AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

SCREAMING EAGLE BNR JV, LLC

Dated as of August 4, 2022

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS (OR EXEMPTION THEREFROM) AND WITHOUT COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT ARE SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS ON TRANSFER SET FORTH HEREIN, AND THE COMPANY RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH INTERESTS UNLESS AND UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO THE REQUESTED TRANSFER AND THE TRANSFEROR HAS COMPLIED WITH SUCH RESTRICTIONS.

TABLE OF CONTENTS

INDEX OF DEFINED TERMS

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF

SCREAMING EAGLE BNR JV, LLC

This Amended and Restated Limited Liability Company Agreement of Screaming Eagle BNR JV, LLC, a Delaware limited liability company, dated as of August 4, 2022 (the "**Effective Date**"), is adopted, executed and agreed to, for good and valuable consideration, by and among SEP, BNR (together with SEP the "**Initial Members**") and Buffalo XXII Operating, LLC, a Texas limited liability company ("**Buffalo XXII** "), and any other Persons (as defined below) who are hereafter admitted as Members (as defined below) of the Company in accordance with the terms hereof.

WHEREAS, the Company was formed on April 20, 2022 as a limited liability company under the Act by the filing of the Certificate with the Secretary of State of the State of Delaware and the execution of a Limited Liability Company Agreement by SEP (the "**Original Agreement**"); ***[Note to BNR: it appears BNR formed a new TX LLC with the Company's name; please send SEP the Certificate of Formation of such entity.]***

WHEREAS, prior to the execution of this Agreement and since the formation of the Company, SEP has owned 100% of the equity interests of the Company;

WHEREAS, the Members desire to enter into this Agreement to (a) amend and restate the Original Agreement in its entirety; (b) provide for the management and operation of the Company; and (c) set forth the rights and obligations of the Members in respect thereof; and

NOW, THEREFORE, the Members, by execution of this Agreement, hereby agree as follows:

ARTICLE 1

Definitions

1.1 Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"**Act**" means the Delaware Limited Liability Company Act, as amended from time to time, and any successor to such statute.

"**Adjusted Capital Account**" means the Capital Account, with respect to each Member, maintained for such Member as of the end of each taxable period, (a) increased by any amounts that such Member is obligated to restore under the standards set by Treasury Regulation section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore under Treasury Regulation sections 1.704-2(g) and 1.704-2(i)(5)), and (b) decreased by (i) the amount of all losses and deductions that, as of the end of such taxable period, are reasonably expected to be allocated to such Member in subsequent years under sections 704(e)(2) and 706(d) of the Code and Treasury Regulation section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such taxable period, are reasonably expected to be made to such Member in subsequent years in

accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Member's Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 5.1(b)(i) or Section 5.1(b)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Adjusted Property**" means any property, the Carrying Value of which has been adjusted pursuant to Section 4.3(d).

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by or is under common Control with, such Person. Notwithstanding the foregoing, for purposes of this Agreement, (a) no Member, by virtue of being a Member of the Company or a party to this Agreement, shall be considered an Affiliate of the Company or any of its Subsidiaries and (b) no Member or its Affiliates, by virtue of being a Member of the Company or a party to this Agreement, shall be considered an Affiliate of any other Member or any of such other Member's Affiliates. For the avoidance of doubt, the Operator shall be deemed to be an Affiliate of BNR during any period in which Buffalo XXII is serving as Operator in accordance with this Agreement.

"**Affiliate Contract**" means any contract, agreement, arrangement, understanding or other transaction between the Company or a Subsidiary of the Company, on the one hand, and a Member or an Affiliate of a Member, on the other hand.

"**Agreed Allocation**" means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 5.1 including a Curative Allocation (if appropriate to the context in which the term "Agreed Allocation" is used).

"**Agreed Value**" of any Contributed Property means the Fair Market Value of such property at the time of contribution as determined by the Board of Directors, without regard to the Liabilities deducted from Agreed Value pursuant to clause (a) of the definition of Net Agreed Value. The Board of Directors shall use such method as it determines appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Company in a single or integrated transaction among each separate property on a basis proportional to the Fair Market Value of each Contributed Property.

"**Agreement**" means this Amended and Restated Limited Liability Company Agreement, as it may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

"**Approved Sale**" means any transaction or a series of related transactions involving (a) the sale of all of the outstanding Membership Interests to an Independent Third Party, (b) a merger of the Company with an Independent Third Party, or (c) a sale of all or substantially all of the assets of the Company to an Independent Third Party, in the case of each of the foregoing (a), (b) or (c), for consideration in cash, equity interests or any combination thereof.

"**Available Cash**" means, with respect to any fiscal quarter ending prior to the dissolution or liquidation of the Company, and without duplication:

(a) the sum of all cash and cash equivalents of the Company on hand at the end of such fiscal quarter, *less*

(b) the sum of (i) the amount of any cash reserves determined by the Board of Directors, in its reasonable discretion based on the recommendation of Operator, to be necessary or appropriate to (A) provide for the proper conduct of the business of the Company (including reserves for accrued obligations of the Company, future maintenance expenditures and anticipated future needs of the Company) subsequent to such fiscal quarter; or (B) comply with Law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Company is a party or by which it is bound or its assets are subject, *plus* (ii) any amounts determined by the Board of Directors, based on the recommendation of Operator, to be necessary to fund expenditures set forth in the applicable Budget and related capital funding schedule, or any approved amendment thereto, for the subsequent month.

Notwithstanding the foregoing, "Available Cash" with respect to the fiscal quarter (1) that includes the Effective Date and (2) in which a liquidation or dissolution of the Company occurs and any subsequent fiscal quarter, shall be deemed to equal zero.

"**Bankruptcy**" (and its correlative terms) means, with respect to any Person, that (a) such Person (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; or (iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person's properties; or (b) ninety (90) Days have passed after the commencement of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law, if the proceeding has not been dismissed, or sixty (60) Days have passed after the appointment, without such Person's consent or acquiescence, of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person's properties, if the appointment is not vacated or stayed, or sixty (60) Days have passed after the date of expiration of any such stay, if the appointment has not been vacated. The foregoing definition of "Bankruptcy" shall supersede and replace the definition of "Bankruptcy" contained in the Act.

"**BNR**" means Buffalo Natural Resources, LLC, a Texas limited liability company, any Substituted Member in respect thereof and their respective successors and Transferees permitted in accordance with this Agreement.

"**Book-Tax Disparity**" means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for U.S. federal income tax purposes as of such date. A Member's share of the Company's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Member's Capital Account balance as maintained pursuant to Section 4.3 and the hypothetical balance of such Member's Capital Account computed as if it had been maintained strictly in accordance with U.S. federal income tax accounting principles.

"**Budget**" means the Initial Budget or any Operating Budget, as applicable, in each case that is approved in accordance with this Agreement.

"**Business Day**" means any Day other than a Saturday, a Sunday or a Day on which national banking associations located in the State of Texas are required or authorized by applicable Law to remain closed.

"**Capital Account**" means the capital account maintained for each Member pursuant to Section 4.3.

"**Capital Contribution**" means the dollar amount of any cash or cash equivalents or the Net Agreed Value of Contributed Property, in each case that a Member contributes to the Company.

"**Carrying Value**" means (a) with respect to Contributed Property, the Agreed Value of such property reduced (but not below zero) by all Depreciation charged to the Members' Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Company property, the adjusted basis of such property for U.S. federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with Section 4.3(d) to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Company properties, as reasonably deemed appropriate by the Tax Matters Member.

"**Change in Control**" means an event, other than a Transfer, whereby in the case of any Member or the Operator, such Member or Operator, as applicable, is not Controlled by the Person, or their estate, that, at the time of such Member's admission to the Company or at the time the Operator became the Operator in accordance with this Agreement, as applicable, Controlled such Member or Operator, as applicable, and such Person had no other Person that Controlled such Person.

"**Code**" means the United States Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"**Company**" means Screaming Eagle BNR JV, LLC, a Delaware limited liability company, or any successor Entity thereto contemplated by this Agreement.

"**Company Minimum Gain**" has the meaning given the term "partnership minimum gain" in Treasury Regulation section 1.704-2(b)(2) and the amount of which shall be determined in accordance with the principles of Treasury Regulation section 1.704-2(d).

"**Contributed Property**" means each property or other asset (other than cash or cash equivalents) contributed to the Company. Once the Carrying Value of a Contributed Property is first adjusted pursuant to Section 4.3(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

"**Contribution Agreement**" means the Contribution Agreement, dated as of the Effective Date, by and among BNR, the Company and, for purposes of Section 9.8 thereof, Screaming Eagle Partners, LLC.

"**Control**" (and its correlative terms) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Curative Allocation**" means any allocation of an item of income, gain, deduction or loss pursuant to the provisions of Section 5.1(b)(x).

"**Day**" means a calendar day.

"**Depreciation**" means, for each taxable period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for U.S. federal income tax purposes with respect to an asset for such taxable period, except that (a) with respect to any such asset the Carrying Value of which differs from its adjusted tax basis for U.S. federal income tax purposes and which difference is being eliminated by use of the "remedial method" pursuant to Treasury Regulation section 1.704-3(d), Depreciation for such taxable period shall be the amount of book basis recovered for such taxable period under the rules prescribed by Treasury Regulation section 1.704-3(d)(2), and (b) with respect to any other such asset the Carrying Value of which differs from its adjusted tax basis at the beginning of such taxable period, Depreciation shall be an amount which bears the same ratio to such beginning Carrying Value as the U.S. federal income tax depreciation, amortization, or other cost recovery deduction for such taxable period bears to such beginning adjusted tax basis; provided, however, that if the adjusted tax basis of any property at the beginning of such taxable period is zero dollars, Depreciation with respect to such property shall be determined with reference to such beginning value using any reasonable method selected by the Tax Matters Member.

"**Designating Member**" means, with respect to a Director, the Member who has the right pursuant to Section 6.2 to elect and remove from office such Director.

"**Director**" means any individual appointed as a member of the Board of Directors as provided in Section 6.2, but such term does not include any individual who has ceased to be a member of the Board of Directors.

"**Disinterested Director**" means, (a) in the case of any decisions with respect to an Affiliate Contract, a Director whose Designating Member (or its Affiliate) is not a party to such Affiliate Contract (b) in the case of any matter described in Section 6.12(d)(ii), a Director whose Designating Member (or its Affiliate) is not the adverse party, or (c) in the case of any decisions with respect to Section 7.5, a Director whose Designating Member (or its Affiliate) is not BNR or the Operator. For the avoidance of doubt, the Director whose Designating Member (or its Affiliate) is BNR or the Operator shall be considered a Disinterested Director in respect of Section 6.12(q).

"**Disqualified Person**" means (a) any "tax-exempt entity" as that term is defined in section 168(h) of the Code, including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing, any foreign person or any Indian tribal government, in each case except if such Person's direct or indirect ownership of the Company would cause the Person or its owners for U.S. federal income tax purposes to be subject to (i) tax under section 511 of the Code or (ii) with respect to any foreign person, tax under Chapter 1 of

Subtitle A of the Code with respect to income from or in respect of the Company and (b) any partnership or other pass-through entity, and any direct or indirect partner (or other holder of an equity or profits interest) of such partnership or other pass-through entity, which is an organization or entity described in clause (a); provided, that if any indirect owner of a Member that is a Person described in clauses (a) or (b) owns its indirect interest through a corporation (as such term is defined Treasury Regulation section 301.7701-2(b)), then such Person will not be deemed to be a Disqualified Person; provided further, that if such a corporation is a "tax-exempt controlled entity" within the meaning of section 168(h)(6)(F)(iii) of the Code, such corporation has filed a valid election under section 168(h)(6)(F)(ii) of the Code and such election is in effect.

"**Economic Risk of Loss**" has the meaning set forth in Treasury Regulation Section 1.752-2(a).

"**Entity**" means a corporation, limited liability company, venture, partnership (general or limited), trust, unincorporated organization, association or other entity.

"**ETX Transaction**" has the meaning set forth in the Contribution Agreement.

"**Fair Market Value**" means the value of any specified interest or property, which shall not in any event be less than zero, that would be obtained in an arms-length transaction for cash between an informed and willing buyer and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, and without regard to the particular circumstances of the buyer or seller, in each case as determined in good faith by Required Approval of the Board of Directors.

"**GAAP**" means the generally accepted accounting principles in the United States of America as commonly applied by oil and gas exploration and production companies, as in effect from time to time.

"**Governmental Authority**" means any legislature, court, tribunal, arbitrator, authority, agency, commission, division, board, bureau, branch, official or other instrumentality of the United States, or any domestic state, county, city, tribal or other political subdivision, governmental department or similar governing entity, and including any governmental, quasi-governmental or non-governmental body exercising similar powers of authority.

"**Indebtedness**" of a Person means any (a) indebtedness of such Person, whether or not contingent, for borrowed money, (b) obligations (contingent or otherwise) of such Person for the deferred purchase price of assets, property or services, other than trade payables, (c) obligations of such Person evidenced by notes, bonds, debentures, leases required to be capitalized in accordance with generally accepted accounting principles in the United States, and (d) indebtedness of others referred to in clauses (a) through (c) above guaranteed directly or indirectly in any manner by such Person.

"**Indemnitee**" means any (a) Person who is or was an Officer, Director or agent of the Company, (b) Person who is or was an officer, director or agent of any of the Company's Affiliates, (c) Person who is or was serving at the request of the Company or any of its Affiliates as an officer, director or agent of another Person, or (d) Person who is or was serving as "partnership

representative" of the Company under section 6223 of the Code; *provided*, that the Operator shall not be considered an Indemnitee for purposes of this Agreement.

"**Independent Third Party**" means any Person that, immediately prior to the contemplated transaction, is not a Member or an Affiliate of any Member.

"**Law**" means any applicable constitutional provision, statute, act, code (including the Code), law, regulation, rule, ordinance, order, decree, ruling, resolution, judgment, decision of a Governmental Authority.

"**Liabilities**" means, as to any Person, all indebtedness, liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"**License Agreement**" means [ ].

"**Material Contract**" means (a) any agreement, arrangement or understanding between or among the Company or any of its Subsidiaries and any other Person(s) and that: (i) has a primary term of more than one (1) year (or has a term that extends automatically and is not terminable by the Company or any of its Subsidiaries that are party thereto upon thirty (30) or fewer Days' notice); (ii) has or is reasonably expected to have annual expenses in excess of $50,000 during any twelve (12) month period; (iii) requires the Company or any of its Subsidiaries to sell, lease, farmout, trade, exchange, or otherwise dispose of all or any part of the assets of the Company or any of its Subsidiaries; (iv) allows a Person to have the right to be carried or allows for the obligation to carry another Person with respect to, or in connection with, the ownership, operation or development of any of the assets of the Company or any of its Subsidiaries; (v) is for the gathering, treatment, processing, storage, disposal or transportation of hydrocarbons or water, the use of surface property, and/or contains dedications or volume commitments that are binding on the assets of the Company or any of its Subsidiaries; (vi) is a hedge, forward, futures, swap, collar, put, call, floor, cap, option or other similar agreement, arrangement or understanding that is intended to reap a benefit from, or reduce or eliminate the risk of, fluctuations in the price of commodities, including any hydrocarbons or other commodities, currencies, interest rates and indices; (vii) guarantees any obligation of another Person; (viii) constitutes a partnership agreement, joint venture agreement or similar agreement, arrangement or understanding; (ix) has the primary purpose of providing for indemnification of another Person; or (x) is a seismic or other geophysical acquisition agreement or license; and (b) any agreement, arrangement or understanding that contemplates revenue-generating services to be performed, or commercial activities (including the purchase or sale of water, natural gas or other hydrocarbons) to be undertaken, by the Company or any of its Subsidiaries.

"**Member**" means the Initial Members and any other Person hereafter admitted to the Company as a new Member or Substituted Member of the Company as provided in this Agreement, but does not include any Person who has ceased to be a member of the Company.

"**Member Nonrecourse Debt**" has the meaning set forth for "partner nonrecourse debt" in Treasury Regulation section 1.704-2(b)(4).

"**Member Nonrecourse Debt Minimum Gain**" has the meaning set forth for the term "partner nonrecourse debt minimum gain" in Treasury Regulation section 1.704-2(i)(2).

"**Member Nonrecourse Deduction**" has the meaning assigned to the term "partner nonrecourse deduction" in Treasury Regulation section 1.704-2(i)(1).

"**Membership Interest**" means a limited liability company interest (as such term is defined in the Act) of a Member, including the right to receive distributions from the Company, together with all other rights, benefits, and privileges enjoyed by the Member (under the Act, the Certificate, this Agreement or otherwise) in its capacity as a Member, including the right to vote, consent, and approve, and all obligations, duties, and Liabilities imposed on the Member (under the Act, the Certificate, this Agreement or otherwise) in its capacity as a Member.

"**Net Agreed Value**" means (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any Liabilities either assumed by the Company upon such contribution or to which such property is subject when contributed, and (b) in the case of any property distributed to a Member or Transferee by the Company, the Company's Carrying Value of such property (as adjusted pursuant to Section 4.3(d)) at the time such property is distributed, reduced by any indebtedness either assumed by such Member or Transferee upon such distribution or to which such property is subject at the time of distribution as determined under section 752 of the Code.

"**Net Income**" means, for any taxable period, the excess, if any, of the Company's items of income and gain for such taxable period over the Company's items of loss and deduction for such taxable period. The items included in the calculation of Net Income shall be determined in accordance with Section 4.3(b).

"**Net Loss**" means, for any taxable period, the excess, if any, of the Company's items of loss and deduction for such taxable period over the Company's items of income and gain for such taxable period. The items included in the calculation of Net Loss shall be determined in accordance with Section 4.3(b).

"**Nonrecourse Built-in Gain**" means with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Members pursuant to Section 5.2(b)(i)(A) or 5.2(b)(ii)(A) if such properties were disposed of in a taxable transaction in full satisfaction of such Liabilities and for no other consideration.

"**Nonrecourse Deductions**" means any and all items of loss, deduction, or expenditure (described in section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation section 1.704-2(b)(1), are attributable to a Nonrecourse Liability.

"**Nonrecourse Liability**" has the meaning given to such term in Treasury Regulation section 1.704-2(b)(3).

"**Officer**" means any individual duly appointed as an officer of the Company as provided in Section 6.7, but such term does not include any Person who has ceased to be an officer of the Company.

"**Operator**" means initially Buffalo XXII, and any successor thereto appointed to the position of Operator in accordance with Section 6.12(q).

"**Percentage Interest**" means (a) with respect to SEP, (i) 90% for the pendency of any period during which the Company is required to make distributions in accordance with Section 5.3(a)(i) (including when such distributions are made in accordance with Section 5.3(b)) and (ii) 60% for the pendency of any period during which the Company is obligated to make distributions in accordance with Section 5.3(a)(iii); and (b) with respect to BNR, (i) 10% for the pendency of any period during which the Company is required to make distributions in accordance with Section 5.3(a)(i) (including when such distributions are made in accordance with Section 5.3(b)) and (ii) 40% for the pendency of any period during which the Company is obligated to make distributions in accordance with Section 5.3(a)(iii).

"**Permit**" means any license, permit, certificate of authority, approval, tender, bid, registration, franchise, variance, exemption, consent or other authorization of or from a Governmental Authority.

"**Permitted Overrun**" means with respect to any applicable Budget, an amount of expenditure that does not result in aggregate expenditures exceeding by more than ten percent (10%) of the remainder of (a) the aggregate amount set forth in the applicable Budget, *less* (b) the aggregate contingency amount included in the applicable Budget.

"**Person**" means a natural person, an Entity or a Governmental Authority.

"**Preferred Return Threshold**" means the time at which SEP has received cumulative distributions from the Company in respect of its Membership Interests in an amount equal to or greater than the sum of (a) 150% *multiplied by* $6,000,000 prior to SEP making any additional Capital Contributions following the Effective Date, and (b) if applicable, 150% *multiplied by* the amount of such additional Capital Contributions if BNR approves such additional Capital Contributions and if SEP makes any additional Capital Contributions following the Effective Date. For the avoidance of doubt, (i) no portion of the Initial Capital Contributions that are contributed to the Company following the Effective Date shall be considered an additional Capital Contribution for purposes of clause (b) of this definition and (ii) any additional Capital Contributions set forth in a Budget shall be deemed approved by all Members.

"**Project Financing**" means long-term financings with any commercial banking or financial institutions of the assets or properties of the Company or the development thereof based upon (a) the projected cash flows from, or (b) the production reserves of, in each case, such assets; *provided, however* that if such financing is with more than one lender, the administrative agent(s) or documentation agent(s) of such facility shall be one or more commercial banking institutions.

"**Prudent Operating Practices**" means those practices, methods, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by professional firms performing management and operation services for oil and gas assets in the United States of America similar to the assets of the Company.

"**Recapture Income**" means any gain recognized by the Company (computed without regard to any adjustment required by section 734 or 743 of the Code) upon the disposition of any

property or asset of the Company, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

"**Required Allocations**" means any allocation of an item of income, gain, loss or deduction pursuant to Sections 5.1(b)(i) through 5.1(b)(vii) or Section 5.1(b)(ix).

"**Required Approval**" means the affirmative vote or consent of the SEP Director; *provided, however*, that if applicable based on the principles set forth in the definition of "Disinterested Director", such affirmative vote or consent shall be measured solely by reference to the affirmative vote or consent of the BNR Director.

"**Residual Gain**" or "**Residual Loss**" means any item of gain or loss, as the case may be, of the Company recognized for U.S. federal income tax purposes resulting from a sale, exchange or other disposition of a Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Section 5.2(b)(i)(A) or 5.2(b)(ii)(A), respectively, to eliminate Book-Tax Disparities.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security Interest**" means any security interest, lien, mortgage, encumbrance, hypothecation, pledge or other obligation, whether created by operation of Law or otherwise, created by any Person in any of its property or rights.

"**SEP**" means Screaming Eagle Partners, LLC any Substituted Member in respect thereof and their respective successors and Transferees permitted in accordance with this Agreement.

"**Service**" means the Internal Revenue Service.

"**Standard of Performance**" means performing in accordance with (a) Prudent Operating Practices; (b) those practices, methods, techniques, and standards of safety and performance, as such may be changed from time to time, that are consistent with the degree of diligence and care that Operator exercises with respect to the construction, development, maintenance and operation, as applicable, of its oil and gas assets and those of its Affiliates (and that such Affiliates exercise with respect to their own oil and gas assets); (c) the provisions of all rights of way and easements upon or under which any of appurtenances of the Company's assets, as applicable, are located; (d) the provisions of all agreements to which the Company or a Subsidiary of the Company is party or any of their assets are bound; (e) all applicable Laws (including environmental standards in effect from time to time, and any other applicable rules and requirements of Governmental Authorities), Permits, and other contracts related to the Company's assets; and (f) the terms of Operator's and the Company's insurance policies; provided, however, that in the event of a conflict among any of the foregoing, the most stringent requirement on Operator shall prevail.

"**Subsidiary**" of a Person means any other Person of which (a) fifty percent (50%) or more of the voting power represented by the outstanding capital stock or other voting securities or interests having voting power under ordinary circumstances to elect directors or similar members of the governing body of such Person or (b) fifty percent (50%) or more of the equity interests in such Person, shall at the time be owned or Controlled, directly or indirectly, by such other Person and/or by one or more of its Subsidiaries.

"**Substituted Member**" means a Person who is admitted as a Member of the Company, at such time as such Person has complied with the requirements of Section 3.12, in place of and with all the rights and obligations of the Member making the Transfer with respect to the Membership Interest so Transferred and who is shown as a Member on the books and records of the Company.

"**Transfer**" or "**Transferred**" means, with respect to a Membership Interest, a direct or indirect voluntary or involuntary sale (including a merger or consolidation), assignment, transfer, conveyance, exchange, devise, gift or any other alienation (in each case, with or without consideration) of any rights, interests or obligations with respect to all or any portion of such Membership Interest; *provided, however*, that "Transfer" shall (a) not include any grant of a Security Interest in a Membership Interest and (b) include any foreclosure on any Security Interest in a Membership Interest.

"**Transferee**" means a Person who receives all of a Member's Membership Interest through a Transfer in accordance with this Agreement.

"**Treasury Regulations**" means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provisions of succeeding, similar, substitute, proposed or final Treasury Regulations.

"**Unanimous Approval**" means the affirmative vote or consent of all members of the Board of Directors as then composed in accordance with Section 6.4(b); *provided however*, that if applicable based on the principles set forth in the definition of "Disinterested Director", such affirmative vote or consent shall be measured solely by reference to the affirmative vote or consent of the Disinterested Director.

"**Unrealized Gain**" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (a) the Fair Market Value of such property as of such date (as determined under Section 4.3(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.3(d) as of such date).

"**Unrealized Loss**" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.3(d) as of such date) over (b) the Fair Market Value of such property as of such date (as determined under Sections 4.3(d)).

1.2 Construction. The headings and captions herein are inserted for convenience of reference only and are not intended to govern, limit or aid in the construction of any term or provision hereof. The Initial Members recognize that this Agreement is the product of the joint efforts of the Initial Members. It is the intention of the parties that every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party (notwithstanding any rule of Law requiring an agreement to be strictly construed against the drafting party), it being understood that the parties to this Agreement are sophisticated and have had adequate opportunity and means to retain counsel to represent their interests and to otherwise negotiate the provisions of this Agreement. Further, unless the context requires otherwise:

(a) terms defined in Section 1.1 or elsewhere in this Agreement have the meanings assigned to them in that Section for purposes of this Agreement;

(b) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;

(c) references to Articles and Sections (other than in connection with the Code, other Law, the Treasury Regulations or the Act) refer to Articles and Sections, respectively, of this Agreement unless otherwise indicated by the context thereof;

(d) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Article or Section;

(e) "include," "includes," and "including" mean "include, without limitation," "includes, without limitation," and "including, without limitation," respectively;

(f) terms defined herein include the plural as well as the singular;

(g) all exhibits or schedules attached hereto are hereby incorporated herein and made a part hereof for all purposes; provided that, in the event of a conflict between the terms of this Agreement and any exhibit or schedule hereto, the terms of this Agreement will control; and

(h) "or" is not exclusive.

ARTICLE 2

Organization

2.1 Organization. The Company was formed as a Delaware limited liability company by the filing of the Certificate of Formation of the Company (the "**Certificate**") in the office of the Secretary of State of the State of Delaware pursuant to the Act on April 20, 2022. The Members desire to continue the Company for the purposes and upon the terms and conditions hereinafter set forth. Except as provided herein, the rights, duties and Liabilities of each Member shall be as provided in the Act.

2.2 Name. The name of the Company is "Screaming Eagle BNR JV, LLC" and all Company business must be conducted in that name or such other names that comply with Law and as the Board of Directors may select.

2.3 Registered Office; Registered Agent; Principal Office; Other Offices.

(a) The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the office of the registered agent for service of process named in the Certificate or such other office (which need not be a place of business of the Company) as the Board of Directors may designate in the manner provided by Law. The Board of Directors shall cause the Company to register in the State of Texas as a foreign entity.

(b) The registered agent for service of process of the Company in the State of Delaware shall be the registered agent for service of process named in the Certificate or such other Person or Persons as the Board of Directors may designate in the manner provided by Law. The company shall also designate a registered agent in Texas.

(c) The principal office of the Company in the United States shall be located at 25211 Grogans Mill Road, Suite 350, The Woodlands, TX 77380, or such other place as the Board of Directors may from time to time designate by Required Approval, which need not be in the State of Delaware. The Company may have such other offices as the Board of Directors may designate.

2.4 Purpose; Powers. The purposes of the Company shall be to develop, own and operate the assets and properties of the Company approved by the Board of Directors as provided in this Agreement. The Company shall possess and may exercise all such powers and privileges granted by the Act, by any other Law or by this Agreement, and any powers incidental thereto as are necessary or convenient to the conduct, promotion or attainment of the foregoing purposes of the Company.

2.5 Foreign Qualification. Prior to the Company's conducting of business in any jurisdiction other than the State of Delaware, the Board of Directors shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Board of Directors, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction.

2.6 Term. The term of the Company as a Delaware limited liability company commenced on the date of the filing of the Certificate in the office of the Secretary of State of the State of Delaware, and the Company's existence shall be perpetual, unless and until the Company is dissolved in accordance with Article 9.

2.7 No State Law Partnership. No provision of this Agreement shall be interpreted so as to deem or construe the Company as a partnership (including a limited partnership) or joint venture or any Member as a partner or joint venturer of any other Member for any purposes other than U.S. federal and applicable state income tax purposes.

2.8 Title to Company Assets. Title to Company assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an Entity, and no Member, Director or Officer, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof. Title to any or all of the Company assets may be held in the name of the Company or one or more of its Affiliates or one or more nominees, as the Board of Directors may determine. All Company assets shall be recorded as the property of the Company in its books and records, irrespective of the name in which record title to such Company assets is held. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of any individual obligation of, any Member or Director.

2.9 No Liability. No Member will have any liability for any obligations or Liabilities of the Company, whether such Liabilities arise in contract, tort or otherwise, except to the extent that any such Liabilities or obligations are expressly assumed in writing by such Member.

2.10 Competitive Activities.

(a) Except as provided in this Section 2.10, no Member, Indemnitee, or any of their respective Subsidiaries or Affiliates, shall be expressly or implicitly restricted or proscribed pursuant to this Agreement, by Law or otherwise, from engaging in other activities for profit, including any business or activity engaged in by the Company, any Member or any of their respective Subsidiaries or Affiliates or anticipated to be engaged in by the Company, any Member or any of their respective Subsidiaries or Affiliates. Without limitation of the foregoing, (i) nothing in this Agreement shall be construed to require any Director to manage the Company or any of its Subsidiaries or Affiliates as his or her exclusive function, (ii) nothing in this Agreement shall be construed to require any Officer to serve as an officer of the Company or any of its Subsidiaries or Affiliates as his or her exclusive function, (iii) any Director or Officer of the Company may also be a director or officer of the Company's Subsidiaries, Members or any of Members' Affiliates, Subsidiaries or equity investees, and (iv) each Member, Indemnitee and their respective Subsidiaries, Affiliates, and equity investees shall have the right to engage in businesses of every type and description and to engage in and possess an interest in other business ventures of any and every type or description, independently or with others, including business interests and activities which may be in direct competition with the Company, any Member or any of their respective Subsidiaries or Affiliates, and none of the same shall be deemed wrongful or improper or shall breach any duty, express or implied, to the Company, any Member or any of their respective Subsidiaries or Affiliates. None of the Company, the Members or any other Person shall have any rights by virtue of this Agreement or the relationship created hereby, by Law or otherwise, in any business ventures of any Indemnitee, any Member or any of their respective Subsidiaries or Affiliates, or to the income or proceeds derived therefrom, and such Indemnitees, Members and their respective Subsidiaries, Affiliates and equity investees shall have no obligation to offer any interest in any such business ventures to the Company, any Member or any of their respective Subsidiaries or Affiliates or any other Person. Subject to Section 2.10(b), the legal doctrines of "corporate opportunity," "business opportunity," and similar doctrines will not apply to any Indemnitee, any Member or any of their respective Subsidiaries or Affiliates or any of their respective business ventures.

(b) Notwithstanding anything to the contrary herein, except through the Company or any of its Subsidiaries, no Member nor the Operator nor any of their Affiliates or Subsidiaries (each a "**Restricted Party**"), shall engage in, commence or enter into any transaction regarding, or otherwise pursue any potential business opportunity involving the acquisition, operations and/or development of oil and gas assets within the counties of Houston, Madison, Grimes and Walker, Texas (a "**Restricted Business Opportunity**"). Each Restricted Party shall give the Board of Directors written notice ("**Restricted Notice**") prior to engaging in, commencing, entering into or pursuing any Restricted Business Opportunity. The Board of Directors shall either accept or reject the Restricted Business Opportunity within thirty (30) Days of its receipt of the Restricted Notice. A Restricted Party may only be allowed to engage in, commence, enter into or pursue a Restricted Business Opportunity if the Board of Directors either (i) affirmatively rejects such Restricted Business Opportunity or (ii) does not affirmatively accept

or reject such Restricted Business Opportunity within thirty (30) Days of its receipt of the Restricted Notice.

2.11 No Power to Bind Company or Other Members. A Member or Affiliate of a Member may not take any action purporting to bind the Company, any other Member or their respective Affiliates, except as provided in this Agreement. All actions undertaken by the Members and their Affiliates, or any of them, are at their sole risk and expense except to the extent, if any, that the Company, with the approval of the Board of Directors as required in accordance with this Agreement, assumes those obligations by executing an Affiliate Contract in accordance with this Agreement. None of the Members is an agent, employee, contractor, vendor, representative or (except for tax purposes) partner of any other Member or its Affiliates by virtue of its execution of this Agreement, and a Member may not hold itself out as such; *provided, however*, that Members and their Affiliates may, subject to any applicable terms hereof, be parties to Affiliate Contracts with the approval of the Board of Directors as required in accordance with this Agreement.

ARTICLE 3

Members; Certificates; Issuance and Transfer of Membership Interests

3.1 Members. The Members as of the Effective Date are the Initial Members. Additional Members may be admitted to the Company either as additional Members or Substituted Members as provided in Section 3.12.

3.2 Number of Members. The number of Members of the Company shall never be fewer than one (1).

3.3 Membership Interests; Percentage Interests. The Company is authorized to issue a Membership Interest after the Effective Date upon Unanimous Approval. The Membership Interests shall comprise a single class, and the Membership Interests shall vote in accordance with their respective Percentage Interest with respect to any matter submitted for the vote or consent of the Members. The Membership Interests held by each Member are set forth on Exhibit A hereto, which exhibit shall be amended or supplemented by the Board of Directors as required to reflect changes and adjustments made from time to time in accordance with the terms of this Agreement.

3.4 Representations and Warranties. Each Member hereby represents and warrants to the Company and each other Member that (a) it is duly formed, validly existing and (if applicable) in good standing under the Laws of the state of its formation, and if required by Law is duly qualified to do business and (if applicable) is in good standing in the jurisdiction of its principal place of business (if not formed therein); (b) it has full corporate, limited liability company, partnership, trust or other applicable power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all necessary actions by its board of directors, shareholders, managers, members, partners, trustees, beneficiaries or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by that Member have been duly taken; (c) it has duly executed and delivered this Agreement, and this Agreement is enforceable against such Member in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles

of equity (whether applied in a proceeding in a court of Law or equity); (d) its authorization, execution, delivery, and performance of this Agreement does not conflict with any material obligation under any other material agreement or arrangement to which that Member is a party or by which it is bound; (e) it (i) has been furnished with sufficient information about the Company and the Membership Interest, (ii) has made its own independent inquiry and investigation into, and based thereon has formed an independent judgment concerning, the Company and that Member's Membership Interest therein, (iii) is able to bear the economic risks of its investment in the Company and has (or its parent has) a sufficient net worth to sustain a loss of its entire investment in the Company in the event such loss should occur, (iv) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company, and (v) understands and agrees that its Membership Interest shall not be sold, pledged (except as otherwise provided in definitive documentation relating to any Project Financing), hypothecated or otherwise Transferred except in accordance with the terms of this Agreement and pursuant to an applicable exemption from registration under the Securities Act and other applicable securities Laws; and (f) it is not a Disqualified Person.

3.5 Restrictions on Transfer. Except as otherwise provided herein, no Member may Transfer any Membership Interest unless: (a)(i) such Transfer received Required Approval from the Board of Directors; or (ii) such Transfer is permitted pursuant to Section 3.6; and (b) such Transfer otherwise complies with the procedures and conditions set forth in this Article 3. Any purported Transfer in contravention of this Section 3.5 shall be null and void *ab initio*, and the Company shall not recognize any such Transfer.

3.6 Permitted Transfers. Any Member may freely Transfer all or any portion of its Membership Interest to an Affiliate of such Member; *provided*, that, with respect to any such Transfer by BNR, such Affiliate must be Controlled by Zachary Hon and John Westmoreland.

3.7 Intentionally Deleted.

3.8 Transfer Taxes. Any transfer or similar taxes involved in any Transfer shall be paid by the Member making such Transfer, and the Member making such Transfer shall provide the Transferee with such evidence of the authority of the Member making such Transfer to Transfer hereunder.

3.9 Cooperation. Subject to Section 3.11(c), each of the Members shall, and shall cause their respective Affiliates to, cooperate with the Transferee and the Member making a Transfer, at the cost and expense of the Member making such Transfer, in doing all reasonable things necessary, proper or advisable to consummate and make effective, and to satisfy all conditions to, in the most expeditious manner practicable, a Transfer permitted by this Agreement, including (a) providing information reasonably requested by the Member making such Transfer in order to enable it to prepare the Transfer documentation and effectuate the Transfer, (b) providing information concerning the Company reasonably requested by potential purchasers (subject to confidentiality restrictions acceptable to the Company acting reasonably), and (c) obtaining necessary Permits and making necessary filings with third-parties or Governmental Authorities.

3.10 No Release. No Transfer of a Membership Interest shall effect a release of the Member making such Transfer (or its applicable Affiliates) from any Liabilities or obligations to the Company or the other Members that accrued prior to such Transfer.

3.11 Documentation; Validity of Transfer; Conditions.

(a) The Company shall not recognize for any purpose any purported Transfer of any Membership Interest unless and until the Company has received a joinder substantially in the form attached hereto as Exhibit C (a "**Joinder**") executed by the applicable Transferee (if such Transferee is not already a party to this Agreement).

(b) Each Transfer and, if applicable, admission complying with the provisions of this Section 3.11 shall be effective against the Company as of the first Business Day of the calendar month immediately succeeding the calendar month in which both (i) the Company has received the Joinder, if applicable, and (ii) the other requirements in this Section 3.11 have been satisfied; *provided, however*, that, absent such receipt and satisfaction, the Company shall not be bound or otherwise affected by any purported Transfer of any Membership Interest.

(c) The Company shall be entitled to be reimbursed by a Member making a Transfer for the reasonable and documented administrative out-of-pocket costs and expenses incurred by them to effect a Transfer with respect to such Member's Membership Interest, including costs incurred in connection with obtaining any necessary Permits or third party consents.

(d) Notwithstanding any other provision of this Agreement to the contrary, no Transfer may be made that would reasonably be expected to result in the Company becoming classified as a corporation for U.S. federal income tax purposes.

3.12 Additional Members; Substituted Members.

(a) Any Transferee of Membership Interests pursuant to a Transfer made in accordance with Section 3.6 or in compliance with Section 3.5 shall be admitted automatically as a Substituted Member with respect to the Transferred Membership Interests upon compliance with the applicable provisions of Section 3.11 with respect to such Transfers, but, in each case, without the consent or approval of any other Person.

(b) Notwithstanding anything to the contrary contained herein, an Independent Third Party may be admitted as an additional Member only if such Independent Third Party obtained Membership Interests in accordance with this Agreement.

(c) Unless and until a Transferee is admitted as a Member, such Transferee shall have no right to exercise any of the powers, rights or privileges of a Member hereunder. Upon becoming a Substituted Member (i) such Substituted Member shall have all of the powers, rights, privileges, duties, obligations, and Liabilities of a Member, as provided in this Agreement and by Laws, and (ii) the Member who Transferred the Membership Interest (A) shall cease to be a Member and (B) such Member and its guarantor, if applicable, shall be relieved of all of the obligations and Liabilities with respect to such Member's Transferred Membership Interest;

provided, however, that such Member shall remain fully liable for all Liabilities and obligations relating to such Membership Interest that accrued prior to the applicable Transfer.

3.13 Information; Confidentiality.

(a) The Members and the Operator (each, a "**Receiving Party**") acknowledge that, from time to time, they may receive information from or regarding the Company, its Subsidiaries or Affiliates or their respective customers or any other Member or its Affiliates in the nature of trade secrets or secret or proprietary information or information that is otherwise confidential, the disclosure of which may be damaging to the Company, its Subsidiaries or Affiliates, their respective customers or the Member or its Affiliates, as applicable. Each Receiving Party shall hold in strict confidence any such information it receives and may not disclose such information to any Person other than another Member, except for disclosures:

(i) necessary to comply with any Laws (including applicable stock exchange or quotation system requirements and disclosures of tax treatment or tax structure required by the Service);

(ii) to its employees, Affiliates, advisers or representatives; *provided, however*, that in the case of advisers and representatives, (A) only if the recipients of such information have agreed to be bound by the provisions of this Section 3.13(a) or are otherwise subject to a duty of confidentiality, and (B) the Receiving Party making such disclosure shall be responsible for any such Persons' use and disclosure of any such information;

(iii) of information that the Receiving Party also has received from a source independent of the Company but only if such Receiving Party reasonably believes such source obtained such information without breach of any obligation of confidentiality;

(iv) of information that such Receiving Party can reasonably demonstrate was independently developed by such Receiving Party without reliance upon any material separately developed by or for the Company (other than by such Receiving Party in its capacity as a Member or the Operator, as applicable);

(v) to existing or potential investors, lenders, accountants, and other representatives of the Receiving Party making such disclosure with a reasonable need to know such information, provided that the Receiving Party making such disclosure shall be responsible for such Persons' use and disclosure of any such information;

(vi) of public information;

(vii) in connection with any proposed Transfer of the Membership Interests of a Member, to the proposed Transferee in such Transfer and its Affiliates and its and their advisers and representatives; *provided, however*, the Transferee shall be responsible to the Company and the other Members for any violation of the terms of this Section 3.13(a)(vii) by any Person to whom such Transferee discloses such information; or

(viii) in connection with any Project Financing, to the lenders in such Project Financing and their representatives, but only if the recipients of such information have

agreed in writing to be bound by confidentiality provisions that are no less stringent on the recipient of information than those set forth in this Section 3.13(a); *provided, however*, that such confidentiality obligation may be limited to two (2) years.

Further, no Receiving Party shall be presumed to have misused any information solely because such Receiving Party or its Affiliate is the Operator where such Receiving Party or its Affiliate has used such information that is the subject of this Section 3.13(a) in its capacity as the Operator in accordance with the terms and conditions of this Agreement. The Members and the Operator acknowledge that a breach of the provisions of this Section 3.13(a) may cause irreparable injury to the Company, its Subsidiaries or Affiliates or another Member for which monetary damages are inadequate, difficult to compute or both. Accordingly, the Members and the Operator agree that the provisions of this Section 3.13(a) may be enforced by injunctive action or specific performance, and the Members and the Operator hereby waive any requirement to post bond in connection with any injunctive order or order for specific performance. Each Member and the Operator agrees and acknowledges that it shall be held accountable for disclosures in contravention of this Section 3.13(a) by its employees, Affiliates, advisers or representatives.

(b) The Members acknowledge that, from time to time, the Company may need information from any or all of such Members, including for complying with various applicable Law. Each Member shall provide to the Company all information reasonably requested by the Company for purposes of complying with applicable Law or for purposes of providing information to Governmental Authorities, in each case within a reasonable amount of time from the date such Member receives such request; *provided, however*, that no Member shall be obligated to provide such information to the Company to the extent such disclosure (i) could reasonably be expected to result in the breach or violation of any contractual obligation (if a waiver of such restriction cannot reasonably be obtained) or Law or (ii) involves secret, confidential or proprietary information; and provided, further, however, that in the alternative, any Member may provide such information directly to such Governmental Authorities.

3.14 Withdrawal. Each Member hereby covenants and agrees that it will not resign from the Company as a Member. A Member shall not cease to be a Member as a result of the Bankruptcy of such Member or as a result of any other events specified in section 18-304 of the Act. So long as a Member continues to hold any Membership Interests, such Member shall not have the ability to withdraw or resign as a Member prior to the dissolution and winding up of the Company and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void.

3.15 Compliance with Law. Each Member agrees that, in connection with its ownership of Membership Interests and this Agreement, it will not engage in the following transactions in violation of any applicable Laws: (a) pay or offer to pay directly or indirectly, to any domestic or foreign government official or employee amounts in order to obtain business, retain business or direct business to others, or for the purpose of inducing such government official or employee to fail to perform or to perform improperly his official functions; (b) receive, pay or offer anything of value, directly or indirectly, from or to any private party in the form of a commercial bribe, influence payment or kickback for any such purpose; or (c) use, directly or indirectly, any funds or other assets of the Company or its Subsidiaries, or proceeds from such Member's investment in

the Membership Interests, for any unlawful purpose including political contribution in violation of any applicable Laws.

3.16 Project Financing. Subject to approval as provided in Section 6.13(a), each Member hereby agrees to reasonably cooperate with the Company and the lenders in connection with any Project Financing.

ARTICLE 4

Capital Contributions

4.1 Capital Contributions.

(a) Initial Capital Contributions. As of the Effective Date, the initial Capital Contributions made by each Member are set forth on Exhibit A hereto (the "**Initial Capital Contributions**"), which exhibit shall be amended or supplemented by the Board of Directors as required to reflect changes and adjustments made from time to time in accordance with the terms of this Agreement. **[*Note to BNR: please provide an initial draft of the License Agreement.*]**

(b) Additional Capital Contributions. No Member shall be required pursuant to this Agreement to make any Capital Contributions or lend money to or for the benefit of the Company following the Effective Date. Notwithstanding the foregoing, nothing herein shall limit or otherwise affect the effectiveness of any agreement between any Member and any Person other than the Company obligating such Member to make additional Capital Contributions following the Effective Date.

4.2 Return of Contributions. A Member is not entitled (a) to the return of any Capital Contribution or (b) to be paid interest in respect of its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any other Member's Capital Contributions.

4.3 Capital Accounts. The Company shall maintain for each Member a separate Capital Account in accordance with the rules of Treasury Regulation section 1.704-1(b)(2)(iv) and in accordance with the provisions set forth in this Section 4.3.

(a) Each Member's Capital Account shall be increased by (i) the amount of all Capital Contributions made to the Company by such Member pursuant to this Agreement, (ii) all items of income and gain computed in accordance with Section 4.3(b) and allocated with respect to such Member pursuant to Section 5.1, and (iii) the amount of any Company Liabilities assumed by such Member or that are secured by any Company property distributed to such Member, and decreased by (A) the amount of cash or Net Agreed Value of property actually or deemed distributed to such Member pursuant to this Agreement, (B) all items of Company deduction and loss computed in accordance with Section 4.3(b) and allocated to such Member pursuant to Section 5.1, and (C) the amount of any Liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company (in the case of clauses (a)(iii)(A) and (a)(iii)(C), without duplication for Liabilities accounted for in the determination of Net Agreed Value of any property contributed by or distributed to such Member).

(b) For purposes of computing the amount of any item of income, gain, loss or deduction which is to be allocated pursuant to Article 5 and is to be reflected in the Members' Capital Accounts, the determination, recognition, and classification of any such item shall be the same as its determination, recognition, and classification for U.S. federal income tax purposes, provided that:

(i) All fees and other expenses incurred by the Company to promote the sale of (or to sell) a Membership Interest that can neither be deducted nor amortized under section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred and shall be allocated among the Members pursuant to Section 5.1.

(ii) Except as otherwise provided in Treasury Regulation section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss, and deduction shall be made without regard to any election under section 754 of the Code which may be made by the Company and, as to those items described in section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for U.S. federal income tax purposes. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(iii) Any income, gain or loss attributable to the taxable disposition of any Company property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Carrying Value with respect to such property as of such date.

(iv) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such items, there shall be taken into account Depreciation, computed in accordance with the definition of "Depreciation."

(v) For purposes of determining income, gain, loss, and deduction, or any other item allocable to any period, such items will be determined on a daily, monthly or other basis, as reasonably determined by the Tax Matters Member using any permissible method under section 706 of the Code and the related Treasury Regulations.

(c) A Transferee shall succeed to the pro rata portion of the Capital Account of the transferor relating to the Membership Interest so Transferred. Except as otherwise provided herein, all items of income, gain, expense, loss, deduction, and credit allocable to any Membership Interest that may have been transferred during any calendar year shall, if permitted by Law, be allocated between the transferor and the Transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, based upon the interim closing of the books method; *provided, however*, that this allocation must be made in accordance with a method permissible under section 706 of the Code and the Treasury Regulations thereunder.

(d) In accordance with Treasury Regulation section 1.704-1(b)(2)(iv)(f), but except to the extent otherwise determined in the sole discretion of the Tax Matters Member, on (i) an issuance of additional Membership Interests for cash or Contributed Property (other than a contribution of a *de minimis* amount) and the issuance of Membership Interests as consideration for the provision of services, (ii) a distribution by the Company to a Member of property (other than a distribution of a *de minimis* amount) as consideration for a Membership Interest, and (iii) a liquidation of the Company within the meaning of Treasury Regulation section 1.704-1(b)(2)(ii)(g)(1), the Capital Accounts of all Members and the Carrying Value of each Company property immediately prior to such issuance, distribution, liquidation or adjustment shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance, distribution, liquidation or adjustment and had been allocated to the Members at such time pursuant to Section 5.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and Fair Market Value of all Company assets (including cash and cash equivalents) immediately prior to the issuance of additional Membership Interests, the redemption of a Membership Interest or the liquidation of the Company shall be determined by the Board of Directors using such method of valuation as it may adopt. The Board of Directors shall allocate such aggregate value among the assets of the Company (in such manner as it determines) to arrive at a Fair Market Value for individual properties.

ARTICLE 5

Allocations and Distributions

5.1 Allocations for Capital Account Purposes. For purposes of maintaining the Capital Accounts and in determining the rights of the Members among themselves, the Tax Matters Member shall cause the Company's items of income, gain, loss, and deduction (computed in accordance with Section 4.3(b)) to be allocated among the Members in each taxable period (or portion thereof) as provided herein below.

(a) General Allocations. After giving effect to the special allocations set forth in Section 5.1(b), and after adjusting for all Capital Contributions and distributions made during such taxable period, Net Income and Net Losses for any taxable period and, if necessary in the reasonable discretion of the Tax Matters Member, all items of income, gain, loss, and deduction taken into account in computing Net Income and Net Losses for such taxable period shall be allocated to the Members in a manner such that the Capital Account of each Member, immediately after giving effect to such allocation (including the allocations of such Members' share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain not otherwise required to be taken into account during such taxable period) is, as nearly as possible, equal, proportionately, (A) to the amount of the distributions that would be made to such Member at the end of such taxable period if (1) the Company were dissolved and terminated; (2) its affairs were wound up and each Company asset was sold for cash equal to its Carrying Value; (3) all unvested Membership Interests (if any) became vested Membership Interests; (4) all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability); and (5) the net assets of the Company were distributed in accordance with

Section 9.2(d)(ii) to the Members, *minus* (B) the amount any such Member is treated as obligated to contribute to the Company, computed immediately after the hypothetical sale of the Company assets.

(b) Special Allocations. Notwithstanding any other provision of this Section 5.1, the following special allocations shall be made for such taxable period in the following order and priority:

(i) Company Minimum Gain Chargeback. Notwithstanding the other provisions of this Section 5.1, if there is a net decrease in Company Minimum Gain during any taxable period, each Member shall be allocated items of income and gain for such taxable period (and, if necessary, subsequent taxable periods) in the manner and amounts provided in Treasury Regulation sections 1.704-2(f)(6) and (g)(2) and section 1.704-2(j)(2)(i), or any successor provisions. For purposes of this Section 5.1(b)(i), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.1(b) with respect to such taxable period (other than an allocation pursuant to Sections 5.1(b)(vi) and 5.1(b)(vii)). This Section 5.1(b)(i) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. Notwithstanding the other provisions of this Section 5.1 (other than Section 5.1(b)(i)), except as provided in Treasury Regulation section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any taxable period, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of income and gain for such taxable period (and, if necessary, subsequent taxable periods) in the manner and amounts provided in Treasury Regulation sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 5.1(b)(ii), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.1(b), other than Section 5.1(b)(i) and other than an allocation pursuant to Sections 5.1(b)(vi) and 5.1(b)(vii), with respect to such taxable period. This Section 5.1(b)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4) through (6), items of income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; *provided, however*, that an allocation pursuant to this Section 5.1(b)(iii) shall be made only if and to the extent that such Member would have a deficit in such Member's Adjusted Capital Account after all other allocations provided in this Article 5 have been tentatively made as if this Section 5.1(b)(iii) were not a part of this Agreement. This Section 5.1(b)(iii) is intended to be a

"qualified income offset" as that term is used in Treasury Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iv) Stop Loss. Except as described in the final sentence of this Section 5.1(b)(iv), no amount of Net Loss shall be allocated pursuant to Section 5.1(a) to the extent that such allocation would cause any Member to have a deficit balance in its Adjusted Capital Account at the end of such taxable period (or increase any existing deficit balance in its Adjusted Capital Account). All Net Losses in excess of the limitation set forth in the preceding sentence shall be allocated among such other Members, who have positive Adjusted Capital Account balances, in proportion to their respective Percentage Interests until each Member's Adjusted Capital Account balance is reduced to zero. Thereafter, any remaining Net Loss shall be allocated to the Members in proportion to their relative Percentage Interests as required by section 704(b) of the Code.

(v) Gross Income Allocations. In the event any Member has a deficit balance in its Adjusted Capital Account at the end of any taxable period in excess of the sum of (A) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (B) the amount such Member is deemed obligated to restore pursuant to Treasury Regulations sections 1.704-2(g) and 1.704-2(i)(5), such Member shall be specially allocated items of gross income and gain in the amount of such excess as quickly as possible; *provided, however*, that an allocation pursuant to this Section 5.1(b)(v) shall be made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided in this Section 5.1 have been tentatively made as if Section 5.1(b)(iii) and this Section 5.1(b)(v) were not in the Agreement.

(vi) Nonrecourse Deductions. Nonrecourse Deductions for any taxable period shall be allocated to the Members in accordance with their respective Percentage Interests. If the Tax Matters Member determines that the Company's Nonrecourse Deductions should be allocated in a different ratio reasonably to satisfy the safe harbor requirements of the Treasury Regulations promulgated under section 704(b) of the Code, the Tax Matters Member is authorized, upon written notice given to the Members, to revise the prescribed ratio to the numerically closest ratio which does satisfy such requirements.

(vii) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any taxable period shall be allocated one hundred percent (100%) to the Member that bears the Economic Risk of Loss with respect to such Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, such Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) Nonrecourse Liabilities. For purposes of Treasury Regulation section 1.752-3(a)(3), the Members agree that Nonrecourse Liabilities of the Company in excess of the sum of (A) the amount of Company Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members in accordance with their respective Percentage Interests.

(ix) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset pursuant to section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Treasury Regulations.

(x) Curative Allocation.

(A) Notwithstanding any other provision of this Section 5.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss or deduction allocated to each Member pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Member under the Agreed Allocations had the Required Allocations and the related Curative Allocations not otherwise been provided in this Section 5.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Company Minimum Gain and (2) Member Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Member Nonrecourse Debt Minimum Gain. Allocations pursuant to this Section 5.1(b)(x)(A) shall only be made with respect to Required Allocations to the extent the Tax Matters Member reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Members. Further, allocations pursuant to this Section 5.1(b)(x)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the Tax Matters Member determines that such allocations are likely to be offset by subsequent Required Allocations.

(B) The Tax Matters Member shall, with respect to each taxable period, (1) apply the provisions of Section 5.1(b)(x)(A) in whatever order is most likely to minimize economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 5.1(b)(x)(A) among the Members in a manner that is likely to minimize such economic distortions.

5.2 Allocations for Tax Purposes.

(a) Except as otherwise provided herein, for U.S. federal income tax purposes, each item of income, gain, loss, and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 5.1.

(b) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization, and cost recovery deductions shall be allocated for U.S. federal income tax purposes among the Members as follows:

(i) (A) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Members in the manner provided under section 704(c) of the Code that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution; and (B) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Members in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 5.1.

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Members in a manner consistent with the principles of section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 4.3(d), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Members in a manner consistent with Section 5.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Members in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 5.1.

(iii) The Tax Matters Member shall apply the principles of Treasury Regulation section 1.704-3 to eliminate Book-Tax Disparities, based on any such method or methods authorized thereunder, as the Tax Matters Member reasonably determines to be appropriate. No later than thirty (30) days prior to selecting any such method or methods with respect to any asset or property of the Company, the Tax Matters Member shall provide written notice to the other Members of its intent to make such selection. If any Member disagrees with the Tax Matters Member's proposed selection, the Tax Matters Member and such Member (and their respective advisors) shall consult and negotiate in good faith for the next ten (10) days to reach an agreement with respect to such selection. If, after such ten (10)-day period, any Member continues to disagree with such selection, such Member may, at its sole expense, provide a written quantification of the adverse impact that such selection would reasonably be expected to cause for such Member. If such adverse impact is both (a) disproportionate with respect to such Member in light of such Member's economic interest in the Company and (b) material in light of the distribution that such Member would receive in connection with a hypothetical liquidation under Section 9.2(d)(ii), in each case, as of such time, the Tax Matters Member shall utilize a different method or methods under Treasury Regulation section 1.704-3.

(c) For the proper administration of the Company, the Tax Matters Member shall (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations for U.S. federal income tax purposes of income (including gross income) or deductions; and (iii) amend the provisions of this Agreement as appropriate to reflect the proposal or promulgation of Treasury Regulations under section 704(b) or 704(c) of the Code. The Tax Matters Member may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 5.2(c) in its reasonable discretion, but only if such conventions, allocations or amendments are consistent with the principles of section 704 of the Code and the Treasury Regulations promulgated thereunder. Seven (7) days prior to making such determination, the Tax Matters Member shall consult with BNR and demonstrate that such determination is fair and equitable to both Members.

(d) Any gain allocated to the Members upon the sale or other taxable disposition of any Company asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 5.2, be characterized as Recapture Income in the same proportions and the same extent as such Members (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(e) All items of income, gain, loss, deduction, and credit recognized by the Company for U.S. federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to the election under section 754 of the Code that will be made by the Company; *provided, however*, that such allocations, once made, shall be adjusted (in any manner determined by the Tax Matters Member) as necessary or appropriate to take into account those adjustments permitted or required by sections 734 and 743 of the Code.

5.3 Distributions.

(a) Subject to the provisions of section 18-607 of the Act, the Company shall distribute, within thirty (30) days following the end of each fiscal quarter, all Available Cash (if any) to the Members as follows:

(i) First, a Tax Distribution will be made to the Members pursuant to Section 5.4 on a quarterly basis; and

(ii) Second, 90% to SEP and 10% to BNR, until the Preferred Return Threshold is achieved; and

(iii) Third, after the Preferred Return Threshold is achieved, 60% to SEP and 40% to BNR.

(b) If the Preferred Return Threshold is achieved at any time and, at any time thereafter SEP makes any additional Capital Contribution to the Company following the Effective Date, then from and after the date such additional Capital Contribution is made by SEP, distributions of Available Cash pursuant to this Section 5.3 shall be made in accordance with Section 5.3(a)(i) until such time as the Preferred Return Threshold is achieved with respect to such additional Capital Contribution.

(c) Any distributions attributable to the Membership Interests of the Company made in cash or property of the Company shall, subject to the provisions of Section 18-607 of the Act, be made to the Members in proportion to their respective Percentage Interests.

(d) Notwithstanding any provision to the contrary in this Section 5.3, the Company shall not be required to make any distribution of Available Cash to the Members if such distribution is not permitted by the Act or under the terms of any credit facility to which the Company is a party, and the Company's failure to make any such distribution shall not cause a breach or default under this Agreement.

5.4 Tax Distributions . The "Tax Distribution" for a Member for any fiscal quarter is the amount that, when added to any other distributions made to such Member pursuant to Section 5.3(a)(ii) and Section 5.3(a)(iii) during such fiscal quarter, is at least equal to the amount of the Member's federal income taxes with respect to the Member's allocable share of any Company net taxable income and gain for such fiscal quarter, determined by (i) excluding any allocations pursuant to Sections 704(c) or 743(b) of the Code, (ii) excluding an amount of allocations of net taxable income and gains equal to the excess, if any, of the aggregate net taxable losses and deductions allocated to such Member for all prior fiscal quarters over the aggregate net taxable income and gains allocated to such Member for all prior fiscal quarters and (iii) assuming (without regard to the actual effective income tax rate applicable to such Member (or its direct or indirect owners)) that such income or gain, as applicable, is taxable to the Member at an effective federal income tax rate using for each Member is the effective federal income tax rate for individual taxpayers resident in Harris County, Texas, then in effect, taking into account the character of such income or gain. For purposes of applying this Section 5.4, the Tax Matters Member may, in its sole discretion, treat a distribution made by the seventy-fifth day following the end of a calendar year as occurring during such calendar year (and not the calendar in which it was in fact made). Any Tax Distribution made to a Member pursuant to Section 5.3(a)(i) will be treated as an advance on distributions to such Member, and will reduce future distributions that would otherwise be made to such Member, pursuant to Section 5.3(a)(ii), Section 5.3(a)(iii) and Section 9.2(d)(ii).

ARTICLE 6

Management

6.1 Generally. To facilitate the orderly and efficient management of the Company, the Members shall act collectively as a "committee of the whole," which is hereby named the "**Board of Directors**." The Company will not have "managers," as that term is used in the Act, it being understood that the Directors do not constitute "managers." Except as otherwise required under the Act or expressly provided in this Agreement, each Member hereby (a) specifically delegates to the Board of Directors its rights and powers to manage and control the business and affairs of the Company in accordance with the provisions of section 18-407 of the Act, and (b) revokes its right to bind the Company, as contemplated by the provisions of section 18-402 of the Act. The Board of Directors shall have full power and authority to do all things necessary or appropriate to conduct, or cause to be conducted, the business and affairs of the Company. The Board of Directors may delegate authority conferred on it to Officers or other Persons. In addition, pursuant to Article 7 but subject to Sections 6.12 and 6.13, the Board of Directors has delegated to the Operator the authority to perform the services and obligations specifically enumerated in Article 7, and no additional delegation of authority or approval of the Board of Directors shall be required for Operator to perform such services.

6.2 Board of Directors.

(a) Composition of the Board. The initial Board of Directors shall consist of two (2) Directors. Each Director shall be appointed as provided in this Section 6.2(a) and shall hold office until such Director's earlier resignation, death or removal in accordance with this Section 6.2(a) or Section 6.5.

(i) So long as SEP is a Member, SEP shall be entitled to elect (by affirmative vote or written consent) one (1) Director (the "**SEP Director**"), to remove from office the SEP Director, to fill any vacancy caused by the resignation, death or removal of the SEP Director, and to fill any vacancy otherwise existing in the position of the SEP Director.

(ii) So long as BNR is a Member, BNR shall be entitled to elect (by affirmative vote or written consent) one (1) Director (the "**BNR Director**"), to remove from office the BNR Director, to fill any vacancy caused by the resignation, death or removal of the BNR Director, and to fill any vacancy otherwise existing in the position of the BNR Director.

(b) Initial Board. The initial Directors, effective as of the Effective Date, are set forth on Exhibit B.

(c) Director Authority. Except as otherwise specifically provided in this Agreement or by resolution of the Board of Directors, (i) no Director or group of Directors shall have any actual or apparent authority to enter into contracts on behalf of, or to otherwise bind, the Company, or to take any action in the name of or on behalf of the Company or conduct any business of the Company, and (ii) no Director shall have the power or authority to delegate to any Person such Director's rights and powers as a Director to manage the business and affairs of the Company.

(d) Committees. The Board of Directors may establish, name or dissolve one or more committees of the Board of Directors, each committee to consist of at least one (1) SEP Director. Any committee established pursuant to this Section 6.2(d) shall have and may exercise all the powers and authority delegated to such committee by the Board of Directors.

6.3 Meetings.

(a) Regular meetings of the Board of Directors shall be held at least monthly at times and places as shall be designated from time to time by resolution of the Board of Directors without any further notice than such resolution.

(b) Special meetings of the Board of Directors may be called by any Member entitled to appoint a Director.

(c) Notice of a meeting of the Board of Directors will be given to each Director, by personal delivery, e-mail or other electronic transmission at least fifteen (15) Days prior to any regular meeting of the Board of Directors and seven (7) Business Days prior to any special meeting of the Board of Directors. Any such notice, or waiver thereof, need not state the purpose of such meeting except as may otherwise be required by Law. Any electronic notice shall not include any other message or matters and shall state in the subject line in all bold capital letters, **"NOTICE OF BOARD MEETING".**

(d) Directors may participate in and hold a meeting of the Board of Directors by means of conference telephone, video conference or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meetings shall constitute presence in person at the meeting.

(e) Attendance of a Director at a meeting (including pursuant to Section 6.3(d)) shall constitute a waiver of notice of such meeting, except where such Director attends the meeting for the express purposes of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.4 Quorum and Voting.

(a) Quorum.

(i) The attendance of at least one (1) Director at a meeting shall constitute a quorum of the Board of Directors for the transaction of business.

(ii) Each Member that appoints a Director shall use commercially reasonable efforts to cause its Director to participate (including participation pursuant to Section 6.3(d)) in all properly called meetings of the Members.

(b) Voting. Each Director shall be entitled to cast one (1) vote on each matter on which such Director is entitled to vote. Except as set forth in this Agreement, Required Approval shall be required to authorize any action by the Board of Directors.

(c) Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors (or any committee thereof) may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to be taken are signed by requisite Directors required by this Agreement to authorize such action.

6.5 Resignation; Removal and Vacancies.

(a) Any Director may resign at any time by giving written notice to the other Director. The resignation of a Director shall take effect upon receipt of notice thereof or on such date as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Any Director may be removed at any time, with or without cause, by its Designating Member. The removal of a Director shall be effective only upon receipt of notice thereof by the remaining Director.

(c) Any vacancy on the Board of Directors occurring for any reason may be filled only by the appointment of a replacement Director by the Designating Member of the Director whose death, resignation or removal created such vacancy. The appointment of a new Director by a Member shall be effective upon receipt of notice thereof by the remaining Director, or at such later time as may be specified in such notice.

6.6 Reliance on Reports. Each Director may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the Board of Directors. The Board of Directors may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it.

6.7 Officers.

(a) The Board of Directors may appoint agents of the Company as "Officers" of the Company, who shall not be "managers" under the Act.

(b) The Officers of the Company shall be appointees of the Members (or their Affiliates) elected to such position by Required Approval. Any two (2) or more offices may be held by the same person. The role, responsibilities and level of authority of each Officer shall be subject to Required Approval. Subject to those matters reserved to the Board of Directors in Section 6.12 and Section 6.13, the Board of Directors may delegate some or all of its authority to an Officer.

(c) An Officer shall serve until his or her death, resignation or removal or the expiration of such Officer's term. Any Officer of the Company may resign at any time by giving written notice to the Board of Directors and the Members. The resignation of any Officer shall take effect upon receipt of notice by the Board of Directors or on such date as shall be specified in such notice; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. An Officer shall automatically cease to be an Officer of the Company upon his ceasing to be a consultant, employee or officer of one of the Members or their Affiliates.

(d) If any vacancy shall occur in any office, for any reason whatsoever, then Operator shall have the right to nominate any new Officer to fill such vacancy and the Board of Directors shall have the right to appoint (or not) any such person so nominated.

(e) Any Officer may be removed by Required Approval whenever in the Board of Directors' judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an Officer shall not of itself create contract rights.

6.8 Compensation. Except as otherwise provided by a separate agreement approved by Required Approval, no Officer of the Company shall be entitled to any salary or similar compensation from the Company or its Subsidiaries for serving as an officer of the Company and/or its Subsidiaries and compensation and benefits for any Officer of the Company and/or its Subsidiaries will be set and paid by the Member or its Affiliate with whom such Officer is employed. Directors shall receive no compensation for their services as Directors.

6.9 Interested Party Transactions.

(a) The Members acknowledge that the Company may from time to time enter into Affiliate Contracts in accordance with the terms and provisions of this Agreement. The Members and Directors hereby ratify, confirm, and approve the Company's execution and delivery of the Contribution Agreement and License Agreement.

(b) With respect to any Affiliate Contract: (i) the negotiation of such Affiliate Contract shall be conducted on behalf of the Company by or under the direction of the Disinterested Director; (ii) the Company shall only enter into such Affiliate Contract following receipt of Required Approval pursuant to Section 6.12(i); and (iii) any decisions of the Company

involving such Affiliate Contract, including any decision with respect to the exercise or waiver of any rights or the initiation, prosecution or settlement of any action or dispute thereunder, involving the Company as a party to which a Member, or an Affiliate of a Member, is a party materially adverse to the Company (other than as a co-defendant or the equivalent), such matter shall be reviewed and subject to the Required Approval of the Disinterested Director pursuant to Section 6.12(i).

6.10 Fiduciary Duties. Except as set otherwise set forth in this Agreement, the Operator, each Member and each Director shall have the same fiduciary duties as a member of a board of directors of a Delaware corporation (assuming such corporation had in its certificate of incorporation a provision eliminating the liabilities of directors as provided in Section 102(b)(7) of the Delaware General Corporation Law) to the Company.

6.11 Indemnification.

(a) To the fullest extent permitted by Law but subject to the limitations expressly provided in this Agreement, the Indemnitees shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, Liabilities, expenses (including reasonable legal fees and expenses), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, joint or several, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as (i) an officer, director or agent of the Company or any of its Subsidiaries or Affiliates; or (ii) a Person serving at the request of the Company in another Entity in a similar capacity, and, with respect to any criminal proceeding, the Indemnitee had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified in the previous sentence. Any indemnification pursuant to this Section 6.11(a) shall be made only out of the assets of the Company, it being agreed that no Member or any of its Affiliates, in their respective capacities as such, shall, in any event, be personally liable for such indemnification nor shall it or they have any obligation to contribute or loan any monies or property to the Company to enable the Company to effectuate such indemnification. The indemnification provided by this Section 6.11(a) shall be secondary to any other rights to which an Indemnitee may be entitled as contemplated under any other agreement, as a matter of Law or otherwise, both as to actions in the Indemnitee's capacity as (A) an officer, director or agent of the Company or any of its Subsidiaries or Affiliates; or (B) a Person serving at the request of the Company in another Entity in a similar capacity, and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of such Indemnitee.

(b) To the fullest extent permitted by Law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 6.11(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company on the Indemnitee's behalf prior to the final disposition of such claim, demand, action, suit or proceeding; *provided*, that the Company has received a written undertaking by or on behalf

of such Indemnitee to repay such amounts so advanced if it shall be determined that such Indemnitee is not entitled to be indemnified as authorized in this Section 6.11.

(c) The Company, or Operator on the Company's behalf, may purchase and maintain insurance, on behalf of the Officers and Directors and on behalf of such other Persons as the Board of Directors by Required Approval shall determine, against any liability that may be asserted against, or expense that may be incurred by, such Person in connection with the Company's activities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(d) An Indemnitee shall not be denied indemnification in whole or in part contemplated under this Section 6.11 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(e) The provisions of this Section 6.11 are for the benefit of the Indemnitees, their heirs, successors, assigns, and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(f) No amendment, modification or repeal of this Section 6.11 or any provision hereof or defined term used herein shall in any manner retroactively terminate, reduce or impair the right of any past or present Indemnitee to be indemnified by the Company, nor the obligation of the Company to indemnify any such Indemnitee under and in accordance with the provisions of this Section 6.11 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

6.12 Matters Requiring Required Approval. Notwithstanding anything to the contrary in this Agreement, neither the Company nor Operator shall take or make decisions or actions with respect to any of the matters set forth in this Section 6.12 on behalf of the Company or any of its Subsidiaries, and such matters shall require Required Approval at a meeting at which a quorum is present or through a written consent pursuant to Section 6.4:

(a) approve, amend or modify an applicable Budget;

(b) other than in respect of Indebtedness, which is addressed in Section 6.12(k), guaranty in the name or on behalf of the Company the performance of any contract or other obligation of any Person;

(c) enter into a Material Contract or terminate, amend, modify or waive any material provision of or enforce or fail to enforce the Company's rights with respect to a Material Contract, in each case, that is not specifically contemplated in an applicable Budget;

(d) (i) commence or settle any claim or legal proceeding (other than legal proceedings described in Section 6.12(h)) involving the Company, or (ii) make any decision with respect to any pending or threatened action related to litigation, arbitration or similar dispute resolution proceedings involving the Company as a party (or the equivalent) and a Member (or its Affiliate) as a party (or the equivalent) that is adverse to the Company; *provided, however* that

Section 6.12(h) and not this Section 6.12(d) shall apply in the case such litigation, arbitration or similar dispute resolution proceedings is pursuant to an Affiliate Contract;

(e) engage or replace independent auditors, other than in connection with a change of the auditors of the Operator and its Affiliates, or change any material accounting policies;

(f) all other decisions or actions under this Agreement that require Required Approval;

(g) make any investment in or consummate any acquisition or sale of assets in excess of $100,000 in any 12-month period that is not specifically contemplated in an applicable Budget;

(h) initiate, settle, compromise or resolve any legal proceedings involving (i) a state or federal regulatory proceeding, (ii) a criminal sanction, (iii) a Member or Affiliate of a Member; *provided, however,* that the Required Approval required pursuant to this clause (iii) with respect to any settlement or compromise must include the affirmative vote of such involved Member or Affiliate of Member; or (iv) an admission of guilt or liability on the part of the Company or any Subsidiary;

(i) (i) except as provided in Section 6.9(b), enter into; (ii) amend, modify or waive any provision of, or (iii) enforce or fail to enforce the Company's rights with respect to, or exercise the Company's termination rights under, an Affiliate Contract;

(j) declare or make any dividend or other distribution other than as contemplated by Article 5;

(k) Intentionally Deleted;

(l) Intentionally Deleted

(m) enter into or amend, modify or waive any material provision of a Project Financing (other than a Project Financing as described in Section 6.13(b));

(n) Intentionally Deleted;

(o) hire employees, independent contractors or consultants of the Company or any Subsidiary or enter into or amend any compensation, incentive, or benefit plan with any (i) officer, director or employee of the Company or any Subsidiary, or (ii) other Person providing Operation Services to the Company or any Subsidiary of the Company.

(p) enter into (or permit any Subsidiary to enter into) any agreement, or amend, modify or waive (or permit any Subsidiary to amend, modify or waive) any material provision of any agreement, containing provisions relating to non-competition, non-solicitation, non-dealing, or any other material restriction on the ability to conduct business (excluding certain ordinary course agreements, such as confidentiality and nondisclosure agreements) or that grants a

preferential purchase right, right of first refusal or similar right with respect to any asset or equity interest of the Company or any Subsidiary of the Company;

(q) appoint a replacement or successor to Operator;

(r) enter into, amend, modify an Approved Sale;

(s) enter into, amend, modify or waive any material provision of any agreement that involves any trading activity or any hedge, swap, collar or similar arrangement contracts;

(t) enter into or materially amend or modify any joint venture, shareholder, partnership or other co-ownership agreement (or form a joint venture partnership or other co-owned entity) with a third party;

(u) make any delegation of authority (i) to any committee of the Board of Directors, or (ii) to an Officer;

(v) repurchase any equity or debt interests in the Company or any Subsidiary;

(w) make any investment in or consummate any acquisition of any equity of another Person;

(x) make, amend or modify any tax election that would cause the Company to be classified as a corporation for U.S. federal income tax purposes; or

(y) subject to Article 9, dissolve the Company or any of its Subsidiaries, or commence or consent to any bankruptcy, insolvency, liquidation or similar proceeding relating to the Company or any of its Subsidiaries.

6.13 Matters Requiring Unanimous Approval. Notwithstanding anything to the contrary in this Agreement neither the Company nor Operator shall take or make decisions or actions with respect to any of the matters set forth in this Section 6.13, and such matters shall require Unanimous Approval at a meeting at which a quorum is present or through a written consent pursuant to Section 6.4.

(a) authorize the making of any additional Capital Contribution following the Effective Date, unless the Board of Directors determines in good faith that the Company would be insolvent without such additional Capital Contribution;

(b) enter into or amend, modify or waive any material provision of a Project Financing which requires a Member grant a Security Interest or otherwise provide collateral other than a Security Interest on a Member's Membership Interests;

(c) except as set forth in Section 10.11, amend, modify or supplement this Agreement; or

(d) enter into (or permit any Subsidiary to enter into) any agreement, or amend, modify or waive (or permit any Subsidiary to amend, modify or waive) any material provision of

any agreement, containing provisions relating to non-competition, non-solicitation, non-dealing or any other material restriction on the ability to conduct business that would be binding on any Member.

ARTICLE 7

Operating Matters; Budgets

7.1 Operations.

(a) Subject to the terms of this Agreement, the Operator shall be responsible for and shall perform all operating, maintenance, marketing and commercial services, including, but not limited to, the services set forth on Exhibit E, related to the assets held by the Company as of any applicable time of determination (the "**Operation Services**").

(b) In performing the Operation Services, the Operator shall at all times act, and shall cause the Company to act (to the extent Operator or its affiliated Member has the authority to do so), in accordance with (i) the Standard of Performance, (ii) the applicable Budget and (iii) the terms of this Agreement.

(c) The Operation Services shall include the performance of such matters as may be requested by the Board of Directors from time to time, or that are otherwise described on Exhibit E.

7.2 Subcontractors. Subject to Section 7.4, Operator may have portions of the Operation Services performed by Affiliates or subcontractors; provided, that (a) Operator shall ensure that all such Affiliates or subcontractors have appropriately qualified and experienced (including possessing appropriate certifications) personnel for the Operation Services they were hired to perform; (b) Operator shall oversee and review the performance of all such Affiliates or subcontractors; and (c) Operator's use of such Affiliates or subcontractors shall not relieve Operator of its obligations under this Agreement.

7.3 Budgets and Budget Amendments. For each Fiscal Year, the activities and operations of the Company for such period shall be set forth in the applicable Budget. Each Budget shall be prepared and approved or disapproved by the Board of Directors in the following manner:

(a) The Board of Directors ratifies and approves the initial development and operating budget attached hereto as Exhibit D (the "**Initial Budget**"), which Initial Budget shall apply with respect to the Company from and after February 1, 2022 and until December 31, 2022, as may be adjusted pursuant to this Section 6.9.

(b) No later than September 30 for the 2023 Fiscal Year and of each Fiscal Year thereafter, the Operator shall prepare and submit to the Board of Directors a good faith preliminary estimate of the anticipated revenues and operating and maintenance expenses for the Company's activities for the following Fiscal Year (the "**Preliminary Budget**"). The Operator shall further refine the Preliminary Budget no later than November 15 for the 2023 Fiscal Year and of each Fiscal Year thereafter (the "**Operating Budget**"). The Preliminary Budget and Operating Budget shall include: (i) the estimated revenues, third-party operating and maintenance costs and costs

payable to Operator and (ii) any other amounts necessary with respect to any other expenditures that the Operator anticipates will be required to be made by the Company or the Operator on behalf of the Company during such Fiscal Year.

(c) The Board of Directors shall work with the Operator to finalize and approve such Operating Budget on or before December 15 of each Fiscal Year. If the Board of Directors has not agreed by Required Approval (after having used reasonable efforts to resolve any disagreements) to an Operating Budget applicable to a Fiscal Year prior to January 1 of such Fiscal Year, then (i) each undisputed Operating Budget item, as applicable, shall be considered approved; (ii) until the Board of Directors has resolved any Operating Budget item that is in dispute, the Board of Directors shall be deemed to have approved each such disputed Operating Budget item, but only for the amount included with respect to the same Operating Budget item in the immediately preceding Budget that was approved by the Board of Directors, but (x) excluding any Permitted Overruns and (y) adjusted upward by an amount equal to five percent (5%) of the amount of such disputed Operating Budget item contained in the preceding Budget; *provided, however,* that to the extent the disputed Operating Budget item was not included in the immediately preceding Budget, the Board of Directors shall not be deemed to have approved any amount with respect to such disputed Operating Budget item; and (iii) unless the Board of Directors subsequently agrees otherwise, such adjusted Operating Budget shall be deemed to be the Operating Budget for the Fiscal Year in dispute.

(d) If, during the period covered by an approved Budget, the Operator or the Board of Directors determines that an adjustment to the estimated costs set forth in such Budget is necessary or appropriate, then the Operator shall prepare and submit to the Board of Directors (i) such addition line items Operator believes in good faith are necessary or required to preserve the assets, and the value of the business, of the Company and its Subsidiaries and (ii) any other information or materials reasonably requested by the Board of Directors related to such proposed additional line item; *provided, however*, that Permitted Overruns shall not require further approval or be treated as a part of, or an amendment to, any Budget. The Board of Directors may approve or reject, in each case by Required Approval, the applicable adjusted Budget in its sole discretion.

(e) If Operator directly pays with its own funds any budgeted, approved or permitted costs specifically identified in an applicable Budget, then the Company shall reimburse Operator for all such costs following receipt by the Company of an invoice for such permitted costs. In connection with delivery of such invoice, the Operator shall deliver to the Company such additional supporting information and documentation evidencing such expenditures as the Company may reasonably request.

7.4 Agreements. Except for any employment agreements between the Operator or its Affiliates with the Operator's personnel who are involved in the performance of the Operation Services, the Operator hereby acknowledges and agrees that it shall not, directly or indirectly, enter into, terminate, amend, modify or waive any agreement, arrangement or understanding that (a) is necessary for the performance, or is related, directly or indirectly, to the performance, of the Operation Services or (b) binds or impacts any of the assets of the Company or any of its Subsidiaries, unless, in each case, the Operator (i) enters into, terminates, amends, modifies or waives any such agreement, arrangement or understanding in the name of the Company or a Subsidiary of the Company and (ii) is expressly authorized to enter into, terminate, amend, modify

or waive any such agreement, arrangement or understanding in accordance with the terms of this Agreement or has otherwise received Required Approval.

7.5 Removal.

(a) The Operator shall be removed as Operator, upon thirty (30) Days' notice from the Board of Directors of Required Approval approving such removal, if (i) the Operator has materially breached any of its obligations under this Agreement and such material breach is not cured within thirty (30) Days of the Operator's receipt of notice of such material breach from any Member that is not affiliated with the Operator or the Board of Directors, (ii) BNR Transfers or any of its Affiliates Transfer any of its Membership Interests or otherwise ceases to be a Member, (iii) a Change in Control occurs with respect to BNR or the Operator, or (iv) the Operator has engaged in gross negligence, malfeasance, willful misconduct or fraud. For the avoidance of doubt, if BNR ceases to be a Member (including pursuant to a Transfer), then the Operator shall automatically be removed as the Operator hereunder without any further action by any Member, any Director or the Company, unless otherwise approved in writing by the Board of Directors.

(b) If the Operator is removed pursuant to Section 7.5(a), then the Operator's replacement shall be elected by Required Approval.

(c) Following receipt of notice of removal pursuant to Section 7.5, the Operator that is being removed shall use reasonable, good faith efforts to make an orderly transition to and cooperate with any successor Operator selected in accordance with Section 7.5(b), and shall promptly transmit to such successor Operator all documents reasonably requested by such successor Operator or the SEP. Notwithstanding the foregoing, upon Required Approval, the Operator that is being removed shall continue to serve as Operator in compliance with the provisions hereof for a transition period of up to three (3) months (the "**Transition Period**"), unless the Directors, through Required Approval, request that the Operator that is being removed terminate its performance of the Operation Services prior to the expiration of the Transition Period by providing at least thirty (30) days' prior written notice. During the Transition Period, the Operator that is being removed shall provide the Operation Services in accordance with all of the terms of this Agreement.

7.6 Company's Right to Act. Notwithstanding anything contained herein to the contrary, if the Operator fails to enforce any rights of the Company or any of its Subsidiaries:

(a) under any Affiliate Contract, if the Disinterested Director has determined in their reasonable commercial discretion by Required Approval that the enforcement of such rights are in the best interest of the Company or its applicable Subsidiary (without regard to the subject Member), then the Disinterested Director shall cause the Company or its applicable Subsidiary to enforce such rights or may authorize a Member to enforce such rights (including the right to terminate such agreement) on behalf of the Company or such Subsidiary; or

(b) under any contract, lease or agreement entered into by the Company with any Independent Third Party or with respect to the failure to remove any lien on a Company asset, if the Board of Directors (pursuant to Required Approval of the Disinterested Director) shall have determined in good faith that failure to enforce such rights or remove such lien could reasonably

be expected to cause a material detriment to the Company, then the Board of Directors shall first give written notice to Operator of the Board of Directors' decision and desired course of action. If the Operator fails to diligently pursue the Board of Directors' decision and desired course of action within thirty (30) Days of receipt of such written notice from the Board of Directors, the Board of Directors (pursuant to Required Approval of the Disinterested Director) shall cause the Company or its applicable Subsidiary to enforce such rights or may authorize a Member to enforce such rights (including the right to terminate such agreement) or remove such lien on behalf of the Company or such Subsidiary.

7.7 Insurance. The Operator shall obtain and maintain on behalf of the Company and its Members liability, property and any other insurance with the coverage, limits and deductibles that are set forth on Exhibit F, and that the Board of Directors, from time to time by Required Approval, otherwise determines is necessary and appropriate to adequately insure the Company and its operations in accordance with the Standard of Performance in the performance of the Operator's obligations hereunder. The Board of Directors by Required Approval shall approve the limits of coverage and the deductibles provided by each of the Company's insurance policies.

7.8 Indemnity. The Operator agrees to protect, defend, indemnify and hold the Company and its Affiliates and Subsidiaries, and each of its and their respective managers, directors, members, officers, employees, attorneys-in-fact and agents (each a "**Company Indemnified Party**"), free and harmless from and against any and all Expenses suffered or incurred by any Company Indemnified Party to the extent a result of, caused by, or arising out of the performance of Operator's obligations under this Agreement, including, but not limited to, performing the Operation Services in accordance with the Standard of Performance.

ARTICLE 8

Inspection; Books and Records; Taxes

8.1 Maintenance of Books and Records. The Company shall keep at its principal office complete and accurate books and records of the Company, its Subsidiaries and Affiliates, supporting documentation of the transactions with respect to the conduct of the Company's, its Subsidiaries' and Affiliates' business and affairs and minutes of the proceedings of the Board of Directors and the Members and the governing bodies and owners of the Company's Subsidiaries and Affiliates. The records shall include: (a) complete and accurate information regarding the state of the business and financial condition of the Company; (b) a copy of this Agreement and the Certificate and the organizational documents of the Company's Subsidiaries and Affiliates; (c) a current list of the names and last known business, residence or mailing addresses of all Directors and Officers; and (d) the Company's tax returns for the Company's six (6) most recent tax years.

8.2 Tax Statements.

(a) The Company shall deliver to each Member as soon as practicable after the end of each calendar year, but in any event not later than the last Day of May, a final version of the Company's U.S. federal income tax return and Schedule K-1 together with such additional information as may be required by the Members (or their owners) in order to file their individual returns reflecting the Company's operations, including its apportionment schedules and a schedule

of Company Book-Tax Disparity for the immediately preceding tax year; provided, however, on or before the thirtieth (30th) Day after the end of such calendar year (or, if such Day is a Friday, Saturday or Sunday, the immediately following Monday), the Company shall deliver to each Member an estimated Schedule K-1 for the immediately preceding tax year. The Company shall bear the costs of the preparation and filing of its tax returns.

(b) Prior to the end of each calendar quarter (or other period, if agreed to by the Company), the Members and the Company shall cooperate in good faith to determine any additional tax-related information (including any applicable state withholdings) or other information in the Company's possession with respect to such calendar quarter or other period that is reasonably necessary for the Members (or their owners) to comply with their respective tax return filing and compliance obligations. The Company shall use commercially reasonable efforts to distribute such tax-related or other information to the Members on or before the thirtieth (30th) Day after the end of each calendar quarter or other period (or, if such Day is a Friday, Saturday or Sunday, the immediately following Monday).

8.3 Accounts. The Board of Directors shall establish, or direct or authorize any Officer to establish, one or more separate bank and investment accounts to be maintained in a bank (or banks) which is a member of the Federal Deposit Insurance Corporation, which shall be maintained in the Company's name with financial institutions and firms that the Board of Directors, or any Officer so directed or authorized, determines. Such accounts shall be used for the payment of the expenditures incurred by the Company in connection with the business of the Company, and in which shall be deposited any and all receipts of the Company. The Company shall not comingle its assets with those of any other Person, and shall maintain its assets in a manner so that it is not costly or difficult to segregate, identify or ascertain its assets.

8.4 Accountants; Accounting Statements and Inspection; Fiscal Year

(a) The books, records and financial statements of the Company shall be maintained and prepared in conformity with GAAP. The fiscal year of the Company (the "**Fiscal Year**") shall be the calendar year. Unless otherwise determined by the Board of Directors by Required Approval, the accountants for the Company shall be the same accounting firm that is the auditor of the Member who is an Affiliate of Operator.

(b) At all times during the continuance of the Company, the books of account will be kept by the Operator pursuant to the terms of this Agreement.

(c) The Operator shall provide, at the cost of the Company, the following periodic financial information and reports to each Member:

(i) On or before the last Business Day of each calendar month, an (x) unaudited income statement of the Company and each of its Subsidiaries on a consolidated basis and (y) operational report of the assets of the Company and its Subsidiaries, in each case, as of the end of such period for, or as of the end of, the calendar month immediately preceding such calendar month.

(ii) On or before the last Business Day of each March, June, September and December, an (x) unaudited balance sheet, an income statement, a statement of cash flows, a

statement of project cash flows of the Company (on a rolling 12-month basis) and (y) operational report of the assets of the Company and its Subsidiaries, in each case, for, or as of the end of, the calendar quarter immediately preceding such calendar quarter.

(iii) On or before March 1 of each year, (x) a draft balance sheet, a draft income statement, and a draft statement of cash flows and (y) operational report of the assets of the Company and its Subsidiaries, in each case for the immediately preceding calendar year.

(iv) On or before April 30 of each year, audited financial statements, including a balance sheet, an income statement, and a statement of cash flows for the immediately preceding calendar year.

(v) Such operational data or accounting and tax information and financial data concerning the Company as any Member may reasonably request and to the extent reasonably available.

(d) In addition to any other rights which may be provided under the Act, each Member shall have the right, during usual business hours and upon no less than three (3) Business Days' prior notice to Operator, to designate representatives that may (i) examine and make copies of the books and records of the Company, (ii) visit the facilities, assets and properties of the Company, (iii) observe and report on the operation of the Company's assets and cause the Company to do the same; or (iv) inspect the Company's assets and properties with regard the Company's compliance with all applicable safety, health and similar requirements and cause the Company to do the same with regard to requirements applicable to the Company, the Company's assets and the Operator's operation thereof. A Member's costs and expenses incurred in connection with any Member's exercise of its rights permitted pursuant to this Section 8.4(d) shall be borne by such Member. Each Member hereby indemnifies and holds harmless the Company and each of its Subsidiaries and Affiliates, each Member other than itself, Operator, and each officer, manager, director, employee, agent or consultant of the foregoing (each an "**Indemnified Person**") from and against any and all Liabilities, obligations, losses, damages, penalties, claims and costs (including reasonable attorneys' fees and expenses) of any kind or nature whatsoever (collectively, "**Expenses**") relating to or arising out of or with respect to or in connection with such Member's exercise of its rights permitted pursuant to this Section 8.4(d). **ANY INDEMNIFIED PERSON SHALL BE INDEMNIFIED PURSUANT TO THIS SECTION 8.4(d) NOTWITHSTANDING THE FACT THAT ANY OF THE EXPENSES ARE OR WERE (i) FORESEEABLY CAUSED OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, (A) BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE OR OTHER FAULT OF SUCH INDEMNIFIED PERSON OR ANY OTHER INDEMNIFIED PERSON OR (B) WITHOUT ANY FAULT OF ANY SUCH INDEMNIFIED PERSON OR ANY OTHER INDEMNIFIED PERSON, OR (ii) ATTRIBUTABLE TO STRICT LIABILITY OR NO-FAULT LIABILITY OF SUCH INDEMNIFIED PERSON OR ANY OTHER INDEMNIFIED PERSON; PROVIDED, HOWEVER, THAT NO INDEMNIFIED PERSON SHALL BE INDEMNIFIED PURSUANT TO THIS SECTION 8.4(d) FOR EXPENSES TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PERSON.**

(e) At the request of SEP, the Company may audit costs charged to the Company's accounts and other accounting records maintained for the Company by Operator pursuant to the terms of this Agreement. Whether such rights are exercised by a Member on its own behalf or on behalf of the Company, such rights may be exercised through any agent, representative or employee of such Member designated by it or by independent certified public accountants or counsel designated by such Member. Each Member shall bear its expenses incurred in any examination made by a Member or its agents or representatives on its own behalf. If a Member causes the Company to initiate an audit of Operator and such audit does not result in an adjustment to costs charged to the Company's accounts in favor of the Company in excess of one hundred thousand dollars ($100,000), then the audit shall be at the expense of the Member causing the Company to initiate such audit. If a Member causes the Company to initiate an audit of the Operator, and such audit does result in an adjustment to costs charged to the Company's accounts in favor of the Company in excess of one hundred thousand dollars ($100,000), then the audit shall be at the expense of the Operator; *provided, however* that such allocation of audit costs to Company will not prejudice any rights Company may have against the Operator hereunder or otherwise at law or in equity.

8.5 Tax Returns.

(a) The Tax Matters Member shall cause to be prepared and filed all necessary U.S. federal and state tax returns for the Company, including making the elections described in Section 8.6. Upon the request (written or oral) of the Tax Matters Member, each Member shall give to the Tax Matters Member all pertinent information in its possession relating to Company operations that is necessary to enable the Company's tax returns to be prepared and filed. A copy of the proposed U.S. federal income tax return of the Company for each taxable year shall be provided to BNR for comment fifteen (15) days prior to filing, and the Tax Matters Member shall consider any such comments in good faith.

(b) The Company and the Members intend that, for U.S. federal income tax purposes, the Company became a partnership no earlier than the day of the closing of the ETX Transaction, on which day (i) SEP was deemed to contribute an amount of cash equal to the aggregate purchase price with respect to the ETX Transaction to a newly-formed partnership in a transaction governed by Section 721 of the Code and Revenue Ruling 99-5 (Situation 2), (ii) the Company was deemed to acquire the assets acquired in the ETX Transaction with such cash on such date, and (iii) BNR was deemed to make the initial Capital Contribution described on Exhibit A in connection with the entry of the Company and BNR into the License Agreement. Neither the Company nor any Member shall take any position that is inconsistent with the foregoing tax treatment for any tax purpose, including the preparation of any tax return or the defense of any tax audit, or otherwise, unless required by applicable Law.

8.6 Certain Tax Elections. The Tax Matters Member shall cause the Company to make the following elections on the appropriate tax returns:

(a) to adopt the calendar year as the Company's taxable year;

(b) to adopt the accrual method of accounting;

(c) an election pursuant to section 754 of the Code;

(d) to elect to deduct the organizational expenses of the Company as permitted by section 709(b) of the Code; and

(e) to elect to deduct the start-up expenditures of the Company as permitted by section 195(b) of the Code.

8.7 Other Tax Elections, Etc. Except as otherwise in this Agreement, including Sections 8.6, 8.8 and 8.9, the Tax Matters Member shall cause the Company to make any tax election; provided, that the Tax Matters Member shall not make any material tax election that would, or would reasonably be expected to, affect any Member in a manner that is both (a) disproportionate with respect to such Member in light of such Member's economic interest in the Company and (b) material in light of the distribution that such Member would receive in connection with a hypothetical liquidation under Section 9.2(d)(ii), without such Member's prior written consent.

8.8 Tax Classification. Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state Law, and no provision of this Agreement shall be construed to sanction or approve such an election.

8.9 Tax Representative.

(a) SEP shall act as the "partnership representative" within the meaning of section 6223 of the Code (the "**Tax Matters Member**").

(b) The Tax Matters Member shall have the sole right and authority to act on behalf of the Company under Subchapter C of Section 63 of the Code and in any tax proceedings brought by taxing authorities. The Tax Matters Member shall be responsible for making all decisions, filing all elections and taking all other actions, in each case related to any such tax proceedings or otherwise related to its role as "partnership representative" in its reasonable discretion, and each Member and former Member agrees to cooperate in all respects with the Tax Matters Member in order to effectuate such decisions, elections and actions. Any reasonable, documented cost or expense incurred by the Tax Matters Member in connection with the roles and responsibilities described in this Section 8.9(b), including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company. Each Member shall indemnify and reimburse the Company to the extent the Company is required to make any payment for taxes, interest, addition to tax or penalty or with respect to a Member's share of any adjustment to income, gain, loss, deduction or credit as determined in the reasonable good faith discretion of the Tax Matters Member. To the fullest extent permitted by applicable Law, a Member's obligations under this Section 8.9(b) shall survive the dissolution, liquidation, termination and winding-up of the Company and shall survive, as to each Member, such Member's withdrawal from the Company or termination of the Member's status as a Member. The Company may pursue all rights and remedies it may have against any Member (or former Member). Any amounts payable to the Company under this Section 8.9(b) shall be payable by such Member within ten (10) Business Days of receipt of notice that such payment is due. The Company shall have a right

of set-off against distributions to a Member or former Member for amounts to be indemnified pursuant to this Section 8.9(b), and any amount so withheld shall be treated as an amount distributed to such Member for all purposes under this Agreement. The Members agree to reasonably cooperate with the Company and the Tax Matters Member as necessary to carry out the intent of this Section 8.9(b). No later than fifteen (15) days prior to making any material election or other material decision pursuant to this Section 8.9, the Tax Matters Member shall provide written notice of its intent to make such election or decision to the other Members. If any Member disagrees with the Tax Matters Member's proposed election or decision, the Tax Matters Member and such Member (and their respective advisors) shall consult and negotiate in good faith for the next five (5) days to reach an agreement with respect to such selection. If, after such five (5)-day period, any Member continues to disagree with such election or decision, such Member may, at its sole expense, provide a written quantification of the adverse impact that such election or decision would reasonably be expected to cause for such Member. If such adverse impact is both (a) disproportionate with respect to such Member in light of such Member's economic interest in the Company and (b) material in light of the distribution that such Member would receive in connection with a hypothetical liquidation under Section 9.2(d)(ii), in each case, as of such time, the Tax Matters Member shall not to make such election or decision.

8.10 Unitary/Combined Tax Reporting.

(a) In the event the Company does not file its own tax report for any state tax purposes, but instead is part of an affiliated group engaged in a unitary business that files a combined group report (a "**Unitary/Combined Tax Report**"), the methodology set forth in this Section 8.10 shall be used to determine the amount of reimbursement due to the applicable Member (the "**Combined Reporting Member**") as a result of having to include the Company in the Unitary/Combined Tax Report of such Member (or an Affiliate of such Member). Any Member that is not a Combined Reporting Member shall be referred to as a "**Reimbursing Member**."

(b) For each privilege or taxable period, the Combined Reporting Member will compute (i) such Combined Reporting Member's actual unitary tax liability ("**Actual Unitary Tax Liability**"), (ii) such Combined Reporting Member's hypothetical unitary state tax liability excluding any tax liability arising from such Combined Reporting Member's ownership of the Company ("**Stand-Alone Tax Liability**"), and (iii) difference between the Actual Unitary Tax Liability and the Stand-Alone Tax Liability ("**Resulting Tax Liability**"). The Actual Unitary Tax Liability, Stand-Alone Tax Liability, and Resulting Tax Liability (along with any supporting work papers) will be provided to the Reimbursing Member for review at least thirty (30) Days prior to the due date of the Unitary/Combined Tax Report of the Combined Reporting Member (or its Affiliate) related to the applicable period. The Reimbursing Member shall have ten (10) Days to review the Resulting Tax Liability and provide any comments to the Combined Reporting Member. If the Members cannot agree on the Resulting Tax Liability, the Members shall engage a national accounting firm to determine the Resulting Tax Liability. Subject to Section 8.10(d), the determination of the national accounting firm shall be considered final and binding on the Members as the Resulting Tax Liability for purposes of determining reimbursement under this Section 8.10. All costs associated with the national accounting firm shall be borne by the Members in proportion to their respective Percentage Interests. The Reimbursing Members shall bear the Resulting Tax Liability based on their respective Percentage Interests.

(c) Within five (5) Days of any tax payment (including estimated tax payments) by the Combined Reporting Member (or its Affiliate) with respect to a Unitary/Combined Tax Report, each Reimbursing Member shall reimburse the Combined Reporting Member for its share of the Resulting Tax Liability.

(d) In the event of any tax audit adjustments impacting the calculation of the Resulting Tax Liability for any privilege or taxable period, the Resulting Tax Liability for any such period shall be redetermined by the Combined Reporting Member and any prior reimbursement under Section 8.10(c) shall be adjusted consistent with such redetermination (the "**Adjusted Resulting Tax Liability**"). The Adjusted Resulting Tax Liability (along with any supporting work papers) will be provided to the Reimbursing Member for review within thirty (30) Days following the final settlement of the applicable audit. The Reimbursing Member shall have ten (10) Days to review the Adjusted Resulting Tax Liability and provide any comments to the Combined Reporting Member. If the Members cannot agree on the Adjusted Resulting Tax Liability, the Members shall engage a national accounting firm to determine the Adjusted Resulting Tax Liability. The determination of the national accounting firm shall be considered final and binding on the Members as the Adjusted Resulting Tax Liability for purposes of determining any reimbursement adjustments under this Section 8.10(d). All costs associated with the national accounting firm shall be borne by the Members in proportion to their respective Percentage Interests. Any payments due by the Reimbursing Member to the Combined Reporting Member (or vice-versa) as a result of the determination of the Adjusted Resulting Tax Liability shall be made within thirty (30) Days following the final determination of the Adjusted Resulting Tax Liability. The Company shall have a right of set-off against distributions to any Member for amounts to be paid or indemnified pursuant to this Section 8.10(d) (or otherwise pursuant to this Section 8.10), and any amount so withheld shall be treated as an amount distributed to such Member for all purposes under this Agreement.

ARTICLE 9

Dissolution, Liquidation and Termination

9.1 Dissolution. Subject to the provisions of Section 9.2 and any Laws, the Company shall dissolve and its affairs shall be wound up only on the first to occur of the following (each a "**Liquidating Event**"):

(a) Unanimous Approval;

(b) entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act; and

(c) the occurrence of any event which requires dissolution of a limited liability company under the Act, except that the Company shall not be dissolved pursuant to this Section 9.1(c) if, within ninety (90) Days after the occurrence of such event, the last remaining Member consents to the continuation of the Company.

9.2 Liquidation and Termination. Subject to Section 9.2(d), upon dissolution of the Company, a representative of the Company selected by the Board of Directors shall act as a

liquidator or may appoint one or more Members as liquidator ("**Liquidator**"). The Liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the Liquidator shall continue to operate the Company properties for a reasonable period of time to allow for the sale of all or a part of the assets thereof with all of the power and authority of the Members. The steps to be accomplished by the Liquidator are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, Liabilities, and operations through the last Day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the Liquidator shall cause any notices required by Law to be given to each known creditor of and claimant against the Company in the manner described by such Law;

(c) upon dissolution of the Company, the Liquidator shall sell the assets of the Company at the best price available for cash. The property of the Company shall be liquidated as promptly as is consistent with obtaining the fair value thereof. The Liquidator may sell any or all Company property, including to one or more of the Members, provided that any such sale to a Member must be made on an arm's length basis under terms which are in the best interest of the Company. If any assets are sold or otherwise liquidated for value, the Liquidator shall proceed as promptly as practicable in a commercially reasonable manner to implement the procedures of this Section 9.2(c); and

(d) subject to the terms and conditions of this Agreement and the Act (especially Section 18-803), the Liquidator shall distribute the cash in the Company in the following order:

(i) the Liquidator shall pay, satisfy or discharge from Company funds all of the debts, Liabilities, and obligations of the Company, including all expenses incurred in liquidation or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent Liabilities in such amount and for such term as the Liquidator may reasonably determine); provided, however, that such payments shall not include any Capital Contributions described in Article 4 or any other obligations in favor of the Members created by this Agreement; and

(ii) thereafter, any remaining cash in the Company shall be distributed to the Members in accordance with Section 5.3.

(e) The distribution to a Member in accordance with the provisions of this Section 9.2 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its share of all the Company's property.

9.3 Provision for Contingent Claims.

(a) The Liquidator shall make a reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, actually known to the Company but for which the identity of the claimant is unknown; and

(b) If there are insufficient assets to both pay the creditors pursuant to Section 9.2 and to establish the provision contemplated by Section 9.3(a), the claims shall be paid as provided for in accordance to their priority, and, among claims of equal priority, ratably to the extent of assets therefor.

9.4 Deficit Capital Accounts. No Member shall have any obligation to restore any negative balance in its Capital Account at any time (including upon liquidation of the Company).

9.5 Deemed Contribution and Distribution. In the event the Company is "liquidated" within the meaning of Treasury Regulation section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Company's property shall not be liquidated, the Company's Liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for U.S. federal income tax purposes, the Company shall be deemed to have contributed all Company property and Liabilities to a new partnership in exchange for an interest in such new partnership and, immediately thereafter, the Company will be deemed to liquidate by distributing interests in the new partnership to the Members.

9.6 Certificate of Cancellation. On completion of such final distribution, the Liquidator shall file a Certificate of Cancellation with the Secretary of State of the State of Delaware, cancel any other filings made pursuant to Section 2.5, and take such other actions as may be necessary to terminate the existence of the Company.

ARTICLE 10

General Provisions

10.1 Notices. Any notice, request, demand, and other communication required or permitted to be given or made hereunder (each a "**Notice**") shall be in writing and shall be deemed to have been duly given or made if (a) delivered personally, (b) transmitted by first class registered or certified mail, postage prepaid, return receipt requested, (c) delivered by prepaid overnight courier service or (d) delivered by electronic mail transmission, in each case to a Member or the Operator at the addresses set forth on Exhibit A (or at such other addresses as shall be specified by a Member or the Operator by similar notice). Notices shall be effective (i) if delivered personally or sent by courier service, upon actual receipt by the intended recipient, (ii) if mailed, upon the earlier of ten (10) Days after deposit in the mail or the date of delivery as shown by the return receipt therefor, or (iii) if sent by electronic mail transmission, when such transmission is received. Whenever any notice is required to be given by Law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Any emailed notice shall cover only the matter for which notice is given and shall state in the subject line, in all capital letters and bold, "**NOTICE OF SIGNIFICANT MATTER**"

10.2 Entire Agreement. This Agreement, the instruments to be delivered hereunder and the other agreements entered into on the Effective Date in connection with the foregoing (together with the exhibits and schedules of each of the foregoing), constitute the entire agreement among the Members with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Members with respect to the subject matter hereof.

10.3 Waiver. No waiver by any party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. Except as specifically set forth in this Agreement, no failure by a party hereto to exercise, or delay in exercising, any right, remedy, power or privilege hereunder shall operate or be construed as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.4 Non-Compensatory Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE MEMBERS WAIVE ANY AND ALL RIGHTS, CLAIMS OR CAUSES OF ACTION AGAINST ONE ANOTHER, BUT NOT THE OPERATOR, ARISING UNDER THIS AGREEMENT FOR ANY LOST PROFITS, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES, SAVE AND EXCEPT SUCH DAMAGES PAYABLE WITH RESPECT TO THIRD PARTY CLAIMS.

10.5 Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Members, the Company, and their respective executors, administrators, successors, and legal representatives.

10.6 Disputes. If any dispute (which shall not include any failure by the Board of Directors or the Members to approve a matter) arises under this Agreement, a Director may submit such disputed matter to further negotiation by giving written notice to the other Directors containing a brief description of the nature of the dispute to be further negotiated and the position of the Director initiating further negotiation. Upon receipt of such notice, the Directors shall promptly meet at a time and place mutually agreed upon or, if no time and place is agreeable, at the principal office of the Company at 10:00 a.m. local time on the fifth (5^{th}) Business Day after the date of receiving the notice of further negotiations. If within thirty (30) Days following the date of such meeting, the dispute has not been resolved, then such dispute shall be handled in accordance with Section 10.7.

10.7 Governing Law; Consent to Jurisdiction; Severability; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of Delaware without regard to the principles of conflicts of Law. In the event of a direct conflict between the provisions of this Agreement and (i) any provision of the Certificate, or (ii) any mandatory, non-waivable provision of the Act, such provision of the Certificate or the Act shall control. If any provision of the Act provides that it

may be varied or superseded in the limited liability company agreement (or otherwise by agreement of the members or managers of a limited liability company), such provision shall be deemed superseded and waived in its entirety if this Agreement contains a provision addressing the same issue or subject matter.

(b) The Members hereby irrevocably submit to the jurisdiction of the courts of the State of Delaware and the federal courts of the United States of America located in Delaware over any dispute between or among the Members arising out of this Agreement, and the Members irrevocably agree that all such claims in respect of such dispute shall be heard and determined in such courts. The Members hereby irrevocably waive, to the fullest extent permitted by Law, any objection which they may now or hereafter have to the venue of any such dispute arising out of this Agreement brought in such court or any defense of inconvenient forum for the maintenance of such dispute. The Members agree, to the fullest extent permitted by applicable Law, that a final and unappealable judgment against any of them in any action contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment or in any other manner provided by Law, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

(c) If any provision of this Agreement or the application thereof to any Person or circumstance is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted legislation or by decree of a court of last resort, the Members shall promptly meet and negotiate substitute provisions for those rendered or declared illegal or unenforceable, but all of the remaining provisions of this Agreement shall remain in full force and effect.

(d) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.8 Further Action. Except to the extent expressly set forth in this Agreement, the Members shall execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

10.9 No Right to Action for Dissolution or Partition. To the greatest extent permitted by Law, no Member has any right to maintain any action for dissolution of the Company or for partition of the property of the Company.

10.10 Third-Party Beneficiaries. Nothing in this Agreement is intended to or shall confer upon any Person other than the Members, and their successors and assigns, any rights, benefits, or remedies of any nature whatsoever under or by reason of this Agreement; provided, however, that the Indemnitees, the Indemnified Persons and their respective executors, administrators, successors, and legal representatives shall be considered to be third-party beneficiaries of this Agreement. Operator and its successors and legal representatives shall be considered to be third-party beneficiaries of the definition of "Available Cash" and Sections 3.11(c), 3.13, 6.1, and 6.7(d).

10.11 Amendments. Any amendment to this Agreement shall require Unanimous Approval; *provided, however*, that, for the avoidance of doubt, (a) Section 6.12(a) shall govern Budgets and (b) Section 6.12(j) shall govern distributions other than as contemplated in Article 5.

10.12 Creditors. None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Company in its capacity as such.

10.13 Disclosure; Public Announcements.

(a) Subject to Section 10.13(b) and Section 10.13(c), no Member will issue or make, or cause any agent or Affiliate of it to issue or make, any press releases, public statements or other public disclosures with respect to Company, this Agreement or any of the instruments, documents and agreements entered into pursuant to, or in connection with, this Agreement, or any of the activities contemplated hereby (or thereby), unless such Member has first received the Required Approval of the Board of Directors.

(b) Neither the Company nor Operator will issue or make, or permit any agent or Affiliate of it to issue or make, any press releases, public statements or other public disclosures with respect to this Agreement or any of the instruments, documents and agreements entered into pursuant to, or in connection with, this Agreement, or any of the activities contemplated hereby (or thereby), unless (i) such press release, public statement or other public disclosure is required by applicable Law; (ii) not less than three (3) Business Days prior to so releasing or disclosing any such information, the Company or the Operator, as applicable, provides a copy of the release, statement or disclosure containing such information to each Member for its review and comment (which comments the Company will review in good faith and incorporate as the Operator deems appropriate); and (iii) such press release, public statement or other public disclosure does not include any Member's name (unless such Member consents in writing to the inclusion of such Member's name in such release, or inclusion of such Member's name is required by applicable Law).

(c) This Section 10.13 shall not restrict a Member (or any of its Affiliates) from (i) issuing or making any press release, public statement or other public disclosure required by applicable Law or the rules or regulations of any national securities exchange to which the Member (or any of its Affiliates) is subject, in which case, to the extent practicable, the Member (or such Affiliate) required to issue or make the press release, public statement or other public disclosure shall consult with the other Members, and, to the extent practicable, allow the other Members reasonable time to comment on such release, public statement or announcement in advance of such release, statement or disclosure or (ii) providing or discussing information in investor or analyst presentations.

10.14 Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Facsimile copies of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof.

10.15 Non-Performance and Non Compliance. It is acknowledged and agreed that non-performance or non-compliance by a Member or a Member's agents or Affiliates shall be deemed

to be non-performance or non-compliance by such Member for purposes of this Agreement and any remedies available under this Agreement.

10.16 Certain Acknowledgements. Upon execution and delivery of a counterpart to this Agreement or a joinder to this Agreement, each Member (including each Substituted Member and each additional Member) shall be deemed to acknowledge to the Company as follows: (a) the determination of such Person to acquire Membership Interests has been made by such Person independent of any other Person and independent of any statements or opinions as to the advisability of such purchase or as to the properties, business, prospects or condition (financial or otherwise) of the Company and its Subsidiaries which may have been made or given by any other Member or by any agent or employee of any other Member, (b) no other Member has acted as an agent of such Person in connection with making its investment hereunder and that no other Member shall be acting as an agent of such Member in connection with monitoring its investment hereunder and (c) (i) SEP has retained Bracewell LLP in connection with the transactions contemplated hereby and may retain Bracewell LLP as legal counsel in connection with SEP's investment in the Company, and (ii) unless otherwise specifically set forth in a written engagement letter with Bracewell LLP, Bracewell LLP is not representing the Company or any Member (other than SEP) in connection with the transactions contemplated hereby and if any Person wishes counsel on the transactions contemplated hereby, such Person shall retain its own independent counsel.

[*Signature Page Immediately Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

SEP:

SCREAMING EAGLE PARTNERS, LLC

By: _____
Name: Kirk Yariger
Title: Manager

BNR:

BUFFALO NATURAL RESOURCES, LLC

By: _____
Name: John B. Westmoreland
Title: CEO

OPERATOR:

BUFFALO XXII OPERATING, LLC

By: _____
Name: John B. Westmoreland
Title: CEO