of Interests proposed to be Transferred):

(a) Any Event of Bankruptcy;

(b) The Transfer of a deceased or mentally incompetent Member's Interests to a non-Family Member following the death or mental incompetency of such Member;

(c) The divorce (or other similar legal separation resulting in the partitioning of assets) of a Member;

(d) The voluntary offer by a Member of some or all of its Interests for purchase by the Company, which shall be evidenced by written notice to the Company (a "*Voluntary Offer*"); or

(e) The proposal by a Member to Transfer some or all of its Interests to any Person not the Company, other than a Family Member, evidenced by a written notice

delivered to the Company, (which notice includes the written offer received by the Member which written offer must be bona fide, itemize each of the material terms and conditions upon which the offer is made and reasonably evidence the buyer's willingness and actual ability to close on the proposed transaction within one hundred eighty (180) days of the date of the written offer) (a "*Third Party Offer*").

9.4 Offered Interest. The term "*Offered Interest*" shall, subject to the provisions of Section 9.3(c) with respect to divorce (or other similar legal separation resulting in the partitioning of assets), mean all of the Interests owned by a Member as to which an Event of Offer has occurred (which Member, or such Member's estate, trustee or other successor or assign, is referred to as the "*Offeror*"), except that such term shall include as to a Voluntary Offer and a Third Party Offer only the Interests proposed to be Transferred. Notwithstanding anything to the contrary contained in this Agreement, any and all rights of the Company arising under Section 9.5 as a result of the occurrence of an Event of Offer may be waived by the Board. The Company is permitted, and the Offeror hereby consents to, the assignment of the rights to exercise the rights to acquire the Offered Interests to one or more of the Members of the Company (other than the Offeror). The Board may assign such right pro rata based on the Members that choose to participate in the rights granted hereunder.

9.5 Options to Purchase.

(a) Company Option. Upon the occurrence of any Event of Offer, the Offeror shall immediately notify the Company and the Board in writing of such occurrence, and the Company (or its Member assign(s), as applicable, collectively the "Company" for purposes of Sections 9.5 and 9.6) shall have the exclusive option to purchase all (or a part) of the Offered Interest at the price determined under Section 9.6(a) (the "*Company Option*"). The Company Option may be exercised by the Company, at the sole discretion of the Board, by delivering written notice to the Offeror within sixty (60) days (the "*Company Option Period*") after:

(i) if arising out of a Voluntary Offer, a death or mental incompetency covered by Section 9.3(b), or the divorce (or other similar legal separation resulting in the partitioning of assets) of a Member covered by Section 9.3(c), the date on which the Company receives actual written notice of the Event of Offer;

(ii) if arising out of a Third Party Offer and the consideration underlying such proposal consists entirely of cash, the date on which the Company receives actual written notice of the Event of Offer;

(iii) if arising out of a Third Party Offer including non-cash consideration, thirty (30) days after the date on which the Company receives actual written notice of the Event of Offer; and

(iv) if the Event of Offer is an Event of Bankruptcy, forty-five (45) days after the date on which the Company received actual written notice of the Event of Bankruptcy.

The written notice delivered by the Company shall confirm the Company's intent to exercise the Company Option and to acquire all (or a part) of the Offered Interest and shall detail each of the material terms and conditions (as set forth in the Third Party Offer, if applicable) upon which the sale shall occur.

If the Company timely exercises the Company Option, the sale and purchase of the Offered Interest as to which such option is exercised shall be closed within one hundred eighty (180) days after the date of such written notice of exercise at the price determined pursuant to Section 9.6(a).

(b) Sale. If the Company does not elect to purchase all of the Offered Interest or fails to consummate such purchase in accordance with the terms of this Agreement, then such Offeror may (other than with respect to a Third Party Offer), during the one hundred eighty (180) day period beginning on the date the Company Option expires or the date set for closing and sale, as applicable, sell or otherwise transfer the remaining portion of the Offered Interest not purchased by the Company (and, as to a Third Party Offer, only in accordance with the terms and conditions set forth in the applicable notice) in accordance with the terms and conditions of this Agreement.

9.6 Price; Closing.

(a) Price. The price to be paid for any Interests sold and purchased pursuant to this Agreement shall be the appropriate pro rata share (based on the proportionate amount of Interests included in the Offered Interest vis-à-vis the total number of Interests of the Company outstanding, and without discounts for marketability or minority interest but adjusted as appropriate if the Interest being sold is less than the entire Offered Interest) of the Fair Market Value of the Company's assets, less intangibles assets, less liabilities, and excluding any allocation of goodwill, as of the last day of the calendar month coinciding with or next preceding the date of occurrence of an Event of Offer under Section 9.3 (the "*Offer Value*"); except that, (i) in the case of a Third Party Offer, the purchase price of the Offered Interest shall be equal to the cash consideration plus the fair market value (as determined in good faith (without the need to engage professional valuators or appraisers) by the Board) of any non-cash consideration included in the Third Party Offer (adjusted as appropriate if the Interest being purchased and sold is less than the entire Offered Interest); and (ii) in the case of an Event of Offer under Sections 9.3(a), (c), and (d), the purchase price shall be 80% of the Offer Value. The Members agree that the discount applied as a result of such events are a reasonable estimate of the damages caused by the Offeror's premature withdrawal from the Company prior to its dissolution and the diversion of resources of the Company and the other Members necessary to acquire the Offered Interests. In the event the Offeror and the Company cannot agree on the Offer Value within 30 days after the date of delivery by the Company of the written notice of the occurrence of an Event of Offer (the "*Agreed Value Date*"), either party may seek to have the Offer Value determined pursuant to Section 9.9.

(b) Closing. The closing of the purchase and sale of any Offered Interests pursuant to this Agreement shall be at the offices of the Company at a time specified by the Company during the Company's regular business hours and on a Business Day

specified by the Company within one hundred eighty (180) days after the date of written notice of exercise of the Company Option or at such other place, time or date as the parties to the purchase and sale shall mutually agree. At the closing, the purchase price of any Interests sold or otherwise transferred pursuant to this Agreement shall be paid by the Company to the Offeror either (i) in cash or by certified or cashier's check, or, (ii) at the option of the Board not affiliated with the Offeror, by issuance of a promissory note payable to the Offeror (which promissory note, at the option of the Board, shall have a maturity of up to five (5) years, bear interest at the Prime Rate plus two percent (2%) per annum (payable at maturity) and be secured solely by the Interests being acquired).

(c) Effective Date of Sale. Except to the extent otherwise required by applicable law and subject to Section 9.1, the Offered Interest to be sold or otherwise transferred under this Agreement shall be deemed to be sold or otherwise transferred as of the date of the applicable closing pursuant to Section 9.6(b).

9.7 Execution of this Agreement by Transferee. No assignee of all or any part of any Interests of a Member in the Company shall be admitted to the Company as a substitute Member (a "*Substitute Member*") unless and until (a) the Board shall have duly approved (which approval shall not be inferred due to the Company declining the Company Option) such admission (the granting or denial of which shall be in the Board's sole discretion), (b) the assignee has executed a counterpart of this Agreement, substantially in the form attached hereto as Exhibit B (as modified or amended from time to time) and such other documents and instruments as the Board may reasonably deem necessary or appropriate to confirm the undertaking of the assignee to be bound by all the terms and provisions of this Agreement, and (c) the assignee has undertaken in writing to pay all expenses incurred by the Company in connection with such assignment and substitution. Unless and until an assignee of Interests becomes a Substitute Member, such assignee shall not be entitled to exercise any vote, consent or any other right or entitlement with respect to such Interests.

9.8 Exercise of Company Option. The exercise of the Company Option by the Company (and the price to be paid in a Voluntary Offer) must be approved by the Board, and after such approval the Board shall be authorized and directed to consummate the exercise of the Company Option.

9.9 Calculation of Offer Value. If the Company and the Offeror cannot agree upon the Offer Value of the Company by the Agreed Value Date, the determination thereof shall be made as provided in this Section 9.9.

(a) The Offer Value of the Company shall be determined as follows:

(i) If the Company and the Offeror cannot agree upon the Offer Value of the Company by the Agreed Value Date, the Company and the Offeror shall agree upon an appraiser to make an independent determination of the Offer Value of the Company, and the Offer Value determined by such appraiser shall be final and binding. The cost of such appraisal shall be equally shared by the Company and the Offeror. If the Company and the Offeror fail to agree upon an appraiser within 10 days after the Agreed Value Date (the "*Appraiser Designation Date*"),

the Company and the Offeror shall each designate an appraiser to make the determination within ten days after the Appraiser Designation Date. The appraiser chosen by the Offeror shall be referred to as the "*Exiting Appraiser*," and the appraiser chosen by the Company shall be referred to as the "*Company Appraiser*." The appraisals prepared by the Exiting Appraiser and the Company Appraiser shall be referred to as the "*Initial Appraisals*."

(ii) If the Offer Values determined by the Initial Appraisals differ by less than 5%, the Offer Value of the Company shall be the average of the Initial Appraisals. If the Offer Values determined by the Initial Appraisals differ by 5% or more, the Exiting Appraiser and the Company Appraiser shall choose a third appraiser (the "*Third Appraiser*") to prepare a third appraisal of the Offer Value of the Company (the "*Third Appraisal*").

(b) The final Offer Value of the Company shall be determined by comparing the Initial Appraisals and the Third Appraisal and computing the Offer Value as follows:

(i) If the three Appraisals are clustered such that the highest of the three Appraisals is not more than 115%, and the lowest of the three Appraisals is not less than 85%, of the middle Appraisal, then the three Appraisals shall be averaged and the Offer Value shall be the average of the Appraisals; or

(ii) If either one of the conditions stated above is not met, then, the two of the three Appraisals which are closest together in amount shall be averaged, and the result of such averaging shall be the Offer Value; or

(iii) If either of the conditions stated above is not met but the highest and lowest Appraisals are equally close in amount to the middle Appraisal, then the value determined in the middle Appraisal shall be the Offer Value of the Company.

9.10 Failure to Designate Appraiser. If the Offeror fails to designate an appraiser as required by Section 9.9, the Offer Value of the Company determined by the appraiser designated by the Company shall be the final Offer Value of the Company.

9.11 Binding Determination and Costs. The Offer Values as determined in Section 9.9 shall be binding upon the parties. The Offeror shall bear all costs of the Exiting Appraiser and one-half of the cost of the Third Appraiser (including any costs associated with the appointment of the Third Appraiser). The Company shall bear all costs of Company Appraiser and one-half of the costs of the Third Appraiser (including any costs associated with the appointment of the Third Appraiser).

9.12 Drag-Along Rights. If a Liquidation Event is approved in accordance with Section 7.2(a), then, upon thirty (30) days written notice to the other Members and the Company (the "*Drag-Along Notice*"), which notice shall include reasonable details of the proposed transaction, including the proposed time and place of closing and the consideration to be received by the notifying Members in such transaction, no such other Member shall raise any objection to such Liquidation Event and each Member shall be obligated to, and shall sell,

transfer and deliver, or cause to be sold, transferred and delivered, to such third party, all of its Interests in the same transaction at the closing thereof (and will deliver certificates for all of its Interests at the closing, free and clear of all liens, claims, or encumbrances except those arising under this Agreement). Each Member shall receive the consideration such Member would have received in the event of a complete liquidation of the Company at the applicable purchase price. No Member shall seek any alternative valuation, appraisal rights, injunction or other action to delay or hinder any such authorized Liquidation Event.

10. DURATION AND TERMINATION OF THE COMPANY; WITHDRAWAL BY MEMBERS.

10.1 Term. The existence of the Company shall be deemed to have commenced on the Effective Date, and shall continue in perpetuity or until the first to occur of the following events (each, an "*Event of Termination*"):

(a) the removal of all of the Directors under Section 7.1(d) (and the failure to appoint new Board under Section 7.1(c) within ninety (90) days of such removal of all of the Directors);

(b) a determination by the Board to terminate the Company; and

(c) the termination of the Company in accordance with its Articles.

10.2 Winding-Up. Upon the occurrence of an Event of Termination, the Company shall be dissolved and wound-up. In connection with the dissolution and winding-up of the Company, the Board or, if they appoint a liquidator or other representative (or if the Directors have been removed under Section 7.1(d) and have not been timely replaced under Section 7.1(c), then a liquidator or other representative selected by the Members holding the Required Interest) (the "*Representative*"), such Representative shall proceed with the sale or liquidation of all of the assets and properties of the Company (including the conversion to cash or cash equivalents of its notes or accounts receivable) and shall apply and distribute the proceeds of such sale or liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) first, to pay (or make provision for the payment of) all expenses of the liquidation in satisfaction of all obligations of the Company for such expenses of liquidation;

(b) second, to pay (or to make provision for the payment of) all creditors of the Company (including Members who are creditors of the Company) and the expenses of liquidation, in the order of priority provided by applicable law or otherwise, in satisfaction of all debts, liabilities or obligations of the Company due such creditors and of such expenses of liquidation;

(c) third, to the establishment of any reserve that the Board or the Representative, as the case may be, may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company (such reserve may be paid over by the Board or the Representative to an escrow agent acceptable to the Board or the

Representative, to be held for disbursement in payment of any of the aforementioned debts, liabilities or obligations and, at the expiration of such period as shall be deemed advisable by the Board or the Representative, for distribution of the balance in the manner hereinafter provided in this Section 10.2); and

(d) fourth, after (i) the payment (or the provision for payment) of all debts, liabilities and obligations of the Company in accordance with clauses (a) and (b) above and (ii) the establishment of the reserve required under clause (c) above, to the Members in accordance with their relative positive Capital Account balances at the time of distribution, after giving effect to the allocation of any Profit or Loss under Section 5.

10.3 Distributions in Cash or in Kind. Upon dissolution, the Board or the Representative, as the case may be, may at their sole discretion (a) liquidate all or a portion of the Company's assets and properties and apply the proceeds of such liquidation in the manner set forth in Section 10.2 or (b) hire independent appraisers to appraise the Fair Market Value of the Company's assets and properties not sold or otherwise disposed of (the cost of such appraisals to be considered an expense of the Company) and (in accordance with Section 3.3(c)) allocate any unrealized gain or loss determined by such appraisals to the Members' respective Capital Accounts as though the assets and properties in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute said assets and properties in the manner set forth in Section 10.2; provided, however, that the Board or the Representative, as the case may be, shall in good faith attempt to liquidate sufficient Company assets and properties to satisfy in cash the debts and liabilities described in Section 10.2.

10.4 Time for Liquidation. A reasonable amount of time shall be allowed for the orderly liquidation of the assets and properties of the Company and the discharge of liabilities to creditors so as to enable the Board or the Representative, as the case may be, to minimize the losses attendant upon such liquidation.

10.5 Termination. Upon compliance with the foregoing distribution plan, the Company shall cease to be such, and the Board or the Representative, as the case may be, shall execute, acknowledge and cause to be filed with the Division articles of dissolution (or other appropriate documents) of the Company pursuant to the power of attorney granted in Section 13.13. The provisions of this Agreement shall remain in full force and effect during the period of winding up and until the filing of such articles of dissolution with the Division.

10.6 Withdrawal. For the purposes of this Section 10.6, a "*Withdrawal Determination*" is that point in time at which a Member has given notice to the other Members that he, she or it has determined that such Member's continued participation in the Company is no longer economically favorable, and such Member is willing to forfeit his, her or its right, title and Interests in the Company, its assets and properties and such Member's Capital Account to the Company and such Member's position as a Manager, if applicable. At any time after a Withdrawal Determination, but subject expressly to the further terms and provisions of this Section 10.6, any Member (the "*Withdrawing Member*") may elect to withdraw from the Company. A Withdrawing Member agrees not to withdraw from the Company unless each of the following have been satisfied: (a) the requirements of all laws, regulations and third party agreements shall have been complied with and the Withdrawing Member shall have reimbursed

the Company for all of the costs incurred in the satisfaction of such requirements; (b) the Withdrawing Member shall retain and agree to discharge, without recourse against any remaining Member, the obligations such Withdrawing Member has agreed to be personally liable for prior to such date; (c) the Withdrawing Member shall have fully discharged all its accrued obligations for Capital Contributions and waive any rights to such Withdrawing Member's positive Capital Account balance; and (d) if such Member is also a Manager, he, she or it shall have resigned as a Manager of the Company. The Board may waive, in their sole discretion, any of the withdrawal requirements so long as any such waiver does not materially and adversely affect another Member.

11. AMENDMENTS. The Board and Members, subject to receipt of the consent of the Required Interest, shall have the authority to amend or modify this Agreement without any vote or other action by the other Members. A copy of each amendment and modification of this Agreement shall then be sent to the other Members.

12. DEFINITIONS, ACCOUNTING TERMS.

12.1 Definitions. As used herein the following terms shall have the following respective meanings:

"*AAA*" — as defined in Section 13.3(a).

"*Act*" — as defined in Section 1.1.

"*Additional Capital Contribution*" — shall mean, with respect to any Member, the aggregate amount of cash to be contributed by such Member to the Company in respect of any capital call pursuant to Section 3.2.

"*Adjusted Capital Account Deficit*" — shall mean, with respect to any Member, a deficit balance in such Member's Capital Account as of the end of the fiscal year after giving effect to the following adjustments:

(a) Credit to such Capital Account the additions, if any, permitted by Treasury Regulations §§ 1.704-1(b)(2)(ii)(c) (referring to obligations to restore a capital account deficit), 1.704-2(g)(1) (referring to "partnership minimum gain") and 1.704-2(i)(5) (referring to a partner's share of "partner nonrecourse debt minimum gain"); and

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

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulation § 1.704-1(b)(2)(ii)(d).

"*Adjusted Properties*" — as defined in Section 6.3.

"*Affiliate*" — with reference to any Person, any other Person of which such Person is a Family Member, member, director, officer, general partner or employee or any other Person

directly or indirectly controlling or controlled by or under direct or indirect common control with such Person.

"*Agreed Value Date*" — as defined in Section 9.6(a).

"*Agreement*" — shall mean this Operating Agreement, as the same may be amended hereafter from time to time as provided herein.

"*Authorized Representative*" — as defined in Section 13.16.

"*Board*" – as defined in Section 7.1(a).

"*Board Decision*" – as defined in Section 7.2.

"*Board Decision Threshold*" – shall mean $10,000.00.

"*Business Day*" — shall mean any day other than a Saturday or Sunday on which most of the banks in the State of Utah are open for business.

"*Capital Accounts*" — as defined in Section 3.3(a).

"*Capital Contributions*" — as to any Member, the amount of contributions to the capital of the Company made pursuant to Section 3.1 together with any Additional Capital Contributions made pursuant to this Agreement.

"*Carrying Value*" — the initial Carrying Value of a property shall be determined as follows: the initial Carrying Value of a property contributed to the Company by a Member as a capital contribution pursuant to Section 3 shall be the agreed value set forth in Section 3; as to other property contributed to the Company by a Member, the initial Carrying Value shall be the agreed value (as determined by the Board and the contributing Member in good faith) of such property at the time of contribution; and the initial Carrying Value of any other property acquired by the Company shall be the adjusted basis of such property for federal income tax purposes at the time such property is acquired by the Company. The initial Carrying Value of a property shall be reduced (but not below zero (0)) by all subsequent depreciation, cost recovery and amortization deductions with respect to such property as taken into account in determining Profit and Loss. The Carrying Value of any property may be adjusted from time to time to reflect changes, additions or other adjustments to the Carrying Value for dispositions, acquisitions or improvements of the Company's properties or as required pursuant to Section 3.3, as reasonably deemed appropriate by the Board.

"*Cash Available for Distribution*" — shall mean, as determined by the Board, with respect to a particular period, all revenues received by the Company during such period from any source, but excluding Capital Contributions and the proceeds of any loans obtained by the Company, less:

(a) all reasonable and necessary costs and expenses paid by the Company during such period with respect to the conduct of the Company's business and the operation, maintenance and protection of the Company's assets and properties, but

excluding any costs and expenses such as depreciation or depletion, that do not represent cash outlays by the Company;

(b) income, excise, sales, property and other taxes assessed against or imposed on the Company or its assets and properties and paid by the Company during such period, but excluding any such taxes to the extent that reserves for such taxes were set aside pursuant to clause (c) of this definition during any prior period;

(c) reserves, in amounts determined in the reasonable judgment of the Board to be prudent, sufficient to assure that the Company has adequate funds on hand to timely pay the items described in clauses (a) and (b) of this definition with respect to future periods; and

(d) Tax Distributions (other than when calculating a distribution for a Tax Distribution).

"*Code*" — shall mean the Internal Revenue Code of 1986, as amended, and as the same may be amended hereafter from time to time.

"*Company*" — as defined in the introduction to this Agreement.

"*Company Inventions*" — as defined in Section 7.16(c).

"*Company Option*" — as defined in Section 9.5(a).

"*Company Option Period*" — as defined in Section 9.5(a).

"*Confidential Matter*" — as defined in Section 13.16.

"*Damages*" — shall mean any and all damages, disbursements, suits, claims, liabilities, obligations, judgments, fines, penalties, charges, amounts paid in settlement, expenses, costs and expenses (including, without limitation, attorneys' fees and expenses) arising out of or related to litigation and interest on any of the foregoing.

"*Default Interest Rate*" — shall mean a rate per annum equal to the lesser of (a) 2% plus the General Interest Rate, and (b) the maximum rate permitted by applicable law.

"*Division*" — as defined in Section 1.1.

"*Drag-Along Notice*" — as defined in Section 9.12.

"*Effective Date*" — as defined in the introduction to this Agreement.

"*Event of Bankruptcy*" — with respect to a Member, the following:

(a) any assignment by a Member for the benefit of creditors;

(b) the filing by a Member of a voluntary petition in bankruptcy;

(c) the subjection of a Member to the entry of an order for relief or, following a hearing and judicial or other authoritative determination thereof, to a declaration of insolvency in any federal or state bankruptcy or insolvency proceeding;

(d) the filing of a voluntary petition or answer by a Member seeking for such Member, a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law;

(e) the filing of an answer or other pleading by a Member admitting all of or failing to contest at least one of the material allegations of an involuntary petition filed against such Member in a proceeding of the type described in clauses (b) - (d) of this definition;

(f) a Member's pursuit of, consent to, or acquiescence in the appointment of a trustee, receiver or liquidator of such Member of all or any substantial part of such Member's properties if such pursuit, consent or acquiescence is demonstrably evidenced by the actions or omissions of such Member; or

(g) the expiration of one hundred twenty (120) days after the date of the commencement of a proceeding against a Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law if the proceeding has not been previously dismissed, or the expiration of ninety (90) days after the date of the appointment, without such Member's consent or acquiescence, of a trustee, receiver or liquidator of such Member or of all or any substantial part of such Member's assets or properties if the appointment has not previously been vacated or stayed, or the expiration of ninety (90) days after the date of expiration of a stay, if the appointment has not previously been vacated.

"*Event of Offer*" — as defined in Section 9.3.

"*Event of Termination*" — as defined in Section 10.1.

"*Fair Market Value*" — shall mean (a) as to any asset or property (other than as described in clause (b) of this definition) on any date, the fair market value of such asset or property on such date as determined in good faith by the Board or as otherwise provided in Section 10.3; and (b) as to any securities which are listed or admitted to trading on any national securities exchange on any Business Day, the amount equal to (i) the last sale price of such securities, on such date or, if no such sale takes place on such date, the average of the closing bid and asked prices thereof on such date, in each case as officially reported on the principal national securities exchange on which such securities are then listed or admitted to trading, or (ii) if such securities are not then listed or admitted to trading on any national securities exchange but are reported through the automated quotation system of a registered securities association, the last trading price of such securities on such date, or if there shall have been no trading on such date, the average of the closing bid and asked prices of such securities on such date as shown by such automated quotation system.

"*Family Members*" — shall mean (a) the spouse, parents, grandparents, children, grandchildren, nieces, nephews and siblings of (i) a Member who is an individual, (ii) the

beneficiary, who must be an individual, of a Member if such Member is a trust and such beneficiary has a right, together with other Family Members of such beneficiary, to receive a majority of the trust assets, or (iii) the sole holder, who must be an individual, of equity or other controlling interest in a Member if such Member is a business entity; (b) a trust for the benefit of (x) the transferring Member or the beneficiary of the transferring Member, (y) one or more persons named in clause (a) of this definition, or (z) Persons named in both clause (a)(i) and (a)(ii) of this definition; and (c) a business entity in which a Member is the sole holder of equity or otherwise controls such entity. Only Persons that are individuals, trusts, or business entities meeting the foregoing definitions may be deemed to be Family Members under this Agreement.

"*Family Transfer*" — as defined in Section 9.2.

"*GAAP*" — as defined in Section 12.2.

"*General Interest Rate*" — shall mean a rate per annum equal to the lesser of (a) an annual rate of interest that equals the floating commercial loan rate as published in the Wall Street Journal from time to time as the "Prime Rate," adjusted in each case as of the banking day in which a change in the Prime Rate occurs, as reported in the Wall Street Journal; and (b) the maximum rate permitted by applicable law.

"*Governmental Authority*" — shall mean any nation or government, any state or other political subdivision thereof and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"*Interest*" — shall mean the membership interests owned by a Member in the Company, including such Member's Sharing Ratio, Units, the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all the terms and provisions of this Agreement.

"*Internal Revenue Service*" — the Internal Revenue Service or its successor.

"*Investment Advisers Act*" — the Investment Advisers Act of 1940, as amended.

"*Investment Company Act*" — the Investment Company Act of 1940, as amended.

"*Liquidation Event*" — as defined in Section 7.2(a).

"*Directors*" —means the individuals as listed in Schedule 7.1(b), together with any one or more of their permitted successors and assigns.

"*Members*" — shall mean the Persons listed on *Schedule A*, as amended from time to time in accordance with Section 2.1.

"*Offer Value*" — as defined in Section 9.6.

"*Offered Interest*" — as defined in Section 9.4.

"*Offeror*" — as defined in Section 9.4.

"*Operating Expenses*" — as defined in Section 7.10(b).

"*Organizational Expenses*" — as defined in Section 7.10(a).

"*Person*" — shall mean any individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"*Profit or Loss*" — shall mean the profit or loss of the Company as determined under the capital accounting rules of Treasury Regulation § 1.704-1(b)(2)(iv) for purposes of adjusting the Capital Accounts of the Members, including, without limitation, the provisions of paragraphs (b), (f) and (g) of those regulations relating to the computation of items of income, gain, deduction and loss.

"*Recapture Income*" — as defined in Section 6.2.

"*Regulatory Allocations*" — as defined in Section 5.4(h).

"*Required Interest*" — shall mean the approval of Members holding at least sixty-six percent (66%) of the Sharing Ratios.

"*Representative*" — as defined in Section 10.2.

"*Rules*" — as defined in Section 13.3(a).

"*Securities Act*" — shall mean the Securities Act of 1933, as amended, and any other applicable securities laws.

"*Securities Exchange Act*" — shall mean the Securities Exchange Act of 1934, as amended.

"*Sharing Ratio*" — shall mean each Member's membership Interest in the Company on a percentage basis compared to the other Members, consisting of the Member's right to share in the Company's Profit, Losses and receive distributions and participate in the Company's governance (to the extent a Member has such rights pursuant to this Agreement or the Act). The Members' Sharing Ratios may be adjusted from time to time to account for transfers of Units and other transactions authorized under this Agreement. Changes in Sharing Ratios after the date of this Agreement, including those necessitated by the admission and dissociation of Members or the issuance of additional Units, will be reflected in the Company's records. The allocation of Sharing Ratios reflected in the Company's records from time to time is presumed to be correct for all purposes of this Agreement and the Act absent manifest error. The Sharing Ratio of each Member shall be equal to a percentage, the numerator of which is the number of Units held by such Member and the denominator of which is the total number of Units then issued and outstanding; provided, however, when calculating voting percentages for purposes of this Agreement, Units held by Members without voting rights shall not be included in the denominator and such Members shall not vote.

"*Substitute Member*" — shall mean any Person admitted to the Company as a substitute Member pursuant to Section 9.7.

"*Tax Distributions*" — as defined in Section 4.2.

"*Tax Matters Partner*" — as defined in Section 7.9(a).

"*Third Party Offer*" — as defined in Section 9.3(e).

"*Transfer*" and "*Transferring*" — as defined in Section 9.1.

"*Treasury Regulations*" — shall mean the Income Tax Regulations promulgated under the Code, as the same may be amended.

"*Unit*" or "*Units*" — as defined in Section 2.2.

"*U.S. Dollars*" and "*$*" — shall mean lawful money of the United States of America.

"*Voluntary Offer*" — as defined in Section 9.3(d).

12.2 Accounting Terms and Determinations. All accounting terms used in this Agreement and not otherwise defined shall have the meaning accorded to them in accordance with generally accepted accounting principles ("*GAAP*") in the United States of America and, except as expressly provided herein, all accounting determinations shall be made in accordance with GAAP, consistently applied.

12.3 Manager's Standard of Care. Whenever in this Agreement the Directors are permitted or required to make a decision (a) in their "sole and absolute discretion," "sole discretion," "discretion" or under a grant of similar authority or latitude, the Directors shall be entitled to consider such interests and factors as they desire, including their own interests, or (b) in their "good faith" or under another express standard, the Directors shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or other applicable law.

13. MISCELLANEOUS.

13.1 Waiver of Partition. Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain any action for partition of any of the Company's assets or properties.

13.2 Entire Agreement. This Agreement together with the documents expressly referred to herein, each as amended or supplemented, constitutes the entire agreement among the parties with respect to the subject matter hereof or thereof and supersedes any prior agreement or understanding among the parties hereto.

13.3 Negotiation; Mediation; Arbitration. In the event that there is a dispute between or among the Members and/or with the Board arising out of or relating to this Agreement or the operation of the Company, the parties shall attempt in good faith to resolve such dispute

promptly by negotiation. Any party may give each other party written notice that a dispute exists (a "*Notice of Dispute*"). The Notice of Dispute shall include a statement of such party's position. Within ten (10) Business Days of the delivery of the Notice of Dispute, the parties shall meet at a mutually acceptable time and place, and attempt to resolve the dispute. All documents and other information or data on which each party relies concerning the dispute shall be furnished or made available on reasonable terms to each other party at least five (5) Business Days before the first meeting of the parties as provided by this Section 13.3. If the dispute has not been resolved by negotiation within twenty (20) Business Days after the delivery of a Notice of Dispute, the parties shall endeavor to settle the dispute by mediation under the then current Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Unless otherwise agreed, the parties shall agree upon a mediator or, if they cannot agree upon a mediator within five (5) Business Days of commencement of the mediation procedure, then they shall select a mediator pursuant to the Mediation Procedures of the American Arbitration Association. Expenses of mediation shall be divided equally among the disputing parties.

(a) If the dispute has not been resolved by negotiation or mediation within sixty (60 Business Days after of the delivery of a Notice of Dispute, any party to this Agreement may seek to settle the dispute by arbitration in accordance with the terms of this Section 13.3. THE INTERPRETATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT OR TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH, WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF. Any controversy or claim (including, without limitation, whether any controversy or claim is subject to arbitration) arising out of or relating to this Agreement, or the breach thereof (whether, in any case, involving (i) the Company, a Member or a Manager, (ii) their transferees or (iii) the Company or such Member's or the Director's or transferee's directors, officers, partners, members, managers, employees, representatives or agents), shall be settled by binding arbitration administered by the American Arbitration Association (the "*AAA*") under its Commercial Arbitration Rules (the "*Rules*"), and shall be held within 25 miles of the Company's principal place of business.

(b) Any dispute submitted for arbitration shall be referred to one (1) arbitrator mutually selected by the parties to the arbitration. The parties agree that they shall consent to an expedited proceeding under the Rules, to the extent the AAA can accommodate such a request.

(c) The ruling of the arbitrator shall be binding and conclusive upon all parties hereto and any other Person with an interest in the matter.

(d) The arbitration provision set forth in this Section 13.3 shall be a complete defense to any suit, action or other proceeding instituted in any court regarding any controversy or claim (including, without limitation, whether any controversy or claim is subject to arbitration) arising out of or relating to this Agreement, or the breach thereof (whether, in any case, involving (i) the Company, a Member or a Manager, (ii) their transferees or (iii) the Company or such Member's or the Director's or transferee's directors, officers, partners, members, managers, employees, representatives or agents); provided, however, that (x) any of the parties to the arbitration may request a state court,

to provide interim injunctive relief in aid of arbitration hereunder or to prevent a violation of this Agreement pending arbitration hereunder (and any such request shall not be deemed a waiver of the obligations to arbitrate set forth in this Section 13.3), (y) any ruling on the award rendered by the arbitrator may be entered as a final judgment in a court of competent jurisdiction (and each of the parties hereto irrevocably submits to the jurisdiction of such court for such purposes) and (z) application may be made by a party to any court of competent jurisdiction wherever situated for enforcement of any such final judgment and the entry of whatever orders are necessary for such enforcement. In any proceeding with respect hereto, all direct, reasonable costs and expenses (including, without limitation, AAA administration fees and arbitrator fees) incurred by the parties to the proceeding shall, at the conclusion of the proceeding, be paid as determined by the arbitrator.

(e) Each party hereto acknowledges the following:

(i) ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

(ii) IN ARBITRATION THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.

(iii) DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.

(iv) ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR TO SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.

(v) IF SUCH PARTY HAS QUESTIONS ABOUT ARBITRATION, HE, SHE OR IT HAS CONSULTED WITH AN ATTORNEY OR THE AAA BEFORE SIGNING THIS AGREEMENT.

13.4 Successors and Assigns. Except as otherwise specifically provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

13.5 Interpretation. Wherever the context appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, the feminine or neuter gender shall include the masculine, the feminine and the neuter.

13.6 Captions. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or otherwise affect the scope or intent of this Agreement or any provision hereof.

13.7 Severability. If any provision of this Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions of this Agreement, or the application of such provision in jurisdictions or to Persons or circumstances other than those to which it is held invalid, illegal or unenforceable, shall not be affected thereby.

13.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by telecopy shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopy also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, or binding effect hereof. It shall not be necessary for all Members to execute the same counterpart hereof.

13.9 Additional Documents. Subject to the provisions of this Agreement, each party hereto agrees to execute, with acknowledgment or affidavit, if required, any and all documents and writings that may be necessary or expedient in connection with the creation of the Company and the achievement of its purposes, specifically including (a) any amendments to this Agreement and such certificates and other documents and instruments as the Board deems necessary or appropriate to form, qualify or continue the Company as a limited liability company in all jurisdictions in which the Company conducts or plans to conduct business, and (b) all such agreements, certificates, tax statements, tax returns and other documents and instruments as may be required of the Company or its Members by the laws of the United States of America or any jurisdiction in which the Company conducts or plans to conduct business, or any political subdivision or agency thereof.

13.10 Non-Waiver. No provision of this Agreement shall be deemed to have been waived unless such waiver is contained in a written waiver signed by the party or parties granting such waiver; provided, however, that no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given.

13.11 Manner of Consent. Any consent or approval required by this Agreement of a Member may be given as follows:

(a) by a written consent given by the consenting Members (acknowledgment of consent by Email or other electronic transmission to a matter shall be sufficient for purposes of a written consent hereunder); or

(b) by the affirmative vote of the consenting Member to the taking of the action for which the consent is solicited at any meeting duly called and held to consider the taking of such action.

13.12 Notices. To be effective, unless otherwise specified in this Agreement, all notices, demands, consents and other communications under this Agreement must be in writing and must be given (a) by depositing the same in the United States mail, postage prepaid, certified or registered, return receipt requested, (b) by delivering the same in person and receiving a

signed receipt therefor, (c) by sending the same by a nationally recognized overnight delivery service or (d) by telecopy or Email. For purposes of notices, demands, consents and other communications under this Agreement, the addresses of the Members shall be as set forth on *Schedule A* and the address of the Company shall be as set forth by Section 1.4. Notices, demands, consents and other communications mailed in accordance with the foregoing clause (a) shall be deemed to have been given and made three (3) Business Days following the date so mailed. Notices, demands, consents and other communications given in accordance with the foregoing clause (d) shall be deemed to have been given when sent (if confirmed transmission is obtained or acknowledgement is returned). Notices, demands, consents and other communications given in accordance with the foregoing clauses (b) and (c) shall be deemed to have been given when delivered. Any Member or its assignee may designate a different address to which notices or demands shall thereafter be directed and such designation shall be made by written notice given in the manner hereinabove required. Notices to any assignee of a Member shall be given to such Member unless such assignee has designated a different address therefore by written notice given in the manner hereinabove required.

13.13 Grant of Power of Attorney. Each Member hereby irrevocably constitutes and appoints the Directors as its true and lawful attorney and agent, in its name, place and stead to make, execute, acknowledge and, if necessary, to file and record:

(a) any certificates or other documents, instruments or amendments thereof that the Company may be required to file under the Act or any other laws of the State of Utah or pursuant to the requirements of any Governmental Authority having jurisdiction over the Company or that the Board shall deem advisable to file, including, without limitation, this Agreement, any amendment to this Agreement and articles of dissolution (and other appropriate documents) as provided in Section 10.5;

(b) any certificates or other documents or instruments (including counterparts of this Agreement with such changes as may be required by the applicable law of other jurisdictions) and all amendments thereto that the Board deems appropriate or necessary to qualify, or continue the qualification of, the Company as a limited liability company and to preserve the limited liability status of the Company in the jurisdictions in which the Company may acquire assets, properties or other investment interests;

(c) any certificates or other documents or instruments that may be required in order to effectuate any change in the membership of the Company or to effectuate the dissolution and termination of the Company pursuant to Section 10; and

(d) any amendments to any certificate or to this Agreement necessary to reflect any other changes made pursuant to the exercise of the power of attorney granted under this Section 13.13 or pursuant to this Agreement.

13.14 Irrevocable and Coupled with an Interest: Copies to Be Transmitted. The power of attorney granted under Section 13.13 shall be deemed irrevocable and to be coupled with an interest. A copy of each document or instrument executed by the Directors pursuant to the power of attorney granted in Section 13.13 shall be transmitted to each Member promptly after the date of the execution of any such document or instrument.

13.15 Limitation on Power of Attorney. Except as expressly set forth in Section 13, the power of attorney granted under Section 13.13 cannot be utilized by any Member for the purpose of increasing or extending any financial obligation or liability of any other Member or altering the method of division of Profits and Losses or the method of distributions in connection with the investment of a Member without the written consent of such Member.

13.16 Confidentiality. Each Member agrees, as set forth below, with respect to any information pertaining to the Company or its investments or Affiliates that is provided to such Member pursuant to this Agreement or otherwise (collectively, "*Confidential Matter*"), to treat as confidential (and to only use in connection with the business of the Company) all such Confidential Matter, together with any analyses, studies or other documents, instruments or records prepared by such Member, its Affiliates or any representative or other Person acting on behalf of such Member (collectively, its "*Authorized Representatives*"), that contains or otherwise reflects or is generated from Confidential Matter, and will not, and will not permit any of its Authorized Representatives to, disclose any Confidential Matter; provided, however, that any Member (or its Authorized Representative) may disclose any such Confidential Matter (a) that has become generally available to the public, (b) as to which such Member has received from a third party and about which such Member has no knowledge of a confidentiality agreement between such third party and the Company, (c) as may be required or appropriate in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over such Member (or its Authorized Representative), but only that portion of the Confidential Matter that, in the written opinion of counsel for such Member or Authorized Representative, is required or would be required to be furnished to avoid liability for contempt or the imposition of any other material judicial or governmental penalty or censure, (d) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation or (e) as to which each of the other Members has consented in writing.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative or other agent of such party) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. For this purpose, tax treatment and tax structure shall not include the identity of any existing or future party (or any affiliate of such party) to this Agreement.

13.17 Securities Restrictions. THE INTERESTS OF THE COMPANY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR ANY STATE SECURITIES LAWS OR THE LAWS OF ANY OTHER JURISDICTION AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED UNLESS THE SAME HAVE BEEN INCLUDED IN AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE BOARD HAS BEEN RENDERED TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION UNDER APPLICABLE SECURITIES LAWS IS AVAILABLE. IN ADDITION, TRANSFER OR OTHER DISPOSITION OF THE INTERESTS IS RESTRICTED AS PROVIDED IN THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

SCHEDULE A

MEMBERS AND SHARING RATIOS OF MEMBERS

Name and Notice Information	Sharing Ratio
Kelly Curtis 11232 Frandsen circle South Jordan, UT 84095	25%
Gunther Fischli 9591 High Meadow Drive South Jordan, UT 84095	25%
Green Compass Energy, LLC Attention: Robert Deuberry	25%
Joel Dehlin 5348 Cottonwood Lane Holladay, UT 84117	25%

Schedule 7.1(b)

Directors

Kelly Curtis

Gunther Fischli

Robert Deuberry

Joel Dehlin

EXHIBIT A

FORM OF UNIT CERTIFICATE

[FRONT]

ENERGY AUCTION EXCHANGE, LLC
(A Utah Limited Liability Company)

SEE RESTRICTIVE LEGENDS ON REVERSE SIDE

Certificate Number: XX	**XX.XX Units**

THIS CERTIFIES THAT **[MEMBER]** is the registered owner of **xx.xx Units** of **Energy Auction Exchange, LLC**, a Utah limited liability company (the "*Company*"). This certificate and the Units represented hereby are issued and shall be held subject to all of the provisions of the Company's Articles of Organization and that certain Operating Agreement of the Company dated May 1, 2013 (as the same may be further amended from time to time), to all of which the holder of this certificate, by acceptance hereof, assents.

IN WITNESS WHEREOF, the President of the Company has executed this certificate to be effective as of _____ __, 201_.

_____, Manager		_____, Manager

FORM OF UNIT CERTIFICATE

[BACK]

FOR VALUE RECEIVED, THE UNDERSIGNED MEMBER(S) HEREBY SELL(S), ASSIGN(S) AND TRANSFER(S) UNTO _____ _____UNITS REPRESENTED BY THE WITHIN CERTIFICATE AND DOES HEREBY IRREVOCABLY CONSTITUTE AND APPOINT _____ ATTORNEY TO TRANSFER THE SAID UNITS ON THE RECORDS OF THE WITHIN NAMED COMPANY WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED: _____

_____
MEMBER

IN PRESENCE OF

OF _____
WITNESS

THE MEMBERSHIP UNITS EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES ACT OF ANY STATE, HAVE BEEN TAKEN FOR INVESTMENT, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR OTHERWISE DISPOSED OR ENCUMBERED UNLESS DONE IN ACCORDANCE WITH APPLICABLE LAW AND IN ACCORDANCE WITH THE PROVISIONS OF THE OPERATING AGREEMENT REFERENCED ON THE FACE OF THIS CERTIFICATE. ANY TRANSFERS IN VIOLATION OF THE COMPANY OPERATING AGREEMENT SHALL BE VOID *AB INITIO*.

ENERGY AUCTION EXCHANGE, LLC

Joinder to Operating Agreement of Energy Auction Exchange, LLC

Pursuant to Section 9.7 of that certain Operating Agreement, dated as of May 1, 2013, as may be amended, by and among Energy Auction Exchange, LLC, a Utah limited liability company, and certain Members and Directors listed therein (the "Operating Agreement"), the undersigned hereby agrees, effective as of the date hereof, to become a party to the Operating Agreement, and for all purposes of the Operating Agreement, shall be, and shall have all the rights and obligations of, a Member.

The amended Schedule A to reflect the addition of the undersigned is attached hereto.

The address and facsimile number to which notices may be sent to the undersigned is as follows:

893 W. Baxter Dr.
South Jordan, UT 84095
Phone ~~(801) 8~~ 877-671-7751
Fax (801) 838 7707
Attention: Kelly Curtis

By your signature below, you hereby acknowledge and agree that you have reviewed the Operating Agreement, are making the representations, warranties and covenants set forth therein effective as of the date hereof and that you agree to be bound by the terms and conditions of such Operating Agreement.

By: _____
Name: Joel Dehlin

ENERGY AUCTION EXCHANGE, LLC

By: _____
Name: Kelly Curtis
Title: Manager

ENERGY AUCTION EXCHANGE, LLC

Joinder to Operating Agreement of Energy Auction Exchange, LLC

Pursuant to Section 9.7 of that certain Operating Agreement, dated as of May 1, 2013, as may be amended, by and among Energy Auction Exchange, LLC, a Utah limited liability company, and certain Members and Directors listed therein (the "Operating Agreement"), the undersigned hereby agrees, effective as of the date hereof, to become a party to the Operating Agreement, and for all purposes of the Operating Agreement, shall be, and shall have all the rights and obligations of, a Member.

The amended Schedule A to reflect the addition of the undersigned is attached hereto.

The address and facsimile number to which notices may be sent to the undersigned is as follows:

893 W. Baxter Dr.
South Jordan, UT 84095
Phone [redacted] 877-671-7751
Fax (801) 838 7707
Attention: Kelly Curtis

By your signature below, you hereby acknowledge and agree that you have reviewed the Operating Agreement, are making the representations, warranties and covenants set forth therein effective as of the date hereof and that you agree to be bound by the terms and conditions of such Operating Agreement.

By: _____
Name: GUNTHER FISCHLI

ENERGY AUCTION EXCHANGE, LLC

By: _____
Name: Kelly Curtis
Title: Manager

ENERGY AUCTION EXCHANGE, LLC

Joinder to Operating Agreement of Energy Auction Exchange, LLC

Pursuant to Section 9.7 of that certain Operating Agreement, dated as of May 1, 2013, as may be amended, by and among Energy Auction Exchange, LLC, a Utah limited liability company, and certain Members and Directors listed therein (the "Operating Agreement"), the undersigned hereby agrees, effective as of the date hereof, to become a party to the Operating Agreement, and for all purposes of the Operating Agreement, shall be, and shall have all the rights and obligations of, a Member.

The amended Schedule A to reflect the addition of the undersigned is attached hereto.

The address and facsimile number to which notices may be sent to the undersigned is as follows:

893 W. Baxter Dr.
South Jordan, UT 84095
Phone [redacted] 877-671-7751
Fax ([redacted]) 838 7707
Attention: Kelly Curtis

By your signature below, you hereby acknowledge and agree that you have reviewed the Operating Agreement, are making the representations, warranties and covenants set forth therein effective as of the date hereof and that you agree to be bound by the terms and conditions of such Operating Agreement.

By: _____
Name:

ENERGY AUCTION EXCHANGE, LLC

By: _____
Name: Kelly Curtis
Title: Manager

ENERGY AUCTION EXCHANGE, LLC

Joinder to Operating Agreement of Energy Auction Exchange, LLC

Pursuant to Section 9.7 of that certain Operating Agreement, dated as of May 1, 2013, as may be amended, by and among Energy Auction Exchange, LLC, a Utah limited liability company, and certain Members and Directors listed therein (the "Operating Agreement"), the undersigned hereby agrees, effective as of the date hereof, to become a party to the Operating Agreement, and for all purposes of the Operating Agreement, shall be, and shall have all the rights and obligations of, a Member.

The amended Schedule A to reflect the addition of the undersigned is attached hereto.

The address and facsimile number to which notices may be sent to the undersigned is as follows:

893 W. Baxter Dr.
South Jordan, UT 84095
Phone [redacted] 877.671-7751
Fax ([redacted]) 838 7707
Attention: Kelly Curtis

By your signature below, you hereby acknowledge and agree that you have reviewed the Operating Agreement, are making the representations, warranties and covenants set forth therein effective as of the date hereof and that you agree to be bound by the terms and conditions of such Operating Agreement.

By: _____
Name: Kelly Curtis

ENERGY AUCTION EXCHANGE, LLC

By: _____
Name: Kelly Curtis
Title: Manager

IN WITNESS WHEREOF, the undersigned hereby agree to be bound as Members and Directors, as applicable, by the terms and conditions of this Operating Agreement of Energy Auction Exchange, LLC.

DIRECTORS:

Kelly Curtis

Gunther Fischli

Robert Deuberry

Joel Dehlin

MEMBERS:

Kelly Curtis

Gunther Fischli

Green Compass Energy, LLC

By:
Name: Robert Deuberry
Title: President

Joel Dehlin

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement of Energy Auction Exchange, LLC (the "Company") dated as of May 1, 2013, as may be amended (the "Operating Agreement"), and that I know its contents, including, without limitations, the grant to the Company of the Offered Interest (as such term is defined in Section 9.4 of the Operating Agreement) upon the terms and conditions set forth in the Operating Agreement upon the divorce (or other similar legal separation resulting in the partitioning of assets) from my current spouse. I hereby agree that the Offered Interest, and my interest in them, if any, are subject to the provisions of the Operating Agreement and that I will take no action at any time to hinder operation of or violate the Operating Agreement.

I hereby appoint my husband as my true and lawful attorney in fact, for me and in my name, place and stead, and for my use and benefit, to agree to any amendment or modification of the Operating Agreement and to execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of the Operating Agreement. I further give and grant unto my husband as my attorney in fact full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my husband shall lawfully do and cause to be done by virtue of this power of attorney.

Capitalized terms used herein shall have the meanings ascribed to them in the Operating Agreement.

Lori A Dewberry
(Signature of Member's Spouse)

Lori A-Dewberry
(Print Name)

LORI

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement of Energy Auction Exchange, LLC (the "Company") dated as of May 1, 2013, as may be amended (the "Operating Agreement"), and that I know its contents, including, without limitations, the grant to the Company of the Offered Interest (as such term is defined in Section 9.4 of the Operating Agreement) upon the terms and conditions set forth in the Operating Agreement upon the divorce (or other similar legal separation resulting in the partitioning of assets) from my current spouse. I hereby agree that the Offered Interest, and my interest in them, if any, are subject to the provisions of the Operating Agreement and that I will take no action at any time to hinder operation of or violate the Operating Agreement.

I hereby appoint my husband as my true and lawful attorney in fact, for me and in my name, place and stead, and for my use and benefit, to agree to any amendment or modification of the Operating Agreement and to execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of the Operating Agreement. I further give and grant unto my husband as my attorney in fact full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my husband shall lawfully do and cause to be done by virtue of this power of attorney.

Capitalized terms used herein shall have the meanings ascribed to them in the Operating Agreement.

Kjärstin Fischli
(Signature of Member's Spouse)

Kjärstin Fischli
(Print Name)

KJarstin

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement of Energy Auction Exchange, LLC (the "Company") dated as of May 1, 2013, as may be amended (the "Operating Agreement"), and that I know its contents, including, without limitations, the grant to the Company of the Offered Interest (as such term is defined in Section 9.4 of the Operating Agreement) upon the terms and conditions set forth in the Operating Agreement upon the divorce (or other similar legal separation resulting in the partitioning of assets) from my current spouse. I hereby agree that the Offered Interest, and my interest in them, if any, are subject to the provisions of the Operating Agreement and that I will take no action at any time to hinder operation of or violate the Operating Agreement.

I hereby appoint my husband as my true and lawful attorney in fact, for me and in my name, place and stead, and for my use and benefit, to agree to any amendment or modification of the Operating Agreement and to execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of the Operating Agreement. I further give and grant unto my husband as my attorney in fact full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my husband shall lawfully do and cause to be done by virtue of this power of attorney.

Capitalized terms used herein shall have the meanings ascribed to them in the Operating Agreement.

Lani Dehlin
(Signature of Member's Spouse)

Lani Dehlin
(Print Name)

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement of Energy Auction Exchange, LLC (the "Company") dated as of May 1, 2013, as may be amended (the "Operating Agreement"), and that I know its contents, including, without limitations, the grant to the Company of the Offered Interest (as such term is defined in Section 9.4 of the Operating Agreement) upon the terms and conditions set forth in the Operating Agreement upon the divorce (or other similar legal separation resulting in the partitioning of assets) from my current spouse. I hereby agree that the Offered Interest, and my interest in them, if any, are subject to the provisions of the Operating Agreement and that I will take no action at any time to hinder operation of or violate the Operating Agreement.

I hereby appoint my husband as my true and lawful attorney in fact, for me and in my name, place and stead, and for my use and benefit, to agree to any amendment or modification of the Operating Agreement and to execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of the Operating Agreement. I further give and grant unto my husband as my attorney in fact full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my husband shall lawfully do and cause to be done by virtue of this power of attorney.

Capitalized terms used herein shall have the meanings ascribed to them in the Operating Agreement.

(Signature of Member's Spouse)

Holly Curtis

(Print Name)

Holly

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DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
05/15/2012	201213600356	REG. OF FOR. PROFIT LIM. LIAB. CO. (LFP)	.00	.00	.00	.00	.00

Receipt

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

KELLY CURTIS
3557 W 9800 S
STE 250
SOUTH JORDAN, UT 84095

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted

2106725

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

ENERGY AUCTION EXCHANGE, LLC

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

Document(s)	Document No(s):
REG. OF FOR. PROFIT LIM. LIAB. CO.	**201213600356**

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 14th day of May, A.D. 2012.

Jon Husted

Ohio Secretary of State

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Energy Auction Exchange

BALANCE SHEET

As of December 31, 2016

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
AEX Checking	30,345.64
Total Bank Accounts	**$30,345.64**
Total Current Assets	**$30,345.64**
Fixed Assets	
Accumulated Amortization	-142,944.11
Accumulated Depreciation	-2,500.00
Software	2,500.00
Software Development Costs	306,785.11
Software Development Costs (201	45,532.03
Start Up Costs	0.00
Total Fixed Assets	**$209,373.03**
TOTAL ASSETS	**$239,718.67**
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Credit Cards	
AEX Credit Card	0.00
Total Credit Cards	**$0.00**
Other Current Liabilities	
Due to CCS Loans	4,215.42
Zions - RLOC	0.00
Zions LOC	27,285.07
Total Other Current Liabilities	**$31,500.49**
Total Current Liabilities	**$31,500.49**
Total Liabilities	**$31,500.49**
Equity	
Capital Contributions - Gunther	0.00
Capital Contributions - Joel	0.00
Capital Contributions - Kelly	0.00
Capital Contributions - Robert	0.00
GF Distributions	0.00
JD Distributions	0.00
KC Distributions	0.00
Partner Capital	
Gunther	42,731.99
Joel	51,813.70
Kelly	42,729.99
Robert	42,734.00
Total Partner Capital	**180,009.68**

	TOTAL
RD Distributions	0.00
Retained Earnings	30,334.59
Net Income	-2,126.09
Total Equity	**$208,218.18**
TOTAL LIABILITIES AND EQUITY	**$239,718.67**