EXHIBIT G

The following organizational documents are provided with respect to (i) trueEX Group LLC (formerly known as trueSEF LLC), which holds 100% of the equity of the applicant, and (ii) the applicant, trueEX LLC:

Non-confidential documents

1. Certificate of Formation and Amendments thereto for truSEF LLC (October 21, 2010).

2. Certificate of Name Change from truSEF LLC to trueSEF LLC (February 28, 2011).

3. Redacted trueSEF LLC Third Amended and Restated Operating Agreement (June 20, 2011).

4. Certificate of Name Change from trueSEF LLC to SwapCo Holdings LLC (October 18, 2011).

5. Certificate of name change from SwapCo Holdings LLC to trueEX Group LLC (December 27, 2011).

6. Certificate of Formation for trueEX LLC (October 18, 2011).

7. Operating agreement for trueEX LLC (October 18, 2011).

8. Certificate of good standing for trueEX LLC (February 20, 2012).

Confidential documents

9. Unredacted trueSEF LLC Third Amended and Restated Operating Agreement (June 20, 2011).

Please note that the documents with respect to which a FOIA request for confidential treatment will be filed (which are limited to item (8) listed above) are included in a separate appendix. Please further note that because both trueEX Group LLC and trueEX LLC are limited liability companies, rather than corporations, their organizational documents do not include bylaws or other documents applicable only to corporations.

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "TRUSEF LLC", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF OCTOBER, A.D. 2010, AT 5:16 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

4887991 8100

AUTHENTICATION: 8307564

101017841

DATE: 10-25-10

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:22 PM 10/21/2010
FILED 05:16 PM 10/21/2010
SRV 101017841 - 4887991 FILE

CERTIFICATE OF FORMATION

OF

TruSEF **LLC**

The undersigned desires to form a limited liability company pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del C. §18-101 et seq. (the "Delaware Limited Liability Company Act"), and hereby states as follows:

ARTICLE I

The name of the limited liability company is TruSEF LLC (hereinafter referred to as the "Company").

ARTICLE II

The address of the registered office of the Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act is: 874 Walker Road, Suite C., Dover. Kent County, Delaware 19904. The name of the registered agent at such address is United Corporate Services, Inc.

IN WITNESS OF THE FOREGOING, the undersigned has duly executed this Certificate of Formation this 21th day of October 2010.

/s/Diane Linder Lavine
Diane Linder Lavine
Authorized Person

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "TRUSEF LLC", CHANGING ITS NAME FROM "TRUSEF LLC" TO "TRUESEF LLC", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF FEBRUARY, A.D. 2011, AT 6:40 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

4887991 8100

110238562

AUTHENTICATION: 8593322

DATE: 03-01-11

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:42 PM 02/28/2011
FILED 06:40 PM 02/28/2011
SRV 110238562 - 4687991 FILE

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF FORMATION

OF

TruSEF LLC

Under and pursuant to Section 18-202 of the Delaware Limited Liability Company Act

It is hereby certified that:

FIRST: The name of the limited liability company is: TruSEF LLC (the "Company").

SECOND: Article "I" of the Certificate of Formation of the Company is hereby amended by deleting Article "I" in its entirety and replacing it with the following:

"FIRST: The name of the limited liability company is trueSEF LLC (the "Company").

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of TruSEF this 28th day of February, 2011.

S/S Diane Linder Lavine
Name: Diane Linder Lavine
Title: Authorized Person

THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of trueEX Group LLC, a Delaware limited liability company (formerly trueSEF, LLC and SwapCo Holdings LLC) (the "Company") is made as of the 15th day of November, 2011 by and among the Company and the individuals set forth on the signature pages hereto and each other individual or entity that becomes a Member of the Company as provided for herein (each of such individuals or entities, a "Member" and, collectively, the "Members"). This Agreement amends and restates the Limited Liability Company Agreement dated as of October 21, 2010 as amended and restated by the Amended and Restated Limited Liability Company Agreement dated as of March 18, 2011 as further amended and restated by the Second Amended and Restated Limited Liability Company Agreement dated as of June 20, 2011.

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of the Delaware Limited Liability Company Act (the "Act" or the "Delaware Act"), the initial Members have formed the Company for the purposes hereinafter set forth;

WHEREAS, the existing Members of the Company desire to amend and restate the Limited Liability Agreement dated as of October 21, 2010 as amended and restated by the Amended and Restated Limited Liability Company Agreement dated as of March 18, 2011 as further amended and restated by the Second Amended and Restated Limited Liability Company Agreement dated as of June 20, 2011 (as amended, the "Prior Agreement");

WHEREAS, the Members desired to change the name of the Company from SwapCo Holdings LLC to trueEX Group LLC and to increase the number of shares of Preferred Class A Units (defined below) and to increase the size of the Board of Managers and to integrate all of such changes by amending and restating the Prior Agreement; and

WHEREAS, the parties desire to set forth in this Agreement certain matters regarding the Company and their respective interests therein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and premises contained herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE 1. Formation.

(a) On October 21, 2010, the original Members caused to be filed with the Delaware Secretary of State a Certificate of Formation establishing the Company as a Delaware limited liability company. The Company shall be operated and shall conduct its business in accordance with the Act, except to the extent modified by the terms of this Agreement.

(b) Unless the Company is sooner dissolved in accordance with Article 12 of this Agreement or the provisions of the Act, the term of existence of the Company shall be perpetual.

(c) This Agreement is intended to and shall supersede, amend and in all respects replace the Prior Agreement.

ARTICLE 2. Name; Principal and Registered Office; Registered Agent.

(a) The business and affairs of the Company shall be conducted under the name of trueEX Group LLC. The Board of Managers (defined below in Article 8) shall have the right to change the name of the Company from time to time.

(b) The address of the Company's principal office shall be where directed by the Board of Managers. The Company's initial registered agent and office in the State of Delaware shall be United Corporate Services, Inc. The Board of Managers shall have the right to change the principal office, registered office or registered agent from time to time.

ARTICLE 3. Purpose; Acknowledgment.

(a) The purpose of the Company is any lawful business, purpose or activity permitted under the Act, and to do all things and execute such agreements and documents which are necessary or incidental to the foregoing purposes and not prohibited by this Agreement or any law.

(b) In connection with this stated purpose, the Members each acknowledge and agree that the representations and warranties of each such Member set forth in the those certain acknowledgments previously delivered to the Company are incorporated herein by reference as if they were set forth herein in their entirety.

ARTICLE 4. Additional Members.

From and after the date of this Agreement, any individual or entity shall become a Member of the Company upon (i) if required pursuant to Article 11 below, the prior written consent of the Board of Managers (defined in Section 8(a) below), (ii) (a) such individual's or entity's execution and delivery of a subscription agreement, in form and substance satisfactory to the Company, (b) such individual or entity becoming the owner of vested Units pursuant to an Equity Incentive Plan adopted by the Board of Managers, (c) such individual or entity having purchased or received a gift of Units in accordance with Article 11 below or (d) such individual's or entity's receipt of Class B Units pursuant to Section 5(c), and (iii) such individual's or entity's agreeing in writing to be bound by and to comply with all of the terms, provisions and conditions of this Agreement as are applicable to the Members.

ARTICLE 5. Initial Capital Contributions; LLC Interests & Units; Additional Capital Contributions; Capital Accounts; Member Loans.

(a) The Members have contributed cash or other property to the Company as their respective initial capital contributions and any individual or entity that may become a Member of the Company after the date hereof shall contribute cash or other property to the Company as their respective initial capital contributions (hereinafter collectively referred to as the "Initial Capital Contributions").

(b) "LLC Interest" means the entire legal and equitable ownership interest of a Member in the Company, including, but not limited to, such Member's share of the profits and losses of the Company, right to receive distributions of the Company's assets (liquidating or otherwise), right, if any, to vote or participate in management and right to information concerning the business and affairs of the Company.

(c) Classes of Units. The Board of Managers shall have authority to cause the Company to issue up to an aggregate of 40,000,000 units representing Members' LLC Interests in the Company ("Units") comprised of 35,000,000 units of class A Units (the "Class A Units")

and 5,000,000 units of non-voting class B Units (the "Class B Units"). The Board of Managers shall be authorized to issue Units, in one or more classes or series, including pursuant to an Equity Incentive Plan and including the Class B Units, and to fix the divisions, determinations, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the authority to fix or alter the dividend rights, dividend rates, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking and purchase fund provisions), the redemption price or prices, the dissolution preferences and the rights in respect to any distribution of assets of any wholly unissued series of Units and the number of Units constituting any such series, and the designation thereof, or any of them and such authority shall include the power to increase the previously determined number of Units of the class or series to a number not greater than the aggregate number of shares of all classes and series that the Company is authorized to issue by these articles and to decrease the previously determined number of shares of a class or series to a number not less than that then outstanding; *provided, however*, any such action being subject to compliance with the applicable protective voting rights which may be granted to the Preferred Class A Units or another class of subsequently issued Units. Fractions of a Unit may be created and issued. Each Member shall receive a certificate evidencing such Member's ownership interest in the Units of the Company. **Exhibit A** sets forth (i) the issued and outstanding Units owned by each Member in exchange for his or her Initial Capital Contribution and/or services, (ii) each Member's ownership percentage ("Percentage"), calculated by dividing (A) the issued and outstanding Units held by such Member by (B) the total issued and outstanding Units held by all Members, and (iii) each Member's Class A Unit ownership percentage, if any ("Class A Unit Percentage"), calculated by dividing (A) the issued and outstanding Class A Units held by such Member by (B) the total issued and outstanding Class A Units held by all Members. The Board of Managers will from time to time amend **Exhibit A** to reflect the respective issued and outstanding Units owned by each of the Members following the transfer of Units or the issuance of additional Units.

(d) Units. The Units of the Company shall be comprised of the following two series; (i) Class A Units and (ii) Class B Units. The Class A Units shall be comprised of two classes, Preferred Class A Units (defined below) and Original Class A Units (defined below). Where undesignated, any reference to Class A Units shall mean the Preferred Class A Units and the Original Class A Units. The respective rights, preferences and privileges of the different classes of Units shall be as follows:

(i) Preferred Class A Units. Ten Million (10,000,000) Units shall be designated as "Preferred Class A Units". The issuance price of the Preferred Class A Units shall be the issuance price of the Preferred Class A Units as set forth in the subscription documents for the investment in the Preferred Class A Units ($0.925, $1.75 or $3.00 per Unit) (the "Preferred Class A Original Issue Price"). The Preferred Class A Units shall have the rights, designations, preferences, qualifications, privileges, limitations and restrictions applicable thereto as follows:

(A) Voting. The holders of the Preferred Class A Units shall vote with the holders of the Original Class A Units as one class on all matters submitted to the vote or approval of the Class A Unit holders. The consent or approval of the holders of at least a majority of the Class A

Units shall be required for the approval of any matter submitted to the holders of the Class A Units.

(B) Dividends. Dividends will not be paid on the Preferred Class A Units.

(C) Liquidation Preference. In the event of the sale of the Company (a "Liquidation Event"), the holders of the Preferred Class A Units will receive, prior to and in preference over holders of the Original Class A Units and Class B Units, an amount per Unit equal to the greater of (i) the applicable Preferred Class A Original Issue Price for each such holder of the Preferred Class A Units, or (ii) the holder's proportionate amount of the proceeds to be received by the Members of the Company pursuant to such Liquidation Event (the "Preferred Class A Liquidation Preference") on a fully vested per Unit basis (including both the Class A and Class B Units). If the proceeds for any Liquidation Event are insufficient to satisfy the full Preferred Class A Liquidation Preference, the holders of the Preferred Class A Units shall participate in the Preferred Class A Liquidation Preference on a proportionate basis based on an equal percentage return of the Preferred Class A Original Issue Price for each the Holders in the Preferred Class A Units. After satisfaction of the Preferred Class A Liquidation Preference, the remaining holders of the Membership Interests of the Company (excluding the Preferred Class A Unit holders) shall participate in any liquidation proceeds distributed to the Members of the Company on a proportionate basis (based on each such holder's vested percentage of Membership Interests). For purposes of this Agreement, the following will be deemed a "Liquidation Event": (i) a merger, acquisition or sale of voting control in which the Company's stockholders receive a distribution of cash and/or securities from a third party corporation or business entity; or (ii) a sale of all or substantially all of the assets of the Company; *provided*, in each case, that the Company's stockholders of record as constituted immediately prior to such event do not hold, immediately following such event, at least a majority of the voting power of the surviving or acquiring corporation, and in each case unless holders of at least a majority of the vested Class A Units elect to the contrary.

(D) Protective Provisions. In addition to the provisions contained in Section 8(u) below, the consent and approval of the holders of at least a majority of the outstanding Preferred Class A Units, voting as a separate class, shall be required for the Company to complete any of the following:

(i) alter any provision of this Agreement, or upon a Corporate Conversion (defined below), the certificate of incorporation or the bylaws, if it would adversely alter the rights, preferences, privileges or powers of or restrictions of the Preferred Class A Units;

(ii) increase or decrease the authorized number of Units of Preferred Class A Units;

(iii) authorize or create (by reclassification or otherwise) any new class or series of Units having rights, preferences or privileges with respect to dividends or liquidation senior to or on a parity with the Preferred Class A Units or having voting rights other than those granted to the Preferred Class A Units generally;

(iv) authorize any disproportionately favorable distribution or dividend to the holders of the Original Class A Units in excess of any distribution or dividend made or to be made by the Company to the holders of the Class A Units as a whole;

(v) increase the size of the Board of Managers in excess of seven (7) Managers; or

(vi) increase the number of Units authorized for issuance under any existing unit, option or management incentive plan in excess of 5,000,000 Units.

(ii) Original Class A Units. Twenty Five Million (25,000,000) Units shall be designated as original Class A Units (the "Original Class A Units"). The original Members of the Company shall be issued Original Class A Units. Additional Original Class A Units may be issued from time to time to third parties (whether or not such third parties are original Members) at the discretion of the Board of Managers and in accordance with this Agreement. All matters requiring the vote or approval of the Members or of the unit holders shall be determined solely by reference to the vote of the Class A Units.

(iii) Class B Units. In furtherance of the authority granted to the Board of Managers in Section 5(b), the Board of Managers is authorized to issue "Class B Units" from time to time to third parties, including but not limited to the officers, employees, consultants and Board of Managers of the Company subject to the terms and conditions governing such issuances and awards, including, but not limited to, conditions regarding the vesting of such Class B Units. The holders of Class B Units shall not be entitled to vote on any matters and no consent of the Class B Units or Class B unit holders shall be required for any matter. In the event any Class B Units are forfeited, an equivalent number of Class B Units may be issued by the Company on such terms and conditions as the Board of Managers shall deem appropriate.

(d) If the Board of Managers determines that the Company requires additional funding, the Board of Managers shall have the right, but not the obligation, to seek additional capital contributions ("Additional Capital Contributions" and, together with the Initial Capital Contributions, "Capital Contributions") from the Members for all or part of the required funds by providing written notice to the Members. This notice shall set forth the aggregate amount of Additional Capital Contributions being requested, the use(s) for such Additional Capital Contributions, each Member's respective Additional Capital Contribution (determined in accordance with their respective Percentages) and the date by which such Additional Capital Contributions are needed by the Company. The Members shall have the right, but not the obligation, to make or cause to be made Additional Capital Contributions to the Company. Each Member will notify the Company promptly whether it intends to make such an Additional Capital Contribution within the time needed by the Company. If any Member elects not to make its Additional Capital Contribution, then the participating Members may elect to increase the amount of their respective Additional Capital Contributions, pro rata among the participating Members, to fund the non-participating Member's or Members' Additional Capital Contribution(s). If any of the participating Members do not elect to increase the amount of their respective Additional Capital Contributions pursuant to the preceding sentence, then the Company shall have the further right to seek such amounts from other sources. The Board of Managers will amend **Exhibit A** to reflect the respective issued and outstanding Units owned by

each of the Members following the payment of Additional Capital Contributions. The Board of Managers shall not be obligated first to seek Additional Capital Contributions from Members and may in its discretion seek capital contributions from third parties without offering Members the right to participate in such capital contributions; and, in such event, some but not all Members (including Members who are serving as Managers) may be offered the right to participate and invest in such capital raising activities.

(e) Capital Contributions shall not bear interest. No Member shall have the right to demand or receive the return of its Capital Contribution, except as otherwise specifically provided by this Agreement.

(f) The Company shall establish and maintain a separate capital account (a "Capital Account") for each Member in accordance with Section 1.704-1(b)(2)(iv) of the Regulations (as defined in Section 7(h)) and in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's allocable share of Net Profits (as defined in Section 7(h)), any items in the nature of income or gain that are specially allocated to such Member under Section 7(d) and the amount of any liabilities of the Company that are assumed by such Member (or liabilities that are secured by any Company Assets distributed to such Member). The principal amount of a promissory note that is not readily traded on an established securities market and that is contributed to the Company by the maker of such note (or a Member related to the maker of such note within the meaning of Regulations Section 1.704-1(b)(ii)(c)) shall not be credited to the Capital Account of any Member until the Company makes a taxable disposition of such note or until (and to the extent) principal payments are made on such note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

(ii) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value (as defined in Section 7(h)) of any Company assets distributed to such Member pursuant to any provision hereof (net of liabilities secured by such distributed Company assets that such Member is considered to assume or take subject to under Code Section 752), such Member's allocable share of Net Losses (as defined in Section 7(h)), any items in the nature of expenses or losses that are specially allocated to such Member under Section 7(d), and the amount of any liabilities of such Member that are assumed by the Company (or liabilities that are secured by any property contributed by such Member to the Company).

(iii) If any interest in the Company is transferred in accordance with the terms hereof, then the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest. In the case of a sale or exchange of an interest in the Company at a time when an election under Code Section 754 is in effect, the Capital Account of the transferee Member shall not be adjusted to reflect the adjustments to the adjusted tax basis of Company Assets required under Code Sections 754 and 743, except as otherwise required or permitted by Regulations Section 1.704-1(b)(2)(iv)(m).

(iv) In determining the amount of any liability for purposes of Sections 5(f)(i) and (ii), there shall be taken into account Code Section 752(c), and any other applicable provisions of the Code.

(v) The foregoing provisions of this Section 5(f) and the other provisions hereof relating to the maintenance of Capital Accounts are intended to comply with Regulations

Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. If the Board of Managers determines that it is prudent to modify the manner in which any debits or credits are made to the Capital Accounts (including debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any Members), the Board of Managers may make such modification, *provided*, that it is not likely to have a material effect on the amounts distributed to any Member pursuant to Section 12(b) upon the dissolution of the Company. The Board of Managers also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

(h) Any Member or Affiliate of such Member may (but shall not be obligated to) at any time, upon obtaining the consent of the Board of Managers, loan money to the Company to finance Company operations, to finance or refinance any assets of the Company, to pay the debts and obligations of the Company, or for any other Company purpose. If any Member or its Affiliate lends funds to the Company, such Member or Affiliate shall be entitled to receive interest on such loan at an interest rate to be agreed upon by such Member or Affiliate and the Board of Managers. Each Member shall be entitled to participate in any such loan pursuant to this Section 5(h) based on their applicable Percentages. For purposes of this Agreement, an "Affiliate" shall mean (a) any entity that, directly or indirectly, controls, is controlled by, or is under common control with, a party. For purposes of this definition "control" of an entity means the power, directly or indirectly, either to (i) vote 50% or more of the securities having ordinary voting power for the election of directors of such entity or (ii) direct or cause the direction of the management and policies of such entity whether by contract or otherwise.

ARTICLE 6. Distributions.

(a) Tax Distributions. At any time at the discretion of the Board of Managers and so long as the Company is treated as a partnership for federal income tax purposes, to the extent of Available Cash (defined below), the Board of Managers shall cause the Company to distribute to each Member with respect to each fiscal quarter an amount of cash (a "Tax Distribution") which in the good faith judgment of the Board of Managers equals the excess, if any, of (a) the product of (i) the amount of taxable income allocable to such Member in respect of such fiscal quarter and all prior fiscal quarters (net of taxable Net Losses allocated to such Member in respect of prior fiscal quarters) and (ii) the Assumed Tax Rate, over (b) the cumulative distributions previously made to such Member pursuant to this Section 6(a) for all previous fiscal quarters.

(i) For purposes of this Section 6(a), "Assumed Tax Rate" means, for any fiscal quarter, 40%, or such higher rate as may from time to time be determined by the Board of Managers.

(ii) Each Tax Distribution pursuant to this Section 6(a), to the extent a Member is entitled to such Tax Distribution by virtue of taxable income allocated to such Member by virtue of Article 7, shall be treated as an advance to such Member of amounts to which it may otherwise be entitled under Section 6(b) and/or Section 6(c).

(b) Distributions of Available Cash. Except as otherwise set forth in Section 6(a), the Company shall, at any time at the discretion of the Board of Managers, distribute Available Cash:

(i) first, to the holders of Class A Units in accordance with the respective Class A Unit Percentage of each such holder of Class A Units in an aggregate amount equal to the excess, if any, of (A) the sum of all Ordinary Net Profits (as defined in Section 7(f)) for all Allocation Periods (as defined in Section 7(f)) over (B) the sum of the aggregate distributions previously made to such Members pursuant to this Section 6(b)(i) and Section 6(c)(i); and

(ii) thereafter, to the holders of Class A Units in the amount of their respective Capital Contributions (including Additional Capital Contributions, if any), less the amount of any Capital Contribution previously distributed to the Class A Members pursuant to this Section 6(b)(ii) and Section 6(c)(ii) (such net amount being the "Net Capital Contributions"), pro rata in proportion to their respective Net Capital Contributions immediately prior to such distribution.

(c) Distributions Upon a Liquidation Event. Except as otherwise set forth in Section 6(a), if and when the Board of Managers may from time to time deem it advisable for the Company to do so, after taking into account prior distributions of Available Cash pursuant to Section 6(b), the Company shall make distributions upon a Liquidation Event to the Members, in the following order of priority:

(i) First, to the holders of Preferred Class A Units in accordance with their priority distribution as set forth in Section 5(d)(i);

(ii) Second, to the holders of the Original Class A Units in accordance with the respective Class A Unit Percentage of each such holder of Original Class A Units in an aggregate amount equal to the excess, if any, of (A) the sum of all Ordinary Net Profits for all Allocation Periods over (B) the sum of the aggregate distributions previously made to such Members pursuant to Section 6(b)(i) and this Section 6(c)(i);

(ii) Third, to the Original Class A Unit and Class B Unit holders in the amount of their respective Net Capital Contributions, pro rata in proportion to their respective Net Capital Contributions immediately prior to such distribution; and

(iii) Next, to each Member (excluding the holders of the Preferred Class A Units) in accordance with its Percentage; *provided, however*, that, unless otherwise provided in the Grant Agreement pursuant to which the Company issued Class B Units, and, subject to the paragraph immediately below, each holder of Class B Units shall only be entitled to receive distributions pursuant to this Section 6(c) up to the amount, if any, of the initial Capital Contributions made with respect to such Class B Units until such time as the amount of distributions pursuant to this Section 6(c) made by the Company after the issuance of such Class B Units has exceeded the applicable Benchmark Amount (as defined below), after which this proviso shall not apply with respect to such Class B Units.

(d) For purposes of this Agreement:

(i) "Available Cash" means, with respect to any Allocation Period, the sum of the cash available to the Company at the end of such Allocation Period for distribution to the Members after (a) the payment of all debt service and other expenses (including, without limitation, operating and maintenance expenses, general and administrative expenses, insurance costs, assessments and other expenses); (b) the payment of any capital expenditures; (c) the satisfaction of any other Company liabilities; and (d) the establishment of reasonable reserves as determined by the Board of Managers; *provided, however*, that Available Cash shall not include net proceeds from a Sale of the Company.

(ii) "Benchmark Amount" means, with respect to a Class B Unit, the cumulative distributions that must be made by the Company (with respect to one or more specified classes of Units outstanding immediately prior to the issuance of such Class B Units as set forth in the applicable Grant Agreement) before the Member holding such Class B Units is entitled to receive any distributions in respect of such Class B Unit, which, unless the Board of Managers expressly determine otherwise is writing, is equal to the greater of (i) the fair market value of all of the equity of the Company at the time such Class B Unit is issued, and (ii) the aggregate amount of all capital contributions made in relation to all of the equity of the Company outstanding at the time such Class B Unit is issued; and

(iii) "Grant Agreement" means a grant, purchase, or other agreement between the Company and a Member pursuant to which the Company has issued Class B Units to such Member.

ARTICLE 7. Allocation of Income and Losses.

(a) Allocation of Ordinary Net Profit and Ordinary Net Loss. After taking into account the special allocations set forth in Section 7(d), and subject to Section 7(c), for each Accounting Period, Ordinary Net Profit (and items thereof) and Ordinary Net Loss (and items thereof) shall be allocated among the Members in accordance with each Member's Class A Unit Percentage.

(b) (i) Allocation of Extraordinary Net Profit and Extraordinary Net Loss. After taking into account the special allocations set forth in Section 7(d), and subject to Section 7(c), and, for the avoidance of doubt, without duplication of any allocation pursuant to Section 7(a), Extraordinary Net Profit (and items thereof) and Extraordinary Net Loss (and items thereof) for each Allocation Period shall be allocated among the Members in the manner such that the Capital Account of each Member, after giving effect to any allocations pursuant to Section 7(a), Section 7(c) and Section 7(d) (and all distributions pursuant to Article 6 for the current and all prior Allocation Periods other than any distribution upon a Liquidation Event pursuant to Section 6(c) for the current Allocation Period), is, as closely as possible, equal (proportionately) to the excess, if any, of (i) the amount that would be distributable to the Members under Section 6(c) if the Company were dissolved, its affairs wound up and (A) all Company assets were sold for cash equal to their respective Gross Asset Values (except Company assets actually sold during such Allocation Period shall be treated as sold for the consideration received therefor), (B) all Company liabilities were satisfied (limited, with respect to each "partner nonrecourse liability" and "partner nonrecourse debt," as defined in Regulations Section 1.704-2(b)(4), to the Gross

Asset Value of the Company assets securing such liabilities) and (C) the net assets were immediately distributed in accordance with Section 6(c) to the Members immediately after making such allocations over (ii) such Member's share (if any) of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of Company assets. The Board of Managers may make such other assumptions (whether or not consistent with the above assumptions) as it deems necessary or appropriate in order to effect the intended economic arrangement of the Members.

(ii) Notwithstanding anything to the contrary contained herein, to the extent that the allocations and adjustments described in Section 7(b)(i) are not sufficient to cause the Capital Accounts of each Member to equal the amount of the distributions such Member would receive pursuant to Section 6(c) assuming that this Section 7(b)(ii) was not part of this Agreement (after giving effect to any allocations pursuant to Section 7(a), Section 7(c) and Section 7(d) and all distributions pursuant to Article 6 for the current and all prior Allocation Periods other than any distribution upon a Sale of the Company pursuant to Section 6(c) for the current Allocation Period), the Board of Managers may allocate (and reallocate) Net Profit (or items of income or gain) and Net Loss (or items of deduction or loss) for current and/or prior Accounting Periods to the extent permitted by law to achieve such result.

(c) Limitation on Loss Allocations. If any allocation of Net Losses under Section 7(a) or Section 7(b) would cause a Member to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the other Members pro rata until their Capital Accounts are reduced to zero, and any remaining Losses will be allocated to each Member in accordance with the relative number of Units held by such Member, as determined by the Board of Managers.

(d) Special Allocations. The following allocations shall be made prior to the allocations set forth in Section 7(a) or Section 7(b) and in the following order and priority:

(i) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Article 7, if there is a net decrease in Company Minimum Gain during any Allocation Period, each Member shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 7(d)(i) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article 7, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Period, each Member that has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Member

Nonrecourse Debt Minimum Gain, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 7(d)(ii) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 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), then items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any Adjusted Capital Account Deficit of such Member as quickly as possible, *provided* that an allocation pursuant to this Section 7(d)(iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7(d)(iii) were not in this Agreement.

(iv) Gross Income Allocation. If a Member has an Adjusted Capital Account Deficit at the end of any Allocation Period, then such Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7(d)(iv) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 7 have been made as if Section 7(d)(iii) and this Section 7(d)(iv) were not in this Agreement.

(v) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Period shall be allocated to the Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vi) Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Period shall be allocated to each Member in accordance with the relative number of Units held by such Member, as determined by the Board of Managers.

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

(viii) Curative Allocations. The allocations set forth above in Section 7(c) and Section 7(d)(i) through (b)(vii) (collectively, the "Regulatory Allocations") are intended

to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 7(d)(viii). Therefore, notwithstanding any other provisions of this Article 7 (other than the Regulatory Allocations), the Board of Managers 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 Company items were allocated pursuant to this Article 7 without regard to the Regulatory Allocations.

(e) Other Allocation Rules.

(i) Net Profits, Net Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Article 7 as of the last day of each Allocation Period; *provided*, that Net Profits, Net Losses and such other items shall also be allocated at such times as the Gross Asset Values of Company Assets are adjusted pursuant to paragraph (ii) of the definition of Gross Asset Value.

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

(iii) The Members acknowledge the income tax consequences of the allocations made by this Article 7 and shall report their respective shares of Company income and loss for income tax purposes in a manner consistent with this Article 7.

(f) Tax Allocations; Code Section 704(c) Allocations.

(i) Except as otherwise provided in this Section 7(f), each item of Company income, gain, loss and deduction for federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes under this Article 7, except that if such allocation is not permitted by the Code or other applicable law, then the Company's subsequent income, gains, losses, deductions and credits for federal income tax purposes will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their respective Capital Accounts.

(ii) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value using any allocation method permitted under Regulations Section 1.704-3, as determined by the Board of Managers.

(iii) In the event the Gross Asset Value of any Company assets is adjusted pursuant to paragraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such Company assets shall take account of

any variation between the adjusted basis of such Company assets for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(iv) Any elections or other decisions relating to such allocations shall be made by the Board of Managers, in any manner that reasonably reflects the purpose and intention hereof. Allocations pursuant to this Section 7(f) are solely for purposes of federal, state, and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provision hereof.

(g) Tax Provisions Related to Class B Units.

(i) The Class B Units are intended to be treated as "profits interests" within the meaning of IRS Revenue Procedure 93-27 and IRS Revenue Procedure 2001-43 and the provisions hereof shall be interpreted and applied consistently therewith. If any Class B Unit is issued after the execution of this Agreement, then the Board of Managers may make appropriate adjustments to the terms of such Class B Unit in order for such Class B Unit to be treated as a "profits interest" as described in the immediately preceding sentence, including establishing a Benchmark Amount of cumulative distributions that must be made with respect to all or one or more specified classes of Units outstanding immediately prior to the issuance of such Class B Unit before such Class B Unit is entitled to receive any distributions and/or adjusting the Benchmark Amount in respect of such Class B Unit.

(ii) Each Member hereby authorizes and directs the Company to make an election (the "Safe Harbor Election") to value any Class B Units issued by the Company as compensation for services at liquidation value as the same may be permitted pursuant to or in accordance with temporarily or finally promulgated successor rules to Proposed Regulations Section 1.83-3(l) and the proposed Revenue Procedure set forth in IRS Notice 2005-43 (the "IRS Notice"). For purposes of making such Safe Harbor Election, the Tax Matters Member (as defined in Section 15(a)) is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor Election by the Tax Matters Member constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the IRS Notice. The Company and each Member shall comply with all requirements of the Safe Harbor Election described in the IRS Notice, including the requirement that each Member prepare and file all federal income tax returns reporting the income tax effects of each interest in the Company issued by the Company covered by the Safe Harbor Election in a manner consistent with the requirements of the IRS Notice.

(iii) Each Member hereby authorizes the Tax Matters Partner to amend Section 7(g)(ii) to the extent necessary to achieve substantially the same tax treatment with respect to any Class B Units or other interest in the Company transferred to a service provider by the Company in connection with services provided to the Company as set forth in Section 4 of the IRS Notice (e.g., to reflect changes from the rules set forth in the IRS Notice in subsequent IRS guidance), *provided* that such amendment is not materially adverse to such Member (as compared with the after-tax consequences that would result if the provisions of the IRS Notice applied to all Class B Units or other interests in the Company transferred to a service provider by

the Company in connection with services provided to the Company). A Member's obligations to comply with the requirements of this Section 7(g) shall survive such Member's ceasing to be a Member of the Company and/or the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this Section 7(g), the Company shall be treated as continuing in existence.

(h) Definitions. For purposes of this Agreement:

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Allocation Period, after giving effect to the following adjustments:

(A) credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(B) debit to such Capital Account the items described in paragraphs (4), (5) and (6) of Regulations Section 1.704-1(b)(2)(ii)(d).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with Regulations Section 1.704-1(b)(2)(ii)(d) to the extent relevant thereto and is to be interpreted consistently therewith.

"Allocation Period" means (i) the twelve month period commencing on January 1 of each year and ending on the following December 31, or (ii) any portion of the period described in clause (i) for which the Company is required to allocate Net Profits, Net Losses and other items of Company income, gain, loss or deduction pursuant to Article 7.

"Company Minimum Gain" has the meaning assigned the term "partnership minimum gain" in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"Depreciation" means, for each Allocation Period or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such period for federal income tax purposes, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such period, then Depreciation means an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such period bears to such beginning adjusted tax basis; *provided, however*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such period is zero, then Depreciation is to be determined with reference to such beginning Gross Asset Value using any reasonable method determined by the Board of Managers.

"Extraordinary Net Profit" and "Extraordinary Net Loss" means, for each Allocation Period, an amount equal to the Net Profit or Net Loss for such Accounting Period other than Ordinary Net Profit or Ordinary Net Loss.

"Gross Asset Value" means with respect to any asset, the adjusted basis of the asset for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset;

(ii) the Gross Asset Values of Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as reasonably determined by the Board of Managers as of the following times: (A) the acquisition of an additional interest in the Company by a new or existing Member in exchange for a more than de minimis Capital Contribution; (B) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for an interest in the Company; (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (D) the issuance of a Unit or Units in exchange for services rendered or to be rendered; *provided*, that an adjustment described in clause (A), (B) and (D) of this paragraph shall be made only if the Board of Managers reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any Company Asset distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such Company asset on the date of distribution as reasonably determined by the Board of Managers; and

(iv) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Company assets pursuant to Code Sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and paragraph (vi) of the definition of "Net Profits" and "Net Losses" or Section 7(d)(vii); *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this paragraph (iv) to the extent that an adjustment pursuant to paragraph (ii) of the definition of "Gross Asset Value" is required in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iv).

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

"Member Nonrecourse Debt" has the meaning assigned to the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" means that amount determined in accordance with the principles of Regulations Section 1.704-2(i)(3) pertaining to "partner nonrecourse debt minimum gain."

"Member Nonrecourse Deductions" has the meaning assigned to the term "partner nonrecourse deductions" in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"Net Profits" and "Net Losses" mean, for each Allocation Period or other period, an amount equal to the Company's taxable income or loss, respectively, for such Allocation Period

or other period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses shall be included;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) (including expenditures treated as such pursuant to Regulations Section 1.704-1(b)(2)(iv)(i)), and not otherwise taken into account in computing Net Profits or Net Losses, shall be subtracted;

(iii) if the Gross Asset Value of any Company asset is adjusted pursuant to paragraphs (ii) or (iii) of the definition of "Gross Asset Value," then the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of such Company Asset) or an item of loss (if the adjustment decreases the Gross Asset Value of such Company Asset) from the disposition of such Company asset and shall be taken into account for purposes of computing Net Profits or Net Losses;

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

(v) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Period or other period, computed in accordance with the definition thereof;

(vi) to the extent an adjustment to the adjusted tax basis of any Company assets pursuant to Code Section 734(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Units, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such Company asset) or loss (if the adjustment decreases the basis of such Company asset) from the disposition of such Company asset and shall be taken into account for purposes of computing such Net Profits or Net Losses; and

(vii) notwithstanding any other provision of this definition, any items that are specially allocated under Section 7(d) shall not be taken into account in computing Net Profits or Net Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section 7(d) shall be determined by applying rules analogous to those set forth in paragraphs (i) through (vi) above.

"Nonrecourse Deductions" has the meaning assigned to the term "nonrecourse deductions" in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Ordinary Net Profit" and "Ordinary Net Loss" means, for each Allocation Period, an amount equal to the Net Profit or Net Loss for such Allocation Period arising in the ordinary course of business of the Company. Notwithstanding anything to the contrary contained herein, Ordinary Net Profit and Ordinary Net Loss shall not include any Net Profit (or items of income or gain) or Net Loss (or items of loss or deduction) resulting from a Sale of the Company or any gain or loss resulting from clause (iii) or (vi) of the definition of Net Profit or Net Loss.

"Regulations" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code.

ARTICLE 8. Management.

(a) Powers. Except as otherwise set forth in this Agreement or under the Delaware Act, the responsibility for management of the business and affairs of the Company shall be delegated to a board of managers pursuant to Section 18-402 of the Delaware Act (the "Board of Managers" or "Board" and each a "Manager"). Except for situations in which the approval or written consent of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act or other applicable law, the Board of Managers shall have complete and full authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, including decisions of the Company under this Agreement, and to perform any and all acts or activities customary or incident to the management of the Company's business or necessary to accomplish the Company's purposes. In addition to (and without limiting) such other powers as may be granted exclusively or non-exclusively to the Board of Managers under this Agreement, the Board of Managers shall retain sole and exclusive power and authority (subject to the consent rights set forth in Sections 5(d)(i)(D) and Section 8(u) below) with respect to each of the following actions:

(i) *General.* Entering into, making, and performing contracts, agreements, instruments and documents, including checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale, leases, partnership agreements, operating agreements of other limited liability companies and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company;

(ii) *Bank Accounts.* Opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(iii) *Property.* Acquiring by purchase, lease, contribution of property or otherwise, owning, holding, operating, maintaining, financing, improving, leasing, selling, conveying, mortgaging, transferring, demolishing or disposing of any real or

personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(iv) *Borrowing Money.* Borrowing money and issuing evidences of indebtedness, and to secure the same by a mortgage, pledge or other lien on the assets of the Company;

(v) *Obligations.* To the extent that funds of the Company are available, paying debts and obligations of the Company;

(vi) *Collections.* Collecting sums due the Company;

(vii) *Insurance.* Obtaining insurance for the Company, including "Key Man" insurance, employees liability insurance, fiduciary insurance and errors and omissions insurance;

(viii) *Amendments.* Approving on behalf of the Company any amendment, modification or waiver (whether by merger, consolidation, conversion or otherwise) of or under this Agreement;

(ix) *Business Combinations.* Approving any transactions or class of related transactions involving a Business Combination of the Company;

(x) *Compensation.* Determining compensation of officers of the Company and determining and administering the Company's bonus and other compensation plans and arrangements (including without limitation, the granting (and re-issuance if repurchased or forfeited) of Class A and Class B Units);

(xi) *Causes of Action.* Suing and being sued, prosecuting, settling or compromising all claims against third parties, compromising, settling and consenting to, or accepting judgment with respect to, claims against the Company, and executing all documents and making all representations, admissions and waivers in connection therewith and making all payments in connection therewith;

(xii) *Appointments and Engagements; Terminations.* Appointing (and dismissing from appointment) employees, attorneys and agents on behalf of the Company, and engaging (and dismissing from engagement) any and all Persons providing legal, accounting or financial services to the Company, or such other Persons as the Board of Managers deems necessary or desirable in connection with the business of the Company; and

(xiii) *Investment Advisor Acquisitions.* Determination of whether a potential Investment Advisor Acquisition meets the Investor Acquisition Metrics.

(xiv) *Delegation.* Authorizing or delegating any officer or officers of the Company to take or to be authorized to take any action necessary or desirable or incidental to any of the foregoing.

(b) Initial Board of Managers. The Board of Managers shall be composed of up to five (5) Managers. Sunil Hirani ("Hirani") shall be entitled to nominate up to three (3) members of the Board of Managers which initially shall include Hirani. Each investor in the Preferred Class A Units that invests at least One Million Dollars ($1,000,000) in the Preferred Class A Units shall be entitled to nominate one (1) member of the Board of Managers and each investor that invests at least Two Million Five Hundred Thousand Dollars ($2,500,000) in the Preferred Class A Units shall be entitled to nominate two (2) members of the Board of Managers. As available, the Board may also include up to two (2) "independent" members of the Board of Managers. For purposes of this Agreement, an "independent" member of the Board of Managers shall mean a person other than an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Board of Managers, would interfere with the exercise of independent judgment in carrying out the responsibilities of a Manager. Each Member hereby agrees to vote all of their Units (to the extent entitled to vote), at each regular or special meeting of the Members of the Company called for the purpose of electing members of the Board of Managers, or in any written consent executed in lieu of such a meeting of Members, and shall take all actions reasonably necessary, to ensure the election of the Board of Managers in accordance with the provisions contained herein. The Board of Managers shall act by the approval or consent of a majority of the total number of the then-current Board of Managers.

(c) Number. The number of Managers serving on the Board of Managers may be increased to seven (7) Managers from time to time with the approval of a majority of the total number of the then-current Board of Managers.

(d) Designation; Election. Each Manager shall hold office for a term of one year or until such Manager's successor is elected by holders of a majority of Class A Units and in accordance with the nomination provisions of Section 8(b) above, at the next annual meeting of holders of Class A Units, or until such Manager's earlier death, resignation or removal in accordance with this Agreement. At any meeting of the Class A Units for the election of Managers at which a quorum is present, each Manager receiving the vote of a plurality of Class A Units shall be a Manager. Each Manager shall hold office until each such Manager's death, resignation or removal in accordance with this Agreement.

(e) Removal and Resignation. Any Board Member may be removed with or without cause by an affirmative vote of the holders of a majority of the then-outstanding Class A Units, *provided, however*, that a Manager nominated by the Preferred Class A Unit holders, shall be removed with or without cause only by the affirmative vote of the holders of a majority of the Preferred Class A Units, voting separately. Any Manager may resign from the Board of Managers at any time.

(f) Committees. The Company shall have such committees (each a "Committee") as may be established by the Board of Managers from time to time. Each Committee shall have such duties and powers and composition as may be established by the Board of Managers.

(g) Qualifications. No Person who is not a natural person may be, become or remain a Manager or a member of a Committee (a "Committee Member"). Each Manager and Committee Member shall be at least eighteen (18) years of age and shall be no older than seventy

five (75) years of age. Each Manager and Committee Member shall serve in such capacity until the earlier to occur of his or her death, retirement, resignation or removal.

(h) Meetings of the Board of Managers and Committees.

(i) *Calling Meetings; Notices.* Meetings of the Board of Managers shall be called at least quarterly at the discretion of the Chairman, CEO or any two Managers. All notices of meetings of the Board of Managers shall be sent or otherwise given to the Managers not less than one (1) Business Day nor more than ninety (90) days before the date of the meeting. The notice shall specify (i) the place, date and hour of the meeting (if applicable) and (ii) the general nature of the business to be transacted or acted upon. Notice of such meeting or action may be waived by any Manager entitled thereto. The attendance of any Manager at a meeting shall constitute a waiver of notice of such meeting or action; *provided* that attendance at a meeting shall not affect the right of any such Manager to object to the business being properly brought before such meeting. Each Manager shall be entitled to reimbursement of his reasonable expenses incurred in connection with his attendance at any meeting of the Board of Managers.

(ii) *Voting; Quorum.* Each Manager shall be entitled to one vote. At least a majority of the Managers then in office shall constitute a quorum of the Board of Managers for purposes of actions of the Board of Managers. The vote of Managers of the Board of Managers holding a majority of votes present at a meeting at which a quorum is present shall be the act of the Board of Managers. If a quorum shall not be present at any meeting of the Board of Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(iii) *Conduct of Meeting.* Each meeting of the Board of Managers shall be conducted by the Chairman, or the CEO in the Chairman's absence, or such other Manager as the Chairman or CEO may appoint. The Managers may participate in or hold meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Such participation in any such meeting shall constitute presence in person at such meeting, except where a Person participates in such meeting for the express purpose of objecting to the transaction of any business on the grounds that such meeting was not lawfully called or convened.

(iv) *Action by Vote or Consent.* In the event the vote or consent of the Managers is required for any action to be taken by the Company, such vote or consent may be given at a meeting, which may be conducted by conference telephone call, or provided in writing, executed by a majority of all of the Managers then in office, or such greater number of Managers as may be necessary to authorize such action at a meeting at which all Managers entitled to vote thereon were present and voted; *provided, that*, the consent or vote of each Manager is solicited.

(v) *Committees.* Unless otherwise determined by the Board of Managers, meetings of each Committee shall be conducted in the same manner as those of the Board

of Managers, as set forth in this agreement, with "Manager" referring only to the members of such Committee.

(i) Fiduciary Duties. Except as limited by Section 8(j) immediately below, the Managers shall have the fiduciary duties to the Members as if the Company were a corporation organized and subject to the DGCL and the Members were the stockholders of such corporation.

(j) Indemnification; Limitation of Liability. To the fullest extent of the law, no Manager or Committee Member shall be liable to the Company or the Members for monetary damages for breach of fiduciary duty as a Manager or Committee Member, as applicable, or otherwise liable, responsible or accountable to the Company or the Members or to any creditor or third party for monetary damages or otherwise for any acts performed, or for any failure to act, in such Person's capacity as a Manager or Committee Member, as applicable; *provided, however*, that this provision shall not eliminate or limit the liability of a Manager or Committee Member to the Company (i) for acts or omissions which involve extreme gross negligence, knowing and willful misconduct or a knowing violation of law or (ii) for any transaction from which the Manager or Committee Member received any improper personal benefit. Any deletion or modification of this Section (j) shall not adversely affect the right or protection of a Manager or Committee Member existing at the time of such deletion or modification. If the Delaware Act or any other law of the State of Delaware is amended after approval by the Members of this Article 10 to authorize corporate action further eliminating or limiting the personal liability of Managers, then the liability of a Manager of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware Act, the General Corporation Law of Delaware or such other law of the State of Delaware as so amended. The Company may provide director and officer indemnification insurance for its Managers at the discretion and upon the approval of the Board of Managers.

(k) Reliance on Experts. In the administration of the duties and obligations hereunder, the Managers, at the expense of the Company, may consult with reputable and knowledgeable counsel, accountants and other skilled persons to be selected by it and employed by the Company, and no Manager or officer of the Company shall be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons and not contrary to this Agreement.

(l) Acts of Others. Except as otherwise expressly provided in this Agreement, no Manager or Committee Member, acting alone, shall undertake or assume any obligation or responsibility on behalf of, or have any obligation to act for, the other Managers or Committee Members, as applicable, or the Company.

(m) Officers. The Board of Managers may appoint a Chairman of the Board of Managers (the "Chairman"), a president (the "President") and a chief executive officer ("CEO"), who shall have responsibility and authority for management of the day-to-day operations of the Company and carrying out the directions of the Board of Managers. The initial Chairman and CEO shall be Sunil Hirani; the initial President shall be James Miller.

(i) *Chairman.* The Chairman shall preside at all meetings of the Members and of the Board of Managers and shall see that orders and resolutions of the Board of

Managers are carried into effect. The Chairman shall perform such duties as may be assigned to him by the Board of Managers.

(ii) *CEO.* The Chief Executive Officer shall be the principal executive officer of the Company and shall, in general, supervise and control all of the business and affairs of the Company, unless otherwise provided by the Board of Managers. He or she may sign bonds, mortgages, certificates for shares and all other contracts and documents whether or not under the seal of the Company except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Managers or by this Agreement to some other officer or agent of the Company. He or she shall have general powers of supervision and shall be the final arbiter of all differences between officers of the Company and his or her decision as to any matter affecting the Company shall be final and binding as between the officers of the Company subject only to its Board of Managers.

(iii) *President.* In the absence of the Chief Executive Officer, the President shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. He or she shall have concurrent power with the Chief Executive Officer to sign bonds, mortgages, certificates for shares and other contracts and documents, whether or not under the seal of the Company except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Managers or by this Agreement to some other officer or agent of the Company. In general, he or she shall perform all duties incident to the office of president and such other duties as the chief executive officer or the Board of Managers may from time to time prescribe.

(n) The Board of Managers may appoint other officers of the Company (including, but not limited to, a chief financial officer, chief operating officer, general counsel, one or more vice presidents, a treasurer and a secretary) with such titles and duties as may be approved by the Board of Managers.

(o) Each officer shall hold office until the earlier of (i) death, retirement, resignation or removal of such officer or (ii) termination of such officer's employment agreement with the Company, if any. The Board of Managers may remove any officer at any time with or without cause.

(p) The Company is expressly permitted in the normal course of its business to enter into transactions with any or all Members or with any Affiliate of any or all Members; *provided that* the price and other terms of such transactions are fair to the Company and that the price and other terms of such transactions are not, in the determination of the Board of Managers, materially less favorable to the Company than those generally prevailing with respect to comparable transactions between unrelated parties.

(q) No Member shall, by virtue of its status as a Member or its ownership of a Unit, be liable for the debts, obligations or liabilities of the Company.

(r) No Member (in its capacity as such) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company, except to the extent that such act or expenditure has been expressly approved by the Board of Managers or by an officer of the Company having authority to approve such act.

(s) Mandatory Conversion. The Board of Managers shall have the authority to convert the Company from an LLC to a C corporation in the discretion of the Board of Managers. Upon the closing of such a conversion (a "Corporate Conversion"), the Company will distribute the successor C corporation's securities to the holders of Units. The Units of the Preferred Class A Units of the Company's LLC Interests shall be converted into preferred stock with the rights, preferences and privileges of the Preferred Class A Units, the Original Class A Units shall be converted into preferred stock with the rights, preferences and privileges of the Original Class A Units and the Class B Units shall be converted into common stock of the issuing entity. The issuance of the successor C corporation's securities to the holders of Units shall be completed in relative share amounts to proportionately reflect each Unit holder's pro rata economic interest in the issuing entity in an amount identical to such Unit holders pro rata economic interest in the Company.

(t) Conversion Mechanics

(i) Conversion Procedures for Units. Following the delivery by the Company of notice of an Corporate Conversion (a "Conversion Notice"), the Company shall mail to each Unit holder of record as set forth in the Company's records such holder's respective shares of equity securities of the issuing entity based upon conversion pursuant to this Agreement (the "Conversion Shares") and the Company's records shall be modified and updated accordingly. If such shares equity securities are to be registered in the name of a Person other than the Person in whose name the Units are registered in the Company's records, such holder must notify the Company of such name within three (3) Business Days of receipt of a Conversion Notice (the "Effective Conversion Time"); *provided, that*, if no such notice is received by the Company, the Company may issue the Conversion Shares in the names of the holders of Units on the Company's records as of the Effective Conversion Time.

(ii) No Further Ownership Rights in Shares. From and after the Effective Conversion Time, the holders of Units outstanding immediately prior to the Effective Conversion Time shall cease to have any rights with respect to such Units except as otherwise provided for herein or by applicable law.

(iii) No Fractional Shares. No fractional Conversion Shares shall be issued in connection with a Corporate Conversion and the number of Conversion Shares to be issued shall be rounded down to the nearest whole share, as the case may be. The number of Conversion Shares issuable upon such Corporate Conversion shall be determined on the basis of the total number of Units to be converted into Conversion Shares and the aggregate number of Conversion Shares issuable upon such Corporate Conversion. If the Corporate Conversion would result in any fractional unit or share, as the case may be, the Company shall, in lieu of issuing any such fractional unit or share,

pay the holder thereof an amount in cash equal to the fair market value of such fractional unit or share on the date of the Corporate Conversion, as determined in good faith by the Board of Managers.

(u) The Board of Managers shall not, without the prior approval of at least a majority in interest of the Class A Units, have the power, on behalf and for the purposes of the Company, to:

(i) cause the Company to merge with or consolidate with any other entity or sell all or substantially all of the assets of the Company to an individual or entity;

(ii) cause the Company to issue more that an aggregate 40,000,000 Units; and

(iii) commence a voluntary case on behalf of, or an involuntary case against, the Company under a chapter of Title 11 of the United States Code.

(v) The Company shall not be required to hold annual meetings of the Members. The Board of Managers may call a meeting upon prior written notice to the Members, which notice shall specify the time, place and purpose or purposes of each meeting and which shall be delivered at least five but not more than sixty days before the date of the meeting. Notice of a meeting need not be given to a Member if such Member, either before or after the meeting, waives such notice, or attends such meeting without objecting, at its beginning, to the transaction of any business because the meeting is not lawfully called or convened. A Member may participate in a meeting by conference telephone or similar communications equipment, by means of which all other individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting. A Member holding one or more voting Units (initially, solely the Class A Units) (the "Voting Units") is entitled to one vote for each issued and outstanding Voting Unit held by it of record, as set forth in **Exhibit A**. Except as otherwise set forth in this Agreement, all acts of, or determinations by, the Members shall require a vote or written consent of Members holding at least 51% of the issued and outstanding Voting Units (a "Majority in Interest"). The meeting and vote of the Members may be dispensed with if a written consent, setting forth the action so taken, shall be signed by the Members holding the percentage of the Voting Units required to approve such action and such written consent is filed with the minutes of the meetings of the Members. In instances where any approval or consent is given by less than all of the Members, then the Company shall, within five business days of the effective date of such action or consent, provide the non-voting or non-consenting Members with written notice setting forth in reasonable detail the actions so approved or consented to.

(w) The Board of Managers shall each perform their respective duties hereunder in good faith, in a manner reasonably believed 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; *provided, however*, that nothing herein is intended to or shall have the effect of expanding or contradicting any provision in this Agreement or under applicable law which would otherwise limit the liability of a Manager.

(x) The Board of Managers shall not be required to devote their full time and attention to the management of the Company, and the Board of Managers may have other business interests and may engage in other activities, including those that may be competitive with those of the Company (hereinafter collectively referred to as the "Outside Interests"). Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such Outside Interests or to the income or proceeds derived therefrom. The Board of Managers shall incur no liability to the Company or to any of the other Members as a result of such Outside Interests.

(y) A Manager may be removed from the Board of Managers for Cause by Members holding at least 66.66% of the Voting Units; *provided, however*, that if a Manager, nominated by the Preferred Class A Unit holders is removed for Cause, the Preferred Class A Unit holders shall be entitled to nominate the replacement in accordance with the provisions of Section 8(b). "Cause" shall mean (i) recurring negligence or disregard for duty in the performance of the duties assigned by the Members to the Manager, other than as a result of Manager's permanent disability, after the Manager has received notice of such negligence or disregard and has failed to cure such in the performance of his duties; (ii) acts of moral turpitude, dishonesty or fraud by the Manager, which in the good faith opinion of such Members, are materially harmful to the Company; or (iii) conviction for a felony, which conviction is no longer subject to any appeal. Cause shall not include minor infractions or mere differences in opinion over business policy. "Permanent disability" shall mean a Manager is unable, by reason of accident, physical or mental infirmity, to satisfactorily perform his or her duties as Manager for a continuous period of 3 months or an aggregate of 6 months. A Majority in Interest shall determine the existence of permanent disability; *provided, however*, a determination of permanent disability under this paragraph may be made only upon receipt of a certificate of disability from a qualified physician, selected by a Majority in Interest and reasonably acceptable to the Manager, after examination of the Manager.

ARTICLE 9. Limitation of Liability.

Except as otherwise provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company; and no Member, Manager, employee or agent of the Company shall be obligated personally for any such debt, obligation or liability of the Company, or for any debt, obligation or liability of any other Member, Manager, employee or agent of the Company, by reason of being a Member, or acting as a Manager, employee or agent of the Company.

ARTICLE 10. Indemnification; Exculpation.

(a) Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or any obligation or duty at law or in equity, neither the Member nor any of its Affiliates, nor any of their respective officers, directors, managers, stockholders, members, partners, employees, Affiliates, representatives or agents (each, individually, a "Covered Person") shall be liable to the Company or any other person or entity for any act or omission (in relation to the Company, its property or the conduct of its business or affairs, this Agreement, any related document or any transaction or investment contemplated hereby or thereby) taken or omitted by a Covered Person in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company and is within the scope of authority

granted to such Covered Person by this Agreement, provided such act or omission does not constitute fraud, wilful misconduct, bad faith, or gross negligence.

(b) Indemnification. To the fullest extent permitted by law, the Company shall indemnify and hold harmless each Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (each, individually, a "Claim"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of its management of the affairs of the Company or which relates to or arises out of the Company or its property, business or affairs. A Covered Person shall not be entitled to indemnification under this Section 7.2 with respect to (i) any Claim with respect to which such Covered Person has engaged in fraud, wilful misconduct, bad faith or gross negligence or (ii) any Claim initiated by such Covered Person unless such Claim (or part thereof) (A) was brought to enforce such Covered Person's rights to indemnification hereunder or (B) was authorized or consented to by the Member. Expenses incurred by a Covered Person in defending any Claim shall be paid by the Company in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company as authorized by this Section 7.2.

(c) Amendments. Any repeal or modification of this Article 10 by the Membesr shall not adversely affect any rights of such Covered Person pursuant to this Article 10, including the right to indemnification and to the advancement of expenses of a Covered Person existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

ARTICLE 11. Transfer of Units.

(a) Subject to the provisions set forth herein, no Member may sell, assign, transfer, make gifts of or otherwise dispose of, or pledge, hypothecate or otherwise encumber, its Units in the Company, or any part thereof, in any manner whatsoever (such events being hereinafter sometimes collectively referred to as a "Transfer") without the prior, written consent of the Board of Managers.

(b) Notwithstanding the provision of Section 11(a) hereof to the contrary, the following Transfers shall not require the consent of the Board of Managers:

(i) Transfers by and among Members

(ii) Transfer by Members to their Affiliates; and

(ii) gifts, bequests or other Transfers for no or nominal consideration by any Member to a spouse, parent, sibling, child, niece, nephew, grandchild, trust for the benefit of any one or more of the foregoing or entity controlled by the Member or any one or more of the foregoing individuals or entities.

(c) Notwithstanding the provisions of Section 11(a) hereof to the contrary, if any Member (the "Transferring Member") desires to Transfer (other than in accordance with the provisions of Section 11(b) hereof) all or any portion of its Units pursuant to a bona fide offer

(the "Third-Party Offer") from any third party (the "Prospective Purchaser"), the Transferring Member shall notify Sunil Hirani in writing of its desire to Transfer its Units, which written notice shall include a description of the portion of the Transferring Member's Units (the "Offered Units") which the Transferring Member desires to Transfer and the price and other terms at which the Transferring Member proposes to Transfer the Offered Units to the Prospective Purchaser pursuant to the Third-Party Offer (the "Offered Terms"). Sunil Hirani shall have seven (7) business days following receipt of such written notice to elect to purchase all, but not less than all, of the Units referred to in the notice for the Offered Terms referred to in the notice, by giving written notice of such election to the Transferring Member (the "Acceptance Notice"). If Sunil Hirani elects to purchase less than all of the Offered Units, the Company shall have the right, within five (5) business days after the expiration of Sunil Hirani's foregoing seven (7) day period, to purchase all of the remaining portion of the Offered Units, by providing an additional Acceptance Note to the Transferring Member. If Sunil Hirani and/or the Company timely issue Acceptance Notices for all of the Offered Units, Sunil Hirani and/or the Company shall purchase the Offered Units from the Transferring Member for the Offered Terms within three (3) business days after the date of the last Acceptance Notice. If Sunil Hirani and/or the Company fail to deliver Acceptance Notices for all of the Offered Units within the time periods set forth above or, timely deliver Acceptance Notices but do not purchase the Offered Units within the time periods set forth herein, then, in each case, the Transferring Member shall have the right, for a period of 120 days from the date that the Offer Notice was given, to Transfer the Offered Units to the Prospective Purchaser on such terms and conditions and at any price equal to or greater than that contained in the Offered Terms, without obtaining the consent of any Other Member.

(d) As a condition precedent to any Transfer consented to by the Board of Managers under Section 11(a) hereof and any Transfer permitted under Section 11(b) or Section 11(c) hereof, the transferor shall deliver to the Board of Managers (i) a written statement setting forth (a) the name, address and tax identification number of the transferee, (b) the terms and provisions of the Transfer, including a complete description of any consideration paid or to be paid in connection therewith, (c) the agreement of the transferee to be bound by and to comply with all of the terms, provisions and conditions of this Agreement as are applicable to the Members; and (ii) a certification, opinion of counsel or such other documents reasonably requested by the Board of Managers stating that such Transfer does not require registration under the Securities Act of 1933 or applicable state securities law, or that such Transfer is exempt for the registration requirements.

(e) Notwithstanding the provisions of this Article 11 hereof to the contrary, if one or more Members owning, whether individually or collectively, a majority of the issued and outstanding Units (each a "Majority Member" and collectively the "Majority Members") desires to Transfer, in the aggregate, a majority of the issued and outstanding Units pursuant to a Third-Party Offer for from any Prospective Purchaser, the Majority Member(s) shall have the right, in the Majority Member(s) discretion, to require each of the other Members (the "Other Members") to sell all (but not less than all) of the Units owned by him, her or it to such Prospective Purchaser. To exercise such right, the Majority Member(s) shall give 15 days notice to all of the Other Members (specifying the identity of the Prospective Purchaser, the proposed purchase price, the scheduled date of the closing, and all other relevant material information), and all of the Other Members shall then be required to sell, simultaneously with the sale by the Majority Member(s), all (but not less than all) of the Units owned by him, her or it to the Prospective

Purchaser on the same terms as are applicable to the Majority Member(s). In connection with the exercise of such right by the Majority Member(s), the Other Members shall cooperate in all respects as reasonably requested by the Majority Member(s), including, but not limited to, providing all information requested by Majority Member(s) and executing all documentation requested by Majority Member(s) to effect the transaction.

(g) The Board of Managers may disapprove and prohibit a transfer of any Units to any prospective holder where the Board of Managers determines in good faith that it would be contrary to the best interests of the Company if the prospective holder were to become a Member.

(f) (i) Notwithstanding the provisions of Section 11(a), if any Transferring Member desires to Transfer (other than in accordance with the provisions of Section 11(b) hereof) all or any portion of its Units (the "Tag-Along Units") pursuant to a Third-Party Offer from any Prospective Purchaser, then such Transferring Member shall notify each of the other Members (the "Other Members") in writing of such offer and its terms and conditions (a "Tag-Along Sale Notice").

(ii) Upon receipt of a Tag-Along Sale Notice, each Other Member shall have the right to sell to the Prospective Purchaser at the same price per Tag-Along Unit, economically adjusted to give effect to economic differences associated with all Units of the Company and on the same terms and conditions applicable to the Transferring Member, in lieu of the sale to the Prospective Purchaser by the Transferring Member, that number of such Tag-Along Units being sold equal to the product attained by multiplying (a) the number of such Tag-Along Units to be sold to the Prospective Purchaser times (b) the quotient derived by dividing (i) the number of such Tag-Along Units held (or deemed to be held) by such Other Member by (ii) the total number of such Tag-Along Units held (or deemed to be held) by all selling Other Members and such Transferring Member. If 2 or more types of securities are to be Transferred in a single transaction or related transactions subject to this Section 11(f), the rights of the Other Members to participate in such Transfer under this Section 11(f) must be exercised to Transfer all types of securities in the same proportion as such securities are to be transferred by the Transferring Member. The Other Members' rights to sell pursuant to this Section 11(f) can be exercised by delivery of a written notice to the Transferring Member within thirty (30) days following the delivery of the Tag-Along Sale Notice to the Other Members of the proposed sale to the Prospective Purchaser by such Transferring Member. In the event that any of the other Members do not deliver to such Transferring Member a notice within such 30 day period, such Transferring Member may, within sixty (60) days after the date of such Tag-Along Sale Notice, complete such sale to such Prospective Purchaser at the same price and on substantially the same terms and conditions set forth in such Tag-Along Sale Notice.

(iii) Notwithstanding the foregoing or anything herein to the contrary, the provisions of this Section 11(f) shall not apply to any Permitted Transfer pursuant to Section 11(b) above, *provided, however*, notwithstanding the foregoing clause, a Transferring Member shall not avoid the provisions of this Agreement by making one or more transfers to an entity in accordance with Section 11(b) and then disposing of all or any portion of such Transferring Member's interest in any such entity.

ARTICLE 12. Dissolution and Liquidation.

(a) The Company shall be dissolved and its assets liquidated pursuant to Section 12(b) hereof upon (i) the sale, condemnation or other disposition of all or substantially all of the assets of the Company (unless the Company receives a note, bond or other evidence of indebtedness instead of cash, in which case this clause (i) shall not apply until such obligation is paid in full or converted to cash); (ii) the approval or written consent of Members holding at least 75% of the Voting Units; or (iii) the entry of a court order or judgment of dissolution.

(b) In the event of a dissolution of the Company in accordance with Section 12(a) hereof, the Board of Managers (or their designee) shall immediately commence to wind up the Company's affairs and shall liquidate the assets of the Company as promptly as possible, but in an orderly and businesslike manner. In connection with any winding up and liquidation, the independent certified public accountant then retained by the Company shall prepare an accounting setting forth the assets and liabilities of the Company as of the date of dissolution, and such accounting shall be furnished to all Members within 90 days of winding up or the date of such liquidation. After all liabilities and obligations of the Company, including any and all indebtedness incurred by the Company under Section 5(h) hereof, all expenses of liquidation and the funding of any reserves which the Board of Managers (or their designee) deems reasonably necessary for any contingency or unforeseen liabilities or obligations of the Company, shall have been paid or provided for, and all items of income, gain, loss, deduction and credit shall have been allocated in accordance with Article 7 hereof, any remaining amounts shall be distributed to the Members in accordance with Section 6(c).

(c) If the Company assets are not sold, but instead are distributed in kind, such assets, for purposes of determining the amount to be distributed to the parties, shall be revalued on the Company books to reflect their then current fair market value and distributed based upon such value as set forth above in this Article 12 in a similar manner to a cash distribution. For internal purposes only, such event shall be deemed to be a "sale" of such assets, with all income, gain and loss allocated in accordance with Article 7 hereof as if such assets have been sold.

(d) If, after taking into account all contributions, distributions and allocations for all periods, any Member's Capital Account is not equal to the amount to be distributed to such Member pursuant to Section 12(b), the Net Profits and Net Losses for the fiscal year in which the Company is dissolved are to be allocated among the Members in such a manner as to cause, to the extent possible, each Member's Capital Account to be equal to the amount to be distributed to such Member pursuant to Section 12(b).

(d) Upon the satisfaction of the distribution plan set forth in this Article 12, the Board of Managers shall cause a certificate of cancellation of the Company to be executed and filed with the Delaware Secretary of State, whereupon all parties hereto shall cease to be Members of the Company.

ARTICLE 13. Books, Records and Reports.

The Board of Managers shall select the accountants for the Company. The Company shall keep proper and complete books of account in accordance with good accounting practice at all times during its continuance, which books and records shall be maintained at the principal office of the Company and shall be available for inspection and copying by any Member upon reasonable notice. The Board of Managers shall select the cash or accrual basis of tax accounting, as required by the Code, and shall make such decisions as required and as are

necessary with respect to capitalization or expensing of items and the method of depreciation for both the books of account and for Federal income tax purposes. The Company shall provide to the Members the following financial reports:

(a) within 60 days after the end of each fiscal quarter, unaudited consolidated balance sheets and statements of operations and cash flows of the Company, such balance sheets to be as of the end of such quarter and such statements of operations and cash flows to be both for the year-to-date period as of the end of such quarter and for the quarter, certified by an officer of the Company; and

(b) an annual financial report, a copy of the Company tax return for each year by March 15th of the following calendar year and Form K-1 or such other form necessary for filing with the Members' income tax returns, certified by an officer of the Company.

The financial reports shall include a copy of the balance sheet, the statement covering the profits and losses of the Company, and with respect to the annual report, a statement showing any distributions made to such Member pursuant to Article 6 hereof and the amounts allocated to such Member pursuant to Article 7 hereof during or in respect of such year. Accountant's fees incurred by the Company for accounting services necessary to comply with the terms of this Article 13 are deemed to be a Company expense.

ARTICLE 14. Fiscal Year.

The fiscal year of the Company shall end on December 31 of each year.

ARTICLE 15. Certain Tax Matters.

(a) Sunil Hirani is hereby designated as the "Tax Matters Member" of the Company, which shall have the same meaning as "tax matters partner" as defined in Code Section 6231(a)(7), for all federal, state and local tax purposes. The Tax Matters Member is authorized and required to represent the Company at the direction of the Board of Managers (at the expense of the Company) in connection with all examinations of the affairs of the Company by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith. The Tax Matters Member shall take such action as may be reasonably necessary to cause each other eligible Member to become a "notice partner" within the meaning of Section 6231(a)(8) of the Code. To the extent and in the manner provided by applicable Code sections and Regulations thereunder, the Tax Matters Member (i) shall furnish the name, address, profits interest and taxpayer identification number of each Member to the IRS and (ii) shall keep the Members reasonably informed of all administrative and judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes. The Board of Managers may change or otherwise designate the Tax Matters Member.

(b) The Company shall cause to be prepared and timely filed all federal, state and local income tax returns or other returns or statements required by applicable law. The Company shall, to the extent permitted by applicable law, take such tax positions as the Board of Managers, in its discretion, determines. The Members shall each take reporting positions on their respective federal, state and local income tax returns consistent with the positions determined for the Company by the Board of Managers.

(c) The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes, and the Company shall not elect, and the Board of

Managers shall not permit the Company to elect, to be treated as an association taxable as a corporation for federal, state or local income tax purposes under Regulations Section 301.7701-3 or under any corresponding provision of state or local law. Each Member and the Company shall file all tax returns consistent with such treatment. This characterization, solely for such tax purposes, does not create or imply a general partnership among the Members for state law or any other purpose.

(d) The taxable year of the Company shall be the calendar year unless another taxable year is required under the Code or the Board of Managers determine otherwise. The Board of Managers shall determine whether to make or revoke any available election pursuant to the Code or other provision of applicable tax law.

(e) The Company shall use commercially reasonable efforts to deliver or cause to be delivered, within 120 days after the end of each fiscal year, to each Person who was a Member at any time during such fiscal year, all information necessary for the preparation of such person's United States federal and state income tax returns.

ARTICLE 16. Modifications; Waivers.

(a) Except as otherwise specifically provided in this Agreement, amendments to this Agreement shall require the approval or consent of the Board of Managers and a Majority in Interest; *provided, however*, that: (i) the express written consent of a Member is required to reduce such Member's Capital Account or such Member's rights to allocations and distributions with respect thereto; (ii) this Article 16 may not be amended without the unanimous consent of all Members holding Voting Units; and (iii) any section of this Agreement requiring the consent or vote of more than a Majority in Interest for action to be taken shall only be amended upon receiving the approval or consent of the Members holding the number of Voting Units required to consent to or vote in favor of such action in such section.

(b) Notwithstanding Section 16(a) above, the Board of Managers, on behalf of the Company, may amend this Agreement without the consent of the Members as follows:

(i) The Board of Managers may amend **Exhibit A** from time to time as necessary to reflect the addition of Members and/or changes in the number of Units owned by, and the Percentages of, the Members.

(ii) The Board of Managers may amend this Agreement if such amendment is solely for the purpose of clarification and does not change the substance hereof and the Company has obtained the opinion of its counsel to that effect.

(iii) The Board of Managers may amend this Agreement if such amendment is, in the opinion of counsel for the Company, necessary or appropriate to satisfy requirements of the Code with respect to partnerships or of any federal or state securities laws or regulations. Any amendment made pursuant to this paragraph may be made effective as of the date of this Agreement.

(c) No waiver of a breach or condition of this Agreement shall be effective unless in writing and signed by the party or parties sought to be charged therewith, and a waiver in one instance shall not be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

ARTICLE 17. Notices and Addresses.

All notices or other communications given or made under this Agreement shall be in writing and shall be (a) personally delivered or (b) sent by certified mail, return receipt requested, postage prepaid or by reputable overnight courier providing a receipt against delivery. Such notices or other communications shall be delivered or sent to the Members at their respective addresses set forth on **Exhibit A** hereof, and to the Company at its principal office specified in Article 2 of this Agreement, or in either case such other address as any party may specify in a notice to the other parties,. All notices shall be effective upon receipt.

ARTICLE 18. Applicable Law.

The validity, construction, performance and enforceability of this Agreement shall be governed in all respects by the laws of the State of Delaware, without reference to the choice-of-law principles thereof.

ARTICLE 19. Construction.

As used herein, each of the masculine, feminine or neuter genders shall include the other genders, the singular shall include the plural and the plural shall include the singular, whenever appropriate to the context. Article titles or captions contained in this Agreement are inserted only as a matter of convenience and as reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of the provisions hereof. The parties hereto agree that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

ARTICLE 20. Counterparts.

This Agreement may be executed in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all of the counterparts shall constitute one and the same instrument, and this Agreement shall be deemed effective on the date it is executed by the parties hereto.

ARTICLE 21. No Waiver.

The failure of any party to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

ARTICLE 22. Successors and Assigns.

Subject to the restrictions on transferability contained in this Agreement, this Agreement and all of its provisions shall be binding on and inure to the benefit of the successors and permitted assigns of the parties.

ARTICLE 23. Entire Agreement.

This Agreement constitutes the entire understanding of the parties, and supersedes all prior to contemporaneous agreements among them, with respect to the subject matter hereof.

ARTICLE 24. Public Sale.

In connection with any sale, occurring simultaneously with or after an initial offering of securities to the public pursuant to an offering registered under the Securities Act of 1933 or to the public through a broker, dealer or market maker (pursuant to the provisions of Rule 144 (or any similar provision then in force) under the Securities Act of 1933 or otherwise) (a "Public Sale"), the parties hereto agree to cooperate in all respects and to take any and all such actions as may be deemed necessary and advisable by the Board of Managers to complete the Public Sale, including, but not limited to:

(i) making all necessary amendments to this Agreement; and/or

(ii) taking any actions necessary to restructure, reorganize, or recapitalize the Company, or ownership therein, as may be necessary to effectuate the Public Sale, in each case so as to optimize the structure for the benefit of the Company and the Members, as appropriate in light of any legal, tax, or other professional advice received by the Company, including, without limitation, converting the Company to a corporation;

provided, that such amendments and actions will not include measures that would unreasonably affect the interests of the Company or the Members beyond what is reasonably necessary for the successful implementation of the Public Sale.

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Remaining pages, which are limited to signature pages and exhibits, have been redacted.

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "TRUESEF LLC", CHANGING ITS NAME FROM "TRUESEF LLC" TO "SWAPCO HOLDINGS LLC", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF OCTOBER, A.D. 2011, AT 1:02 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

4887991 8100

111110987

AUTHENTICATION: 9101123

DATE: 10-19-11

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:02 PM 10/18/2011
FILED 01:02 PM 10/18/2011
SRV 111110987 - 4887991 FILE

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF FORMATION

OF

trueSEF LLC

Under and pursuant to Section 18-202 of the Delaware Limited Liability Company Act

It is hereby certified that:

FIRST: The name of the limited liability company is: trueSEF LLC (the "Company").

SECOND: Article "First" of the Certificate of Formation of the Company is hereby amended by deleting Article "First" in its entirety and replacing it with the following:

"FIRST: The name of the limited liability company is SwapCo Holdings LLC (the "Company")."

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of truSEF this 18th day of October, 2011.

S/S Diane Linder Lavine
Name: Diane Linder Lavine
Title: Authorized Person

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SWAPCO HOLDINGS LLC", CHANGING ITS NAME FROM "SWAPCO HOLDINGS LLC" TO "TRUEEX GROUP LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF DECEMBER, A.D. 2011, AT 10:03 O'CLOCK A.M.

Jeffrey W. Bullock, Secretary of State

4887991 8100

111336994

AUTHENTICATION: 9273506

DATE: 01-05-12

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:09 AM 12/27/2011
FILED 10:03 AM 12/27/2011
SRV 111336994 - 4887991 FILE

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF FORMATION

OF

SwapCo Holdings LLC

Under and pursuant to Section 18-202 of the Delaware Limited Liability Company Act

It is hereby certified that:

FIRST: The name of the limited liability company is: SwapCo Holdings LLC (the "Company").

SECOND: Article "First" of the Certificate of Formation of the Company is hereby amended by deleting Article "First" in its entirety and replacing it with the following:

"FIRST: The name of the limited liability company is trueEX Group LLC (the "Company")."

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of truSEF this 21st day of December, 2011.

S/S Diane Linder Lavine
Name: Diane Linder Lavine
Title: Authorized Person

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "TRUEEX LLC", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF OCTOBER, A.D. 2011, AT 6:38 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

5053661 8100

111113316

AUTHENTICATION: 9102218

DATE: 10-19-11

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:50 PM 10/18/2011
FILED 06:38 PM 10/18/2011
SRV 111113316 - 5053661 FILE

CERTIFICATE OF FORMATION

OF

trueEX LLC

The undersigned desires to form a limited liability company pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del C. §18-101 et seq. (the "Delaware Limited Liability Company Act"), and hereby states as follows:

ARTICLE I

The name of the limited liability company is trueEX LLC (hereinafter referred to as the "Company").

ARTICLE II

The address of the registered office of the Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act is: 874 Walker Road, Suite C., Dover, Kent County, Delaware 19904. The name of the registered agent at such address is United Corporate Services, Inc.

IN WITNESS OF THE FOREGOING, the undersigned has duly executed this Certificate of Formation this 18th day of October 2011.

/s/Diane Linder Lavine
Diane Linder Lavine
Authorized Person

LIMITED LIABILITY COMPANY AGREEMENT

OF

trueEX LLC

This Operating Agreement (this "Agreement") is made and entered into as of the 18th day of October, 2011 by each of the Persons (defined below) that are signatories hereto, individually a "Member" and collectively with such future owners of Membership Interests (defined below) of the Company, the "Members" of trueEX LLC, a limited liability company organized under the laws of the State of Delaware (the "Company").

WITNESSETH:

WHEREAS, the Company was formed as a limited liability company under the Act by the filing of the Certificate on October 18, 2011; and

WHEREAS, the Company and its Member wish to enter into an operating agreement to set forth the rights, preferences and privileges of the Member.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, hereby agree as follows:

ARTICLE 1. Formation.

(a) On October 18, 2011, the original Member caused to be filed with the Delaware Secretary of State a Certificate of Formation establishing the Company as a Delaware limited liability company. The Company shall be operated and shall conduct its business in accordance with the Act, except to the extent modified by the terms of this Agreement.

(b) Unless the Company is sooner dissolved in accordance with Article 12 of this Agreement or the provisions of the Act, the term of existence of the Company shall be perpetual.

ARTICLE 2. Name; Principal and Registered Office; Registered Agent.

(a) The business and affairs of the Company shall be conducted under the name of trueEX LLC. The Board of Managers (defined below in Article 8) shall have the right to change the name of the Company from time to time.

(b) The address of the Company's principal office shall be where directed by the Board of Managers. The Company's initial registered agent and office in the State of Delaware shall be United Corporate Services, Inc. The Board of Managers shall have the right to change the principal office, registered office or registered agent from time to time.

ARTICLE 3. Purpose; Acknowledgment.

(a) The purpose of the Company is any lawful business, purpose or activity permitted under the Act, and to do all things and execute such agreements and documents which are necessary or incidental to the foregoing purposes and not prohibited by this Agreement or any law. The primary purpose of the Company is to provide an automated trading platform for interest rate swaps and other financial instruments as may be determined from time to time.

(b) In connection with this stated purpose, the Members each acknowledge and agree that the representations and warranties of each such Member set forth in the those certain acknowledgments previously delivered to the Company are incorporated herein by reference as if they were set forth herein in their entirety.

ARTICLE 4. Additional Members.

From and after the date of this Agreement, any individual or entity shall become a Member of the Company upon (i) if required pursuant to Article 11 below, the prior written consent of the Board of Managers (defined in Section 8(a) below) and (ii) (a) such individual's or entity's execution and delivery of a subscription agreement, in form and substance satisfactory to the Company, and (b) such individual's or entity's agreeing in writing to be bound by and to comply with all of the terms, provisions and conditions of this Agreement as are applicable to the Members.

ARTICLE 5. Initial Capital Contributions; LLC Interests & Units; Additional Capital Contributions; Capital Accounts; Member Loans.

(a) The Member has contributed cash or other property to the Company as its respective initial capital contributions and any individual or entity that may become a Member of the Company after the date hereof shall contribute cash or other property to the Company as their respective initial capital contributions (hereinafter collectively referred to as the "Initial Capital Contributions").

(b) "LLC Interest" means the entire legal and equitable ownership interest of a Member in the Company, including, but not limited to, such Member's share of the profits and losses of the Company, right to receive distributions of the Company's assets (liquidating or otherwise), right, if any, to vote or participate in management and right to information concerning the business and affairs of the Company.

(c) Classes of Units. The Board of Managers shall have authority to cause the Company to issue up to an aggregate of 1,000 units representing Members' LLC Interests in the Company ("Units"), all of which shall be entitled to vote on all matters submitted to the Members for their consent or approval. The Board of Managers shall be authorized to issue Units, in one or more classes or series, and to fix the divisions, determinations, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the authority to fix or alter the dividend rights, dividend rates, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking and purchase fund provisions), the redemption price or prices, the dissolution preferences and the rights in respect to any distribution of assets of any wholly unissued series of Units and the number of Units constituting any such series, and the designation thereof, or any of them and such authority shall include the power to increase the previously determined number of Units of the class or series to a number not greater than the aggregate number of shares of all classes and series that the Company is authorized to issue by these articles and to decrease the previously determined number of shares of a class or series to a number not less than that then outstanding. Fractions of a Unit may be created and issued. Each Member may receive a certificate evidencing such Member's ownership interest in the Units of the Company. **Exhibit A** sets forth (i) the issued and outstanding Units owned by each Member

in exchange for his or her Initial Capital Contribution and/or services, (ii) each Member's ownership percentage ("Percentage"), calculated by dividing (A) the issued and outstanding Units held by such Member by (B) the total issued and outstanding Units held by all Members. The Board of Managers will from time to time amend **Exhibit A** to reflect the respective issued and outstanding Units owned by each of the Members following the transfer of Units or the issuance of additional Units.

(d) If the Board of Managers determines that the Company requires additional funding, the Board of Managers shall have the right, but not the obligation, to seek additional capital contributions ("Additional Capital Contributions" and, together with the Initial Capital Contributions, "Capital Contributions") from the Members for all or part of the required funds by providing written notice to the Members. This notice shall set forth the aggregate amount of Additional Capital Contributions being requested, the use(s) for such Additional Capital Contributions, each Member's respective Additional Capital Contribution (determined in accordance with their respective Percentages) and the date by which such Additional Capital Contributions are needed by the Company. The Members shall have the right, but not the obligation, to make or cause to be made Additional Capital Contributions to the Company. Each Member will notify the Company promptly whether it intends to make such an Additional Capital Contribution within the time needed by the Company. If any Member elects not to make its Additional Capital Contribution, then the participating Members may elect to increase the amount of their respective Additional Capital Contributions, pro rata among the participating Members, to fund the non-participating Member's or Members' Additional Capital Contribution(s). If any of the participating Members do not elect to increase the amount of their respective Additional Capital Contributions pursuant to the preceding sentence, then the Company shall have the further right to seek such amounts from other sources. The Board of Managers will amend **Exhibit A** to reflect the respective issued and outstanding Units owned by each of the Members following the payment of Additional Capital Contributions. The Board of Managers shall not be obligated first to seek Additional Capital Contributions from Members and may in its discretion seek capital contributions from third parties without offering Members the right to participate in such capital contributions; and, in such event, some but not all Members (including Members who are serving as Managers) may be offered the right to participate and invest in such capital raising activities.

(e) Capital Contributions shall not bear interest. No Member shall have the right to demand or receive the return of its Capital Contribution, except as otherwise specifically provided by this Agreement.

(f) The Company shall establish and maintain a separate capital account (a "Capital Account") for each Member in accordance with Section 1.704-1(b)(2)(iv) of the Regulations (as defined in Section 7(h)) and in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's allocable share of Net Profits (as defined in Section 7(h)), any items in the nature of income or gain that are specially allocated to such Member under Section 7(d) and the amount of any liabilities of the Company that are assumed by such Member (or liabilities that are secured by any Company Assets distributed to such Member). The principal amount of a promissory note that is not readily traded on an established

securities market and that is contributed to the Company by the maker of such note (or a Member related to the maker of such note within the meaning of Regulations Section 1.704-1(b)(ii)(c)) shall not be credited to the Capital Account of any Member until the Company makes a taxable disposition of such note or until (and to the extent) principal payments are made on such note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

(ii) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value (as defined in Section 7(h)) of any Company assets distributed to such Member pursuant to any provision hereof (net of liabilities secured by such distributed Company assets that such Member is considered to assume or take subject to under Code Section 752), such Member's allocable share of Net Losses (as defined in Section 7(h)), any items in the nature of expenses or losses that are specially allocated to such Member under Section 7(d), and the amount of any liabilities of such Member that are assumed by the Company (or liabilities that are secured by any property contributed by such Member to the Company).

(iii) If any interest in the Company is transferred in accordance with the terms hereof, then the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest. In the case of a sale or exchange of an interest in the Company at a time when an election under Code Section 754 is in effect, the Capital Account of the transferee Member shall not be adjusted to reflect the adjustments to the adjusted tax basis of Company Assets required under Code Sections 754 and 743, except as otherwise required or permitted by Regulations Section 1.704-1(b)(2)(iv)(m).

(iv) In determining the amount of any liability for purposes of Sections 5(f)(i) and (ii), there shall be taken into account Code Section 752(c), and any other applicable provisions of the Code.

(v) The foregoing provisions of this Section 5(f) and the other provisions hereof relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. If the Board of Managers determines that it is prudent to modify the manner in which any debits or credits are made to the Capital Accounts (including debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any Members), the Board of Managers may make such modification, *provided*, that it is not likely to have a material effect on the amounts distributed to any Member pursuant to Section 12(b) upon the dissolution of the Company. The Board of Managers also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

(h) Any Member or Affiliate of such Member may (but shall not be obligated to) at any time, upon obtaining the consent of the Board of Managers, loan money to the Company to finance Company operations, to finance or refinance any assets of the Company, to pay the debts and obligations of the Company, or for any other Company purpose. If any Member or its Affiliate lends funds to the Company, such Member or Affiliate shall be entitled to receive interest on such loan at an interest rate to be agreed upon by such Member or Affiliate

and the Board of Managers. Each Member shall be entitled to participate in any such loan pursuant to this Section 5(h) based on their applicable Percentages. For purposes of this Agreement, an "Affiliate" shall mean (a) any entity that, directly or indirectly, controls, is controlled by, or is under common control with, a party. For purposes of this definition "control" of an entity means the power, directly or indirectly, either to (i) vote 50% or more of the securities having ordinary voting power for the election of directors of such entity or (ii) direct or cause the direction of the management and policies of such entity whether by contract or otherwise.

ARTICLE 6. Distributions.

(a) Tax Distributions. At any time at the discretion of the Board of Managers and so long as the Company is treated as a partnership for federal income tax purposes, to the extent of Available Cash (defined below), the Board of Managers shall cause the Company to distribute to each Member with respect to each fiscal quarter an amount of cash (a "Tax Distribution") which in the good faith judgment of the Board of Managers equals the excess, if any, of (a) the product of (i) the amount of taxable income allocable to such Member in respect of such fiscal quarter and all prior fiscal quarters (net of taxable Net Losses allocated to such Member in respect of prior fiscal quarters) and (ii) the Assumed Tax Rate, over (b) the cumulative distributions previously made to such Member pursuant to this Section 6(a) for all previous fiscal quarters.

(i) For purposes of this Section 6(a), "Assumed Tax Rate" means, for any fiscal quarter, 40%, or such higher rate as may from time to time be determined by the Board of Managers.

(ii) Each Tax Distribution pursuant to this Section 6(a), to the extent a Member is entitled to such Tax Distribution by virtue of taxable income allocated to such Member by virtue of Article 7, shall be treated as an advance to such Member of amounts to which it may otherwise be entitled under Section 6(b) and/or Section 6(c).

(b) Distributions of Available Cash. Except as otherwise set forth in Section 6(a), the Company shall, at any time at the discretion of the Board of Managers, distribute Available Cash:

(i) first, to the Members in accordance with the respective Percentage of each such holder of Units in an aggregate amount equal to the excess, if any, of (A) the sum of all Ordinary Net Profits (as defined in Section 7(f)) for all Allocation Periods (as defined in Section 7(f)) over (B) the sum of the aggregate distributions previously made to such Members pursuant to this Section 6(b)(i) and Section 6(c)(i); and

(ii) thereafter, to the Members in the amount of their respective Capital Contributions (including Additional Capital Contributions, if any), less the amount of any Capital Contribution previously distributed to the Members pursuant to this Section 6(b)(ii) and Section 6(c)(ii) (such net amount being the "Net Capital Contributions"), pro rata in proportion to their respective Net Capital Contributions immediately prior to such distribution.

(c) Distributions Upon a Liquidation Event. Except as otherwise set forth in Section 6(a), if and when the Board of Managers may from time to time deem it advisable for the

Company to do so, after taking into account prior distributions of Available Cash pursuant to Section 6(b), the Company shall make distributions upon a Liquidation Event to each Member in accordance with its Percentage.

(d) For purposes of this Agreement "Available Cash" means, with respect to any Allocation Period, the sum of the cash available to the Company at the end of such Allocation Period for distribution to the Members after (a) the payment of all debt service and other expenses (including, without limitation, operating and maintenance expenses, general and administrative expenses, insurance costs, assessments and other expenses); (b) the payment of any capital expenditures; (c) the satisfaction of any other Company liabilities; and (d) the establishment of reasonable reserves as determined by the Board of Managers; *provided*, *however*, that Available Cash shall not include net proceeds from a Sale of the Company.

ARTICLE 7. Allocation of Income and Losses.

(a) Allocation of Ordinary Net Profit and Ordinary Net Loss. After taking into account the special allocations set forth in Section 7(d), and subject to Section 7(c), for each Accounting Period, Ordinary Net Profit (and items thereof) and Ordinary Net Loss (and items thereof) shall be allocated among the Members in accordance with each Member's Percentage.

(b) (i) Allocation of Extraordinary Net Profit and Extraordinary Net Loss. After taking into account the special allocations set forth in Section 7(d), and subject to Section 7(c), and, for the avoidance of doubt, without duplication of any allocation pursuant to Section 7(a), Extraordinary Net Profit (and items thereof) and Extraordinary Net Loss (and items thereof) for each Allocation Period shall be allocated among the Members in the manner such that the Capital Account of each Member, after giving effect to any allocations pursuant to Section 7(a), Section 7(c) and Section 7(d) (and all distributions pursuant to Article 6 for the current and all prior Allocation Periods other than any distribution upon a Liquidation Event pursuant to Section 6(c) for the current Allocation Period), is, as closely as possible, equal (proportionately) to the excess, if any, of (i) the amount that would be distributable to the Members under Section 6(c) if the Company were dissolved, its affairs wound up and (A) all Company assets were sold for cash equal to their respective Gross Asset Values (except Company assets actually sold during such Allocation Period shall be treated as sold for the consideration received therefor), (B) all Company liabilities were satisfied (limited, with respect to each "partner nonrecourse liability" and "partner nonrecourse debt," as defined in Regulations Section 1.704-2(b)(4), to the Gross Asset Value of the Company assets securing such liabilities) and (C) the net assets were immediately distributed in accordance with Section 6(c) to the Members immediately after making such allocations over (ii) such Member's share (if any) of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of Company assets. The Board of Managers may make such other assumptions (whether or not consistent with the above assumptions) as it deems necessary or appropriate in order to effect the intended economic arrangement of the Members.

(ii) Notwithstanding anything to the contrary contained herein, to the extent that the allocations and adjustments described in Section 7(b)(i) are not sufficient to cause the Capital Accounts of each Member to equal the amount of the distributions such Member would receive pursuant to Section 6(c) assuming that this Section 7(b)(ii) was not part of this Agreement (after giving effect to any allocations pursuant to Section 7(a), Section 7(c) and

Section 7(d) and all distributions pursuant to Article 6 for the current and all prior Allocation Periods other than any distribution upon a Sale of the Company pursuant to Section 6(c) for the current Allocation Period), the Board of Managers may allocate (and reallocate) Net Profit (or items of income or gain) and Net Loss (or items of deduction or loss) for current and/or prior Accounting Periods to the extent permitted by law to achieve such result.

(c) Limitation on Loss Allocations. If any allocation of Net Losses under Section 7(a) or Section 7(b) would cause a Member to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the other Members pro rata until their Capital Accounts are reduced to zero, and any remaining Losses will be allocated to each Member in accordance with the relative number of Units held by such Member, as determined by the Board of Managers.

(d) Special Allocations. The following allocations shall be made prior to the allocations set forth in Section 7(a) or Section 7(b) and in the following order and priority:

(i) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Article 7, if there is a net decrease in Company Minimum Gain during any Allocation Period, each Member shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 7(d)(i) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article 7, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Period, each Member that has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Allocation Period (and, if necessary, subsequent Allocation Periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 7(d)(ii) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 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), then items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any Adjusted Capital Account Deficit of such Member as quickly as possible, *provided* that an allocation pursuant to this Section 7(d)(iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7(d)(iii) were not in this Agreement.

(iv) Gross Income Allocation. If a Member has an Adjusted Capital Account Deficit at the end of any Allocation Period, then such Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7(d)(iv) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 7 have been made as if Section 7(d)(iii) and this Section 7(d)(iv) were not in this Agreement.

(v) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Period shall be allocated to the Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vi) Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Period shall be allocated to each Member in accordance with the relative number of Units held by such Member, as determined by the Board of Managers.

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

(viii) Curative Allocations. The allocations set forth above in Section 7(c) and Section 7(d)(i) through (b)(vii) (collectively, the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 7(d)(viii). Therefore, notwithstanding any other provisions of this Article 7 (other than the Regulatory Allocations), the Board of Managers 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 Company items were allocated pursuant to this Article 7 without regard to the Regulatory Allocations.

(e) Other Allocation Rules.

(i) Net Profits, Net Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Article 7 as of the last day of each Allocation Period; *provided*, that Net Profits, Net Losses and such other items shall also be allocated at such times as the Gross Asset Values of Company Assets are adjusted pursuant to paragraph (ii) of the definition of Gross Asset Value.

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

(iii) The Members acknowledge the income tax consequences of the allocations made by this Article 7 and shall report their respective shares of Company income and loss for income tax purposes in a manner consistent with this Article 7.

(f) Tax Allocations; Code Section 704(c) Allocations.

(i) Except as otherwise provided in this Section 7(f), each item of Company income, gain, loss and deduction for federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes under this Article 7, except that if such allocation is not permitted by the Code or other applicable law, then the Company's subsequent income, gains, losses, deductions and credits for federal income tax purposes will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their respective Capital Accounts.

(ii) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value using any allocation method permitted under Regulations Section 1.704-3, as determined by the Board of Managers.

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

(iv) Any elections or other decisions relating to such allocations shall be made by the Board of Managers, in any manner that reasonably reflects the purpose and intention hereof. Allocations pursuant to this Section 7(f) are solely for purposes of federal, state, and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provision hereof.

(g) Definitions. For purposes of this Agreement:

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Allocation Period, after giving effect to the following adjustments:

(A) credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(B) debit to such Capital Account the items described in paragraphs (4), (5) and (6) of Regulations Section 1.704-1(b)(2)(ii)(d).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with Regulations Section 1.704-1(b)(2)(ii)(d) to the extent relevant thereto and is to be interpreted consistently therewith.

"Allocation Period" means (i) the twelve month period commencing on January 1 of each year and ending on the following December 31, or (ii) any portion of the period described in clause (i) for which the Company is required to allocate Net Profits, Net Losses and other items of Company income, gain, loss or deduction pursuant to Article 7.

"Company Minimum Gain" has the meaning assigned the term "partnership minimum gain" in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"Depreciation" means, for each Allocation Period or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such period for federal income tax purposes, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such period, then Depreciation means an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such period bears to such beginning adjusted tax basis; *provided, however*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such period is zero, then Depreciation is to be determined with reference to such beginning Gross Asset Value using any reasonable method determined by the Board of Managers.

"Extraordinary Net Profit" and "Extraordinary Net Loss" means, for each Allocation Period, an amount equal to the Net Profit or Net Loss for such Accounting Period other than Ordinary Net Profit or Ordinary Net Loss.

"Gross Asset Value" means with respect to any asset, the adjusted basis of the asset for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset;

(ii) the Gross Asset Values of Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as reasonably determined by the Board of Managers as of the following times: (A) the acquisition of an additional interest in the Company by a new or existing Member in exchange for a more than de minimis Capital Contribution; (B) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for an interest in the Company; (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (D) the issuance of a Unit or Units in exchange for services rendered or to be rendered; *provided,* that an adjustment described in clause (A), (B) and (D) of this paragraph shall be made only if the Board of Managers reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any Company Asset distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such Company asset on the date of distribution as reasonably determined by the Board of Managers; and

(iv) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Company assets pursuant to Code Sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and paragraph (vi) of the definition of "Net Profits" and "Net Losses" or Section 7(d)(vii); *provided*, *however*, that Gross Asset Values shall not be adjusted pursuant to this paragraph (iv) to the extent that an adjustment pursuant to paragraph (ii) of the definition of "Gross Asset Value" is required in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iv).

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

"Member Nonrecourse Debt" has the meaning assigned to the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" means that amount determined in accordance with the principles of Regulations Section 1.704-2(i)(3) pertaining to "partner nonrecourse debt minimum gain."

"Member Nonrecourse Deductions" has the meaning assigned to the term "partner nonrecourse deductions" in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

"Net Profits" and "Net Losses" mean, for each Allocation Period or other period, an amount equal to the Company's taxable income or loss, respectively, for such Allocation Period or other period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses shall be included;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) (including expenditures treated as such pursuant to Regulations Section 1.704-1(b)(2)(iv)(i)), and not otherwise taken into account in computing Net Profits or Net Losses, shall be subtracted;

(iii) if the Gross Asset Value of any Company asset is adjusted pursuant to paragraphs (ii) or (iii) of the definition of "Gross Asset Value," then the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of such Company Asset) or an item of loss (if the adjustment decreases the Gross Asset Value of such Company Asset) from the disposition of such Company asset and shall be taken into account for purposes of computing Net Profits or Net Losses;

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

(v) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Period or other period, computed in accordance with the definition thereof;

(vi) to the extent an adjustment to the adjusted tax basis of any Company assets pursuant to Code Section 734(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Units, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such Company asset) or loss (if the adjustment decreases the basis of such Company asset) from the disposition of such Company asset and shall be taken into account for purposes of computing such Net Profits or Net Losses; and

(vii) notwithstanding any other provision of this definition, any items that are specially allocated under Section 7(d) shall not be taken into account in computing Net Profits or Net Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section 7(d) shall be determined by applying rules analogous to those set forth in paragraphs (i) through (vi) above.

"Nonrecourse Deductions" has the meaning assigned to the term "nonrecourse deductions" in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Ordinary Net Profit" and "Ordinary Net Loss" means, for each Allocation Period, an amount equal to the Net Profit or Net Loss for such Allocation Period arising in the ordinary course of business of the Company. Notwithstanding anything to the contrary contained herein, Ordinary Net Profit and Ordinary Net Loss shall not include any Net Profit (or items of income or gain) or Net Loss (or items of loss or deduction) resulting from a Sale of the Company or any gain or loss resulting from clause (iii) or (vi) of the definition of Net Profit or Net Loss.

"Regulations" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code.

ARTICLE 8. Management.

(a) Powers. Except as otherwise set forth in this Agreement or under the Delaware Act, the responsibility for management of the business and affairs of the Company shall be delegated to a board of managers pursuant to Section 18-402 of the Delaware Act (the "Board of Managers" or "Board" and each a "Manager"). Except for situations in which the approval or written consent of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act or other applicable law, the Board of Managers shall have complete and full authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, including decisions of the Company under this Agreement, and to perform any and all acts or activities customary or incident to the management of the Company's business or necessary to accomplish the Company's purposes.

(b) Initial Board of Managers. The Board of Managers shall be composed of up to five (5) Managers. Sunil Hirani ("Hirani") shall be entitled to nominate up to three (3) members of

the Board of Managers which initially shall include Hirani. Each Member hereby agrees to vote all of their Units (to the extent entitled to vote), at each regular or special meeting of the Members of the Company called for the purpose of electing members of the Board of Managers, or in any written consent executed in lieu of such a meeting of Members, and shall take all actions reasonably necessary, to ensure the election of the Board of Managers in accordance with the provisions contained herein. The Board of Managers shall act by the approval or consent of a majority of the total number of the then-current Board of Managers.

(c) Composition of the Board of Managers. The number of Managers serving on the Board of Managers may be increased to no more than nine (9) Managers from time to time with the approval of a majority of the total number of the then-current Board of Managers and may be reduced to no fewer than four (4) Managers.

At any and all times while the Company is registered as a designated contract market (DCM) under Section 5 of the Commodity Exchange Act ("CEA"):

(i) at least thirty five (35) percent of the Board of Managers shall be composed of Managers who have been found by the Board of Managers, on the record, to have no "Material Relationship" (as such term is defined in 17 C.F.R. § 1.3(ccc)) with the Exchange (each such Manager, a "Public Manager"). With respect to each Public Manager, the Board of Managers shall make this finding, on the record, as often as necessary in light of all circumstances relevant to such Public Manager, but in no case less than annually;(ii) each Manager shall (x) be of good repute and, where applicable, have sufficient expertise in financial services and risk management; (y) satisfy all fitness standards and otherwise meet all the requirements to serving as a director of a designated contract market under the CEA and regulations of the Commodity Futures Trading Commission (CFTC) thereunder; (z) the compensation of Public Managers and all other non-executive Managers shall not be linked to the business performance of the Exchange; and

(iii) the Board of Managers shall review its performance and that of individual Managers annually and shall consider periodically using external facilitators for such review.

(d) Designation; Election. Each Manager shall hold office for a term of two years or until such Manager's successor is elected by holders of a majority of Units and in accordance with the nomination provisions of Section 8(b) above, at the next annual meeting of Members, or until such Manager's earlier death, resignation or removal in accordance with this Agreement. At any meeting of the Members for the election of Managers at which a quorum is present, each Manager receiving the vote of a plurality of Units shall be a Manager. Each Manager shall hold office until each such Manager's death, resignation or removal in accordance with this Agreement.

(e) Removal and Resignation. Any Manager may be removed with or without cause by an affirmative vote of the holders of a majority of the then-outstanding Units. Any Manager may resign from the Board of Managers at any time.

(f) Committees. The Company shall have such committees (each a "Committee") as may be established by the Board of Managers from time to time. Each Committee shall have

such duties and powers and composition as may be established by the Board of Managers. At any and all times while the Company is registered as a DCM under Section 5 of the CEA, the Company shall maintain a Nominating Committee, an Exchange Access Committee, a Regulatory Oversight Committee and a Trading Protocol Committee to be composed and vested with authority as follows:

(i) *Nominating Committee*: The Nominating Committee shall consist of three Managers appointed from time to time by the Board of Managers, two of whom shall be Public Managers. The Nominating Committee shall be chaired by a Public Manager. The Nominating Committee shall have such authority, power and responsibility as provided in the rulebook of the DCM (the "Rulebook"). The Nominating Committee shall report to the Board of Managers.

(ii) *Exchange Access Committee*: The Exchange Access Committee shall consist of three Managers appointed from time to time by the Board of Managers, two of whom shall be Public Managers.

The Exchange Access Committee shall have such authority, power and responsibility as provided in the Rulebook. The Exchange Access Committee shall report to the Board of Managers. In the event that the Board of Managers rejects a recommendation or supersedes an action of the Exchange Access Committee, the Company shall submit a written report to the CFTC detailing: (w) the recommendation or action of the Exchange Access Committee; (x) the rationale for such recommendation or action; (y) the rationale of the Board of Managers for rejecting such recommendation or superseding such action; and (z) the course of action that the Board of Managers decided to take contrary to such recommendation or action.

(iii) *Regulatory Oversight Committee*. The Regulatory Oversight Committee shall consist of two Public Managers appointed from time to time by the Board of Managers. Each member of the Regulatory Oversight Committee shall serve for a term of two calendar years from the date of her appointment or for the remainder of her term as a Public Manager, and until the due appointment of her successor, or until her earlier resignation or removal, with or without cause, as a member of the Regulatory Oversight Committee or as a Public Manager. A member of the Regulatory Oversight Committee may serve for multiple terms.

The Regulatory Oversight Committee shall have such other authority, power and responsibility as provided in the Rulebook. The Regulatory Oversight Committee shall oversee the DCM's regulatory program on behalf of the Board of Managers. The Board of Managers shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the Regulatory Oversight Committee to fulfil its mandate. The Regulatory Oversight Committee shall make such recommendations to the Board of Managers as will, in its judgment, best promote the interests of the DCM.

The Regulatory Oversight Committee shall report to the Board of Managers. In the event that the Board of Managers rejects a recommendation or supersedes an action of the

Regulatory Oversight Committee, the Company shall submit a written report to the CFTC detailing: (w) the recommendation or action of the Regulatory Oversight Committee; (x) the rationale for such recommendation or action; (y) the rationale of the Board of Managers for rejecting such recommendation or superseding such action; and (z) the course of action that the Board of Managers decided to take contrary to such recommendation or action.

(iv) *Trading Protocol Committee*. The Trading Protocol Committee shall consist of three Managers appointed from time to time by the Board, two of which shall be Public Managers. The Trading Protocol Committee shall have such authority and responsibility as provided in the Rulebook.

At all times while the Company is registered as a DCM under Section 5 of the CEA, any standing committee constituted by the Board of Managers that exercises the functions of an "Executive Committee" (as such term is defined in 17 C.F.R. § 1.3(bbb)) shall be composed of at least thirty five (35) percent and no fewer than two Public Managers.

(g) Qualifications. No Person who is not a natural person may be, become or remain a Manager or a member of a Committee (a "Committee Member"). Each Manager and Committee Member shall be at least eighteen (18) years of age and shall be no older than seventy five (75) years of age. Each Manager and Committee Member shall serve in such capacity until the earlier to occur of his or her death, retirement, resignation or removal.

(h) Meetings of the Board of Managers and Committees.

(1) *Calling Meetings; Notices*. Meetings of the Board of Managers shall be called at least quarterly at the discretion of the Chairman, CEO or any two Managers. All notices of meetings of the Board of Managers shall be sent or otherwise given to the Managers not less than one (1) Business Day nor more than ninety (90) days before the date of the meeting. The notice shall specify (i) the place, date and hour of the meeting (if applicable) and (ii) the general nature of the business to be transacted or acted upon. Notice of such meeting or action may be waived by any Manager entitled thereto. The attendance of any Manager at a meeting shall constitute a waiver of notice of such meeting or action; *provided* that attendance at a meeting shall not affect the right of any such Manager to object to the business being properly brought before such meeting. Each Manager shall be entitled to reimbursement of his reasonable expenses incurred in connection with his attendance at any meeting of the Board of Managers.

(2) *Voting; Quorum*. Each Manager shall be entitled to one vote. At least a majority of the Managers then in office shall constitute a quorum of the Board of Managers for purposes of actions of the Board of Managers. The vote of Managers of the Board of Managers holding a majority of votes present at a meeting at which a quorum is present shall be the act of the Board of Managers. If a quorum shall not be present at any meeting of the Board of Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(3) *Conduct of Meeting*. Each meeting of the Board of Managers shall be conducted by the Chairman, or the CEO in the Chairman's absence, or such other Manager as the Chairman or CEO may appoint. The Managers may participate in or hold meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Such participation in any such meeting shall constitute presence in person at such meeting, except where a Person participates in such meeting for the express purpose of objecting to the transaction of any business on the grounds that such meeting was not lawfully called or convened.

(4) *Action by Vote or Consent*. In the event the vote or consent of the Managers is required for any action to be taken by the Company, such vote or consent may be given at a meeting, which may be conducted by conference telephone call, or provided in writing, executed by a majority of all of the Managers then in office, or such greater number of Managers as may be necessary to authorize such action at a meeting at which all Managers entitled to vote thereon were present and voted; *provided, that*, the consent or vote of each Manager is solicited.

(5) *Committees*. Unless otherwise determined by the Board of Managers, meetings of each Committee shall be conducted in the same manner as those of the Board of Managers, as set forth in this agreement, with "Manager" referring only to the members of such Committee.

(i) Fiduciary Duties. Except as limited by Section 8(j) immediately below, the Managers shall have the fiduciary duties to the Members as if the Company were a corporation organized and subject to the DGCL and the Members were the stockholders of such corporation.

(j) Indemnification; Limitation of Liability. To the fullest extent of the law, no Manager or Committee Member shall be liable to the Company or the Members for monetary damages for breach of fiduciary duty as a Manager or Committee Member, as applicable, or otherwise liable, responsible or accountable to the Company or the Members or to any creditor or third party for monetary damages or otherwise for any acts performed, or for any failure to act, in such Person's capacity as a Manager or Committee Member, as applicable; *provided*, *however*, that this provision shall not eliminate or limit the liability of a Manager or Committee Member to the Company (i) for acts or omissions which involve extreme gross negligence, knowing and willful misconduct or a knowing violation of law or (ii) for any transaction from which the Manager or Committee Member received any improper personal benefit. Any deletion or modification of this Section (j) shall not adversely affect the right or protection of a Manager or Committee Member existing at the time of such deletion or modification. If the Delaware Act or any other law of the State of Delaware is amended after approval by the Members of this Article 10 to authorize corporate action further eliminating or limiting the personal liability of Managers, then the liability of a Manager of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware Act, the General Corporation Law of Delaware or such other law of the State of Delaware as so amended. The Company may provide director and officer indemnification insurance for its Managers at the discretion and upon the approval of the Board of Managers.

(k) Reliance on Experts. In the administration of the duties and obligations hereunder, the Managers, at the expense of the Company, may consult with reputable and knowledgeable counsel, accountants and other skilled persons to be selected by it and employed by the Company, and no Manager or officer of the Company shall be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons and not contrary to this Agreement.

(l) Acts of Others. Except as otherwise expressly provided in this Agreement, no Manager or Committee Member, acting alone, shall undertake or assume any obligation or responsibility on behalf of, or have any obligation to act for, the other Managers or Committee Members, as applicable, or the Company.

(m) Officers. The Board of Managers shall appoint a chief executive officer ("CEO") and a Chief Regulatory Officer ("CRO"); the Board of Managers may additionally appoint a Chairman of the Board of Managers (the "Chairman"), and a president (the "President"). The CEO, CRO, Chairman and President shall have responsibility and authority for management of the day-to-day operations of the Company and carrying out the directions of the Board of Managers as follows:

(1) *Chairman*. The Chairman shall preside at all meetings of the Members and of the Board of Managers and shall see that orders and resolutions of the Board of Managers are carried into effect. The Chairman shall perform such duties as may be assigned to him by the Board of Managers.

(2) *CEO*. The Chief Executive Officer shall be the principal executive officer of the Company and shall, in general, supervise and control all of the business and affairs of the Company, unless otherwise provided by the Board of Managers. He or she may sign bonds, mortgages, certificates for shares and all other contracts and documents whether or not under the seal of the Company except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Managers or by this Agreement to some other officer or agent of the Company. He or she shall have general powers of supervision and shall be the final arbiter of all differences between officers of the Company and his or her decision as to any matter affecting the Company shall be final and binding as between the officers of the Company subject only to its Board of Managers.

(3) *President*. In the absence of the Chief Executive Officer, the President shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. He or she shall have concurrent power with the Chief Executive Officer to sign bonds, mortgages, certificates for shares and other contracts and documents, whether or not under the seal of the Company except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Managers or by this Agreement to some other officer or agent of the Company. In general, he or she shall perform all duties incident to the office of president and such other duties as the chief executive officer or the Board of Managers may from time to time prescribe.

(4) *Chief Regulatory Officer*: The Chief Regulatory Officer shall have such authority, power and responsibility as provided in the Rulebook. The Chief Regulatory Officer shall report to, and shall be supervised by, the Regulatory Oversight Committee.

(n) The Board of Managers may appoint other officers of the Company (including, but not limited to, a chief financial officer, chief operating officer, general counsel, one or more vice presidents, a treasurer and a secretary) with such titles and duties as may be approved by the Board of Managers.

(o) Each officer shall hold office until the earlier of (i) death, retirement, resignation or removal of such officer or (ii) termination of such officer's employment agreement with the Company, if any. The Board of Managers may remove any officer at any time with or without cause.

(p) The Company is expressly permitted in the normal course of its business to enter into transactions with any or all Members or with any Affiliate of any or all Members; *provided that* the price and other terms of such transactions are fair to the Company and that the price and other terms of such transactions are not, in the determination of the Board of Managers, materially less favorable to the Company than those generally prevailing with respect to comparable transactions between unrelated parties.

(q) No Member shall, by virtue of its status as a Member or its ownership of a Unit, be liable for the debts, obligations or liabilities of the Company.

(r) No Member (in its capacity as such) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company, except to the extent that such act or expenditure has been expressly approved by the Board of Managers or by an officer of the Company having authority to approve such act.

(s) Mandatory Conversion. The Board of Managers shall have the authority to convert the Company from an LLC to a C corporation in the discretion of the Board of Managers. Upon the closing of such a conversion (a "Corporate Conversion"), the Company will distribute the successor C Corporation's securities to the holders of Units and all Units of all classes of the Company's LLC Interests shall convert into common stock of the issuing entity in relative share amounts proportionate to the respective amounts such Units would be entitled to receive in order to reflect each unit holder's pro rata economic interest in the issuing entity in an amount identical to such unit holder's pro rata economic interest in the Company.

(t) Conversion Mechanics

(1) Conversion Procedures for Units. Following the delivery by the Company of notice of an Corporate Conversion (a "Conversion Notice"), the Company shall mail to each Unit holder of record as set forth in the Company's records such holder's respective shares of equity securities of the issuing entity based upon conversion pursuant to this Agreement (the "Conversion Shares") and the Company's records shall be modified and updated accordingly. If such shares equity securities are to be registered in the name of a

Person other than the Person in whose name the Units are registered in the Company's records, such holder must notify the Company of such name within three (3) Business Days of receipt of a Conversion Notice (the "Effective Conversion Time"); *provided, that*, if no such notice is received by the Company, the Company may issue the Conversion Shares in the names of the holders of Units on the Company's records as of the Effective Conversion Time.

(2) No Further Ownership Rights in Shares. From and after the Effective Conversion Time, the holders of Units outstanding immediately prior to the Effective Conversion Time shall cease to have any rights with respect to such Units except as otherwise provided for herein or by applicable law.

(3) No Fractional Shares. No fractional Conversion Shares shall be issued in connection with a Corporate Conversion and the number of Conversion Shares to be issued shall be rounded down to the nearest whole share, as the case may be. The number of Conversion Shares issuable upon such Corporate Conversion shall be determined on the basis of the total number of Units to be converted into Conversion Shares and the aggregate number of Conversion Shares issuable upon such Corporate Conversion. If the Corporate Conversion would result in any fractional unit or share, as the case may be, the Company shall, in lieu of issuing any such fractional unit or share, pay the holder thereof an amount in cash equal to the fair market value of such fractional unit or share on the date of the Corporate Conversion, as determined in good faith by the Board of Managers.

(u) The Company shall not be required to hold annual meetings of the Members. The Board of Managers may call a meeting upon prior written notice to the Members, which notice shall specify the time, place and purpose or purposes of each meeting and which shall be delivered at least five but not more than sixty days before the date of the meeting. Notice of a meeting need not be given to a Member if such Member, either before or after the meeting, waives such notice, or attends such meeting without objecting, at its beginning, to the transaction of any business because the meeting is not lawfully called or convened. A Member may participate in a meeting by conference telephone or similar communications equipment, by means of which all other individuals participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting. A Member holding one or more Units is entitled to one vote for each issued and outstanding Unit held by it of record, as set forth in **Exhibit A**. Except as otherwise set forth in this Agreement, all acts of, or determinations by, the Members shall require a vote or written consent of Members holding at least 51% of the issued and outstanding Units (a "Majority in Interest"). The meeting and vote of the Members may be dispensed with if a written consent, setting forth the action so taken, shall be signed by the Members holding the percentage of the Units required to approve such action and such written consent is filed with the minutes of the meetings of the Members. In instances where any approval or consent is given by less than all of the Members, then the Company shall, within five business days of the effective date of such action or consent, provide the non-voting or non-consenting Members with written notice setting forth in reasonable detail the actions so approved or consented to.

(v) The Board of Managers shall each perform their respective duties hereunder in good faith, in a manner reasonably believed 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; *provided*, *however*, that nothing herein is intended to or shall have the effect of expanding or contradicting any provision in this Agreement or under applicable law which would otherwise limit the liability of a Manager.

(w) The Board of Managers shall not be required to devote their full time and attention to the management of the Company, and the Board of Managers may have other business interests and may engage in other activities, including those that may be competitive with those of the Company (hereinafter collectively referred to as the "Outside Interests"). Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such Outside Interests or to the income or proceeds derived therefrom. The Board of Managers shall incur no liability to the Company or to any of the other Members as a result of such Outside Interests.

(x) A Manager may be removed from the Board of Managers for Cause by Members holding at least 66.66% of the Units. "Cause" shall mean (i) recurring negligence or disregard for duty in the performance of the duties assigned by the Members to the Manager, other than as a result of Manager's permanent disability, after the Manager has received notice of such negligence or disregard and has failed to cure such in the performance of his duties; (ii) acts of moral turpitude, dishonesty or fraud by the Manager, which in the good faith opinion of such Members, are materially harmful to the Company; or (iii) conviction for a felony, which conviction is no longer subject to any appeal. Cause shall not include minor infractions or mere differences in opinion over business policy. "Permanent disability" shall mean a Manager is unable, by reason of accident, physical or mental infirmity, to satisfactorily perform his or her duties as Manager for a continuous period of 3 months or an aggregate of 6 months. A Majority in Interest shall determine the existence of permanent disability; *provided*, *however*, a determination of permanent disability under this paragraph may be made only upon receipt of a certificate of disability from a qualified physician, selected by a Majority in Interest and reasonably acceptable to the Manager, after examination of the Manager.

(y) Should any applicable law (including the CEA and any CFTC regulation thereunder) establishing minimum thresholds relating to the number or percentage of Public Managers that must serve on the Board of Managers or any committee be amended, this Agreement shall be deemed amended so as to comply with such applicable law without any further action of the Company to the extent permissible by law.

(z) At any and all times while the Company is registered as a DCM under Section 5 of the CEA, an individual may not serve as a Manager of the Company if: (i) such individual committed any "Serious Disciplinary Offense" (as defined in the Rulebook) in the preceding three years; or (ii) a "De-Registration Basis" (as defined in the Rulebook) exists with respect to such individual.

(aa) At any and all times while the Company is registered as a DCM under Section 5 of the CEA, an individual may not serve as an officer of the Company if a De-Registration Basis exists with respect to such individual.

(bb) At any and all times while the Company is registered as a DCM under Section 5 of the CEA, the power, authority and responsibility of the Board and any Manager or Officer may be restricted, expanded or otherwise modified during an "Emergency" (as defined in the Rulebook) pursuant to the terms of the Rulebook.

ARTICLE 9. Limitation of Liability.

Except as otherwise provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company; and no Member, Manager, employee or agent of the Company shall be obligated personally for any such debt, obligation or liability of the Company, or for any debt, obligation or liability of any other Member, Manager, employee or agent of the Company, by reason of being a Member, or acting as a Manager, employee or agent of the Company.

ARTICLE 10. Indemnification; Exculpation.

(a) Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or any obligation or duty at law or in equity, neither the Member nor any of its Affiliates, nor any of their respective officers, directors, managers, stockholders, members, partners, employees, Affiliates, representatives or agents (each, individually, a "Covered Person") shall be liable to the Company or any other person or entity for any act or omission (in relation to the Company, its property or the conduct of its business or affairs, this Agreement, any related document or any transaction or investment contemplated hereby or thereby) taken or omitted by a Covered Person in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company and is within the scope of authority granted to such Covered Person by this Agreement, provided such act or omission does not constitute fraud, willful misconduct, bad faith, or gross negligence.

(b) Indemnification. To the fullest extent permitted by law, the Company shall indemnify and hold harmless each Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (each, individually, a "Claim"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of its management of the affairs of the Company or which relates to or arises out of the Company or its property, business or affairs. A Covered Person shall not be entitled to indemnification under this Article 10 with respect to (i) any Claim with respect to which such Covered Person has engaged in fraud, wilful misconduct, bad faith or gross negligence or (ii) any Claim initiated by such Covered Person unless such Claim (or part thereof) (A) was brought to enforce such Covered Person's rights to indemnification hereunder or (B) was authorized or consented to by the Member. Expenses incurred by a Covered Person in defending any Claim shall be paid by the Company in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company as authorized by this Article 10.

(c) Amendments. Any repeal or modification of this Article 10 by the Membesr shall not adversely affect any rights of such Covered Person pursuant to this Article 10, including the right to indemnification and to the advancement of expenses of a Covered Person existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

ARTICLE 11. Transfer of Units.

(a) Subject to the provisions set forth herein, no Member may sell, assign, transfer, make gifts of or otherwise dispose of, or pledge, hypothecate or otherwise encumber, its Units in the Company, or any part thereof, in any manner whatsoever (such events being hereinafter sometimes collectively referred to as a "Transfer") without the prior, written consent of the Board of Managers.

(b) Notwithstanding the provision of Section 11(a) hereof to the contrary, the following Transfers shall not require the consent of the Board of Managers:

(i) Transfers by and among Members

(ii) Transfer by Members to their Affiliates; and

(ii) gifts, bequests or other Transfers for no or nominal consideration by any Member to a spouse, parent, sibling, child, niece, nephew, grandchild, trust for the benefit of any one or more of the foregoing or entity controlled by the Member or any one or more of the foregoing individuals or entities.

(c) Notwithstanding the provisions of Section 11(a) hereof to the contrary, if any Member (the "Transferring Member") desires to Transfer (other than in accordance with the provisions of Section 11(b) hereof) all or any portion of its Units pursuant to a bona fide offer (the "Third-Party Offer") from any third party (the "Prospective Purchaser"), the Transferring Member shall notify Sunil Hirani in writing of its desire to Transfer its Units, which written notice shall include a description of the portion of the Transferring Member's Units (the "Offered Units") which the Transferring Member desires to Transfer and the price and other terms at which the Transferring Member proposes to Transfer the Offered Units to the Prospective Purchaser pursuant to the Third-Party Offer (the "Offered Terms"). Sunil Hirani shall have seven (7) business days following receipt of such written notice to elect to purchase all, but not less than all, of the Units referred to in the notice for the Offered Terms referred to in the notice, by giving written notice of such election to the Transferring Member (the "Acceptance Notice"). If Sunil Hirani elects to purchase less than all of the Offered Units, the Company shall have the right, within five (5) business days after the expiration of Sunil Hirani's foregoing seven (7) day period, to purchase all of the remaining portion of the Offered Units, by providing an additional Acceptance Note to the Transferring Member. If Sunil Hirani and/or the Company timely issue Acceptance Notices for all of the Offered Units, Sunil Hirani and/or the Company shall purchase the Offered Units from the Transferring Member for the Offered Terms within three (3) business days after the date of the last Acceptance Notice. If Sunil Hirani and/or the Company fail to deliver Acceptance Notices for all of the Offered Units within the time periods set forth above or, timely deliver Acceptance Notices but do not purchase the Offered Units within the time periods set forth herein, then, in each case, the Transferring Member shall have the right, for a period of 120 days from the date that the Offer Notice was given, to Transfer

the Offered Units to the Prospective Purchaser on such terms and conditions and at any price equal to or greater than that contained in the Offered Terms, without obtaining the consent of any Other Member.

(d) As a condition precedent to any Transfer consented to by the Board of Managers under Section 11(a) hereof and any Transfer permitted under Section 11(b) or Section 11(c) hereof, the transferor shall deliver to the Board of Managers (i) a written statement setting forth (a) the name, address and tax identification number of the transferee, (b) the terms and provisions of the Transfer, including a complete description of any consideration paid or to be paid in connection therewith, (c) the agreement of the transferee to be bound by and to comply with all of the terms, provisions and conditions of this Agreement as are applicable to the Members; and (ii) a certification, opinion of counsel or such other documents reasonably requested by the Board of Managers stating that such Transfer does not require registration under the Securities Act of 1933 or applicable state securities law, or that such Transfer is exempt for the registration requirements.

(e) Notwithstanding the provisions of this Article 11 hereof to the contrary, if one or more Members owning, whether individually or collectively, a majority of the issued and outstanding Units (each a "Majority Member" and collectively the "Majority Members") desires to Transfer, in the aggregate, a majority of the issued and outstanding Units pursuant to a Third-Party Offer for from any Prospective Purchaser, the Majority Member(s) shall have the right, in the Majority Member(s) discretion, to require each of the other Members (the "Other Members") to sell all (but not less than all) of the Units owned by him, her or it to such Prospective Purchaser. To exercise such right, the Majority Member(s) shall give 15 days notice to all of the Other Members (specifying the identity of the Prospective Purchaser, the proposed purchase price, the scheduled date of the closing, and all other relevant material information), and all of the Other Members shall then be required to sell, simultaneously with the sale by the Majority Member(s), all (but not less than all) of the Units owned by him, her or it to the Prospective Purchaser on the same terms as are applicable to the Majority Member(s). In connection with the exercise of such right by the Majority Member(s), the Other Members shall cooperate in all respects as reasonably requested by the Majority Member(s), including, but not limited to, providing all information requested by Majority Member(s) and executing all documentation requested by Majority Member(s) to effect the transaction.

(g) The Board of Managers may disapprove and prohibit a transfer of any Units to any prospective holder where the Board of Managers determines in good faith that it would be contrary to the best interests of the Company if the prospective holder were to become a Member.

(f) (i) Notwithstanding the provisions of Section 11(a), if any Transferring Member desires to Transfer (other than in accordance with the provisions of Section 11(b) hereof) all or any portion of its Units (the "Tag-Along Units") pursuant to a Third-Party Offer from any Prospective Purchaser, then such Transferring Member shall notify each of the other Members (the "Other Members") in writing of such offer and its terms and conditions (a "Tag-Along Sale Notice").

(ii) Upon receipt of a Tag-Along Sale Notice, each Other Member shall have the right to sell to the Prospective Purchaser at the same price per Tag-Along Unit,

economically adjusted to give effect to economic differences associated with all Units of the Company and on the same terms and conditions applicable to the Transferring Member, in lieu of the sale to the Prospective Purchaser by the Transferring Member, that number of such Tag-Along Units being sold equal to the product attained by multiplying (a) the number of such Tag-Along Units to be sold to the Prospective Purchaser times (b) the quotient derived by dividing (i) the number of such Tag-Along Units held (or deemed to be held) by such Other Member by (ii) the total number of such Tag-Along Units held (or deemed to be held) by all selling Other Members and such Transferring Member. If 2 or more types of securities are to be Transferred in a single transaction or related transactions subject to this Section 11(f), the rights of the Other Members to participate in such Transfer under this Section 11(f) must be exercised to Transfer all types of securities in the same proportion as such securities are to be transferred by the Transferring Member. The Other Members' rights to sell pursuant to this Section 11(f) can be exercised by delivery of a written notice to the Transferring Member within thirty (30) days following the delivery of the Tag-Along Sale Notice to the Other Members of the proposed sale to the Prospective Purchaser by such Transferring Member. In the event that any of the other Members do not deliver to such Transferring Member a notice within such 30 day period, such Transferring Member may, within sixty (60) days after the date of such Tag-Along Sale Notice, complete such sale to such Prospective Purchaser at the same price and on substantially the same terms and conditions set forth in such Tag-Along Sale Notice.

(iii) Notwithstanding the foregoing or anything herein to the contrary, the provisions of this Section 11(f) shall not apply to any Permitted Transfer pursuant to Section 11(b) above, *provided, however*, notwithstanding the foregoing clause, a Transferring Member shall not avoid the provisions of this Agreement by making one or more transfers to an entity in accordance with Section 11(b) and then disposing of all or any portion of such Transferring Member's interest in any such entity.

ARTICLE 12. Dissolution and Liquidation.

(a) The Company shall be dissolved and its assets liquidated pursuant to Section 12(b) hereof upon (i) the sale, condemnation or other disposition of all or substantially all of the assets of the Company (unless the Company receives a note, bond or other evidence of indebtedness instead of cash, in which case this clause (i) shall not apply until such obligation is paid in full or converted to cash); (ii) the approval or written consent of Members holding at least 75% of the Units; or (iii) the entry of a court order or judgment of dissolution.

(b) In the event of a dissolution of the Company in accordance with Section 12(a) hereof, the Board of Managers (or their designee) shall immediately commence to wind up the Company's affairs and shall liquidate the assets of the Company as promptly as possible, but in an orderly and businesslike manner. In connection with any winding up and liquidation, the independent certified public accountant then retained by the Company shall prepare an accounting setting forth the assets and liabilities of the Company as of the date of dissolution, and such accounting shall be furnished to all Members within 90 days of winding up or the date of such liquidation. After all liabilities and obligations of the Company, including any and all indebtedness incurred by the Company under Section 5(h) hereof, all expenses of liquidation and the funding of any reserves which the Board of Managers (or their designee) deems reasonably necessary for any contingency or unforeseen liabilities or obligations of the Company, shall have been paid or provided for, and all items of income, gain, loss, deduction and credit shall have

been allocated in accordance with Article 7 hereof, any remaining amounts shall be distributed to the Members in accordance with Section 6(c).

(c) If the Company assets are not sold, but instead are distributed in kind, such assets, for purposes of determining the amount to be distributed to the parties, shall be revalued on the Company books to reflect their then current fair market value and distributed based upon such value as set forth above in this Article 12 in a similar manner to a cash distribution. For internal purposes only, such event shall be deemed to be a "sale" of such assets, with all income, gain and loss allocated in accordance with Article 7 hereof as if such assets have been sold.

(d) If, after taking into account all contributions, distributions and allocations for all periods, any Member's Capital Account is not equal to the amount to be distributed to such Member pursuant to Section 12(b), the Net Profits and Net Losses for the fiscal year in which the Company is dissolved are to be allocated among the Members in such a manner as to cause, to the extent possible, each Member's Capital Account to be equal to the amount to be distributed to such Member pursuant to Section 12(b).

(d) Upon the satisfaction of the distribution plan set forth in this Article 12, the Board of Managers shall cause a certificate of cancellation of the Company to be executed and filed with the Delaware Secretary of State, whereupon all parties hereto shall cease to be Members of the Company.

ARTICLE 13. Books, Records and Reports.

The Board of Managers shall select the accountants for the Company. The Company shall keep proper and complete books of account in accordance with good accounting practice at all times during its continuance, which books and records shall be maintained at the principal office of the Company and shall be available for inspection and copying by any Member upon reasonable notice. The Board of Managers shall select the cash or accrual basis of tax accounting, as required by the Code, and shall make such decisions as required and as are necessary with respect to capitalization or expensing of items and the method of depreciation for both the books of account and for Federal income tax purposes. The Company shall provide to the Members the following financial reports:

(a) within 60 days after the end of each fiscal quarter, unaudited consolidated balance sheets and statements of operations and cash flows of the Company, such balance sheets to be as of the end of such quarter and such statements of operations and cash flows to be both for the year-to-date period as of the end of such quarter and for the quarter, certified by an officer of the Company; and

(b) an annual financial report, a copy of the Company tax return for each year by March 15th of the following calendar year and Form K-1 or such other form necessary for filing with the Members' income tax returns, certified by an officer of the Company.

The financial reports shall include a copy of the balance sheet, the statement covering the profits and losses of the Company, and with respect to the annual report, a statement showing any distributions made to such Member pursuant to Article 6 hereof and the amounts allocated to such Member pursuant to Article 7 hereof during or in respect of such year. Accountant's fees

incurred by the Company for accounting services necessary to comply with the terms of this Article 13 are deemed to be a Company expense.

At all times while the Company is registered as a DCM under Section 5 of the CEA, the Company shall keep, or cause to be kept, complete and accurate books and records of accounts of the Company, including all books and records required to be maintained pursuant to the CEA, and CFTC regulations thereunder. The Company shall retain all such books and records for at least five (5) years, and shall make such books and records readily accessible for inspection by the CFTC and the Department of Justice during the first two (2) years of such five-year period.

ARTICLE 14. Fiscal Year.

The fiscal year of the Company shall end on December 31 of each year.

ARTICLE 15. Certain Tax Matters.

(a) SwapCo Holdings LLC is hereby designated as the "Tax Matters Member" of the Company, which shall have the same meaning as "tax matters partner" as defined in Code Section 6231(a)(7), for all federal, state and local tax purposes. The Tax Matters Member is authorized and required to represent the Company at the direction of the Board of Managers (at the expense of the Company) in connection with all examinations of the affairs of the Company by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith. The Tax Matters Member shall take such action as may be reasonably necessary to cause each other eligible Member to become a "notice partner" within the meaning of Section 6231(a)(8) of the Code. To the extent and in the manner provided by applicable Code sections and Regulations thereunder, the Tax Matters Member (i) shall furnish the name, address, profits interest and taxpayer identification number of each Member to the IRS and (ii) shall keep the Members reasonably informed of all administrative and judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes. The Board of Managers may change or otherwise designate the Tax Matters Member.

(b) The Company shall cause to be prepared and timely filed all federal, state and local income tax returns or other returns or statements required by applicable law. The Company shall, to the extent permitted by applicable law, take such tax positions as the Board of Managers, in its discretion, determines. The Members shall each take reporting positions on their respective federal, state and local income tax returns consistent with the positions determined for the Company by the Board of Managers.

(c) The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes, and the Company shall not elect, and the Board of Managers shall not permit the Company to elect, to be treated as an association taxable as a corporation for federal, state or local income tax purposes under Regulations Section 301.7701-3 or under any corresponding provision of state or local law. Each Member and the Company shall file all tax returns consistent with such treatment. This characterization, solely for such tax purposes, does not create or imply a general partnership among the Members for state law or any other purpose.

(d) The taxable year of the Company shall be the calendar year unless another taxable year is required under the Code or the Board of Managers determine otherwise. The Board of Managers shall determine whether to make or revoke any available election pursuant to the Code or other provision of applicable tax law.

(e) The Company shall use commercially reasonable efforts to deliver or cause to be delivered, within 120 days after the end of each fiscal year, to each Person who was a Member at any time during such fiscal year, all information necessary for the preparation of such person's United States federal and state income tax returns.

ARTICLE 16. Modifications; Waivers.

(a) Except as otherwise specifically provided in this Agreement, amendments to this Agreement shall require the approval or consent of the Board of Managers and a Majority in Interest; *provided*, *however*, that: (i) the express written consent of a Member is required to reduce such Member's Capital Account or such Member's rights to allocations and distributions with respect thereto; (ii) this Article 16 may not be amended without the unanimous consent of all Members; and (iii) any section of this Agreement requiring the consent or vote of more than a Majority in Interest for action to be taken shall only be amended upon receiving the approval or consent of the Members holding the number of Units required to consent to or vote in favor of such action in such section.

(b) Notwithstanding Section 16(a) above, the Board of Managers, on behalf of the Company, may amend this Agreement without the consent of the Members as follows:

(i) The Board of Managers may amend **Exhibit A** from time to time as necessary to reflect the addition of Members and/or changes in the number of Units owned by, and the Percentages of, the Members.

(ii) The Board of Managers may amend this Agreement if such amendment is solely for the purpose of clarification and does not change the substance hereof and the Company has obtained the opinion of its counsel to that effect.

(iii) The Board of Managers may amend this Agreement if such amendment is, in the opinion of counsel for the Company, necessary or appropriate to satisfy requirements of the Code with respect to partnerships or of any federal or state securities laws or regulations. Any amendment made pursuant to this paragraph may be made effective as of the date of this Agreement.

(c) No waiver of a breach or condition of this Agreement shall be effective unless in writing and signed by the party or parties sought to be charged therewith, and a waiver in one instance shall not be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

ARTICLE 17. Notices and Addresses.

All notices or other communications given or made under this Agreement shall be in writing and shall be (a) personally delivered or (b) sent by certified mail, return receipt requested, postage prepaid or by reputable overnight courier providing a receipt against delivery. Such notices or other communications shall be delivered or sent to the Members at their respective addresses set forth on **Exhibit A** hereof, and to the Company at its principal office

specified in Article 2 of this Agreement, or in either case such other address as any party may specify in a notice to the other parties,. All notices shall be effective upon receipt.

ARTICLE 18. Applicable Law.

The validity, construction, performance and enforceability of this Agreement shall be governed in all respects by the laws of the State of Delaware, without reference to the choice-of-law principles thereof.

ARTICLE 19. Construction.

As used herein, each of the masculine, feminine or neuter genders shall include the other genders, the singular shall include the plural and the plural shall include the singular, whenever appropriate to the context. Article titles or captions contained in this Agreement are inserted only as a matter of convenience and as reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of the provisions hereof. The parties hereto agree that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. References to any statute or regulation refer to such statute or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and references to any section of any statute or regulation include any successor to such section. Each ambiguity in this Agreement shall be construed to maximize consistency between this Agreement and the Rulebook.

ARTICLE 20. Counterparts.

This Agreement may be executed in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all of the counterparts shall constitute one and the same instrument, and this Agreement shall be deemed effective on the date it is executed by the parties hereto.

ARTICLE 21. No Waiver.

The failure of any party to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

ARTICLE 22. Successors and Assigns.

Subject to the restrictions on transferability contained in this Agreement, this Agreement and all of its provisions shall be binding on and inure to the benefit of the successors and permitted assigns of the parties.

ARTICLE 23. Entire Agreement.

This Agreement constitutes the entire understanding of the parties, and supersedes all prior to contemporaneous agreements among them, with respect to the subject matter hereof.

ARTICLE 24. Public Sale.

In connection with any sale, occurring simultaneously with or after an initial offering of securities to the public pursuant to an offering registered under the Securities Act of 1933 or to the public through a broker, dealer or market maker (pursuant to the provisions of Rule 144 (or any similar provision then in force) under the Securities Act of 1933 or otherwise) (a "Public Sale"), the parties hereto agree to cooperate in all respects and to take any and all such actions as may be deemed necessary and advisable by the Board of Managers to complete the Public Sale, including, but not limited to:

(i) making all necessary amendments to this Agreement; and/or

(ii) taking any actions necessary to restructure, reorganize, or recapitalize the Company, or ownership therein, as may be necessary to effectuate the Public Sale, in each case so as to optimize the structure for the benefit of the Company and the Members, as appropriate in light of any legal, tax, or other professional advice received by the Company, including, without limitation, converting the Company to a corporation;

provided, that such amendments and actions will not include measures that would unreasonably affect the interests of the Company or the Members beyond what is reasonably necessary for the successful implementation of the Public Sale.

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IN WITNESS WHEREOF, the undersigned have executed this Limited Liability Company Agreement as of the day and year first aforesaid.

	trucEX LLC By: _____ Sunil Hirani Title: Manager
	MEMBERS: SwapCo Holdings LLC By: _____ Name: _____ Title: _____

EXHIBIT A

MEMBERS AND UNITS

UNITS			
Name and Address	**Total # of Units**	**Proportionate Percentage**	**Capital Contribution**
SwapCo Holdings LLC	1,000	100.00%	$1,000.00
TOTAL	**1,000**	**100.00%**	**$1,000.00**

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "TRUEEX LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTIETH DAY OF FEBRUARY, A.D. 2012.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "TRUEEX LLC" WAS FORMED ON THE EIGHTEENTH DAY OF OCTOBER, A.D. 2011.

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

Jeffrey W. Bullock, Secretary of State

5053661 8300

AUTHENTICATION: 9375031

120192067

DATE: 02-20-12

You may verify this certificate online at corp.delaware.gov/authver.shtml