



William Cass, P.E.
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Rail and Transit
July 8, 2024

REQUESTED ACTION

Authorize the Department of Transportation, pursuant to RSA 4:40 and 228:57, to grant an easement on a 1,000 square foot parcel of state-owned railroad land located on the Mountain Division Railroad Corridor in the Town of Lunenburg, Vermont to GSPP Gilman, LLC for \$500 and a one-time administrative fee of \$1,100, effective upon Governor and Executive Council approval.

Sale income and the one-time administrative fee will be credited as follows:

<u>ACCOUNT</u>	<u>FY 2025</u>
04-096-096-964010-2991 Special Railroad Account	
009-403532 Agency Income	\$ 500
04-096-096-960015-000-UUU-402156 Administrative Fee	\$1,100

EXPLANATION

The Department of Transportation received a request from GSPP Gilman, LLC for an easement over a 10-ft wide by 100-ft long (1,000 square foot) parcel of the state-owned Mountain Division Railroad Corridor in Gilman, VT and that is currently included in a Railroad Operating Agreement with New Hampshire Central Railroad. The Department proposes to grant an easement on the parcel to GSPP Gilman, LLC. The use of this parcel will not impact the inactive railroad corridor's current status or potential resumption of railroad service or other interim uses.

GSPP Gilman, LLC owns and operates a solar collection field at 2701 River Road in Lunenburg, VT, along the south side of the Mountain Division Railroad Corridor, which provides power to the upper Connecticut River area. An overhead electric transmission line has been constructed across the Mountain Division Railroad Corridor, connecting said solar collection field to existing electric distribution facilities on River Road, a municipally maintained highway, under the terms of a short-term agreement. The financial institution underwriting the solar collection field lease agreement has required GSPP Gilman, LLC furnish documentation of formal property rights for a term equal to, or exceeding, that of the loan. In response, GSPP Gilman, LLC submitted a request to obtain an easement over the subject state-owned

railroad property. As such, this proposed (crossing) easement would replace the, now in-place, short-term agreement.

RSA 228:57 allows the Department to sell or lease portions of a railroad corridor no longer needed by the State to any responsible person, firm or corporation for public use. Based on the power being supplied to the region's power grid via this proposed (crossing) easement, the public use criteria has been satisfied. Additionally, the Department has determined the proposed (crossing) easement meets all clearance criteria and the area of interest is surplus to the Department's operational needs and therefore we respectfully request consideration of granting this proposed (crossing) easement.

The Long-Range Capital Planning and Utilization Committee approved the Easement on September 15, 2023 (LRPC 23-023) for \$500 with a \$1,100 administrative fee.

Your approval of this resolution is respectfully requested.

Sincerely,



William J. Cass, P.E.
Commissioner

Attachments

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS

KNOWN ALL MEN BY THESE PRESENTS, THAT, The State of New Hampshire, whose mailing address is the Department of Transportation, PO Box 483, 7 Hazen Drive, Concord, NH 03302-0483, by the Commissioner of the Department of Transportation, pursuant to RSA 4:40 and RSA 228:67, for consideration paid, grants to GSPP Gilman LLC, whose mailing address is 1 Landmark Square Suite 320, Stamford, CT, 06901, said Grantee, an easement for an electric transmission line through the State of New Hampshire-owned Mountain Division railroad corridor, in the Town of Lunenburg, County of Essex, State of Vermont. This easement shall include the right of access and the right to use, maintain, repair and reconstruct an electric transmission line within the easement area bounded and described as follows:

A permanent utility easement across the land of the State of New Hampshire, Mountain Division Railroad Corridor, in the Town of Lunenburg, County of Essex, State of Vermont, and Identified as an "Electric Transmission Line", as shown on the Railroad Valuation Plan titled "RIGHT-OF-WAY AND TRACK MAP, ST. JOHNSBURY & LAKE CHAMPLAIN R.R.", Section V18, Sheet 3, dated June 30, 1916, on file in the records of the Department of Transportation, Bureau of Rail and Transit, and further described as follows;

Bounded on the north by River Road, Town of Lunenburg; bounded on the west by a line perpendicular to approximate Engineering Station 5480+60 of the State of New Hampshire-owned Mountain Division Railroad Corridor; bounded on the south by the land n/f owned by Gilman Paper Mill; bounded on the east by a line perpendicular to approximate Engineering Station 5480+50 of the state-owned Mountain Division Railroad Corridor, and containing approximately one thousand square feet (1,000) square feet, more or less.

Meaning and intending to convey an easement on a portion of that Mountain Division Railroad Corridor obtained by the State of New Hampshire from the Maine Central Railroad Company and recorded in the Lunenburg (VT) Land Records on January 14, 2003, in Book 66 Pages 598-604.

The above-mentioned easement is subject to and conditioned upon the performance by the Grantee, its successors and assigns that these conditions and restrictions listed below are covenants running with the land.

1. The easement hereby granted by the Grantor shall be effective upon approval by the Governor and Executive Council.
2. The Grantee shall pay the Grantor an amount based upon the market value of such easement within thirty (30) days after the approval date by the Governor and Executive Council. following amounts:

	<u>Amount</u>
Sale	\$ 500.00
Administrative Fee	\$ 1,100.00

3. Where applicable, in accordance with RSA 72:23, I(b), this Agreement is made between parties subject to the condition that the Permittee shall pay all properly assessed current and potential real and personal property taxes. Failure of the Permittee to pay the duly assessed real and personal property taxes when due shall be cause to terminate this Agreement by the State. In accordance with the requirements of RSA 72:23, I(b), the Permittee shall be obligated to pay any taxes which may be assessed on structures or improvements added. See *New England Telephone And Telegraph Company v. City of Rochester*, 740 A.2d 135 (N.H. 1999); *Opinion of the Justices (Municipal Tax Exemptions For Electric Utility Personal Property)*, 746 A.2d 981 (N.H. 1999); *Opinion of the Justices (Property Taxation of Telephone Poles)*, 142 N.H. 102 (1997); *New England Telephone And Telegraph Company v. City of Franklin*, 141 N.H. 449 (1996).
4. The Grantee agrees that all construction, use, maintenance, repair and reconstruction within the easement shall be performed at a time and under conditions acceptable to the Grantor.
5. The Grantee agrees that it is liable for the cost of all construction, use, maintenance, repair and reconstruction within the easement. Such liability shall include but not limited to the cost of all on-site inspectors or other representatives of the Grantor. The cost for representatives of the State is in accordance with the attached NHDOT Railroad Rate Schedule, which is updated annually, and for which actual costs will be based on the annual rates in effect when work occurs. If representatives other than the State are used, the methodology will be the same, but the rates will be at the in-effect rates of the third-party and as approved by the State.

6. The Grantee agrees to pay for and obtain before construction, maintenance, repair or reconstruction may begin within the easement any and all other permissions, permits and licenses required by Federal, State, county or local governments, their agencies or boards, or any public subdivision thereof.
7. The Grantee shall coordinate any and all work within the right-of-way with the New Hampshire Department of Transportation's Bureau of Rail & Transit by contacting Bureau personnel at (603) 271-3465 and Merrimack & Grafton, dba New Hampshire Central Railroad personnel at (802) 734-2326 and giving them advanced notice of the work to be performed within the easement area so that Bureau and Railroad personnel can schedule potential railroad operations around the Grantee's work.
8. The Grantee shall defend, indemnify and hold harmless the State, its officers, agents and employees, from and against all losses suffered by the State, its officers, agents and employees, and any and all claims, liabilities or penalties asserted against the State, its officers, agents and employees, by or on behalf of any person on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or from the use, maintenance, installation, removal or existence of this facility (the facility meaning the water line and any associated work or appurtenances made thereon), notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Easement. The Grantee further agrees that its contractor shall obtain and keep in force during construction, maintenance, repair and reconstruction within the easement, and to pay the premiums on a policy or policies of insurance covering the following said easement, designating the State of New Hampshire and the Merrimack & Grafton Railroad, dba New Hampshire Central Railroad, their successors or assigns, as additional insureds.

Commercial General Liability:

\$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

Worker's Compensation Insurance in the amount as required by current State Statute

Procurement and delivery to the State of a certificate indicating such insurance acceptable to the Grantor is a condition precedent to the effectiveness of this easement. Nothing contained herein shall be construed as a waiver of sovereign immunity.

After satisfactory construction, maintenance, repair or reconstruction of this easement, the Grantee further agrees to pay for and obtain and keep in force for the life of the easement, a policy or policies of insurance covering said easement, designating the State of New Hampshire and the Merrimack & Grafton Railroad, dba New Hampshire Central Railroad, their successors or assigns, as additional named insureds.

Commercial General Liability:

\$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

9. The Grantee agrees to protect existing drainage facilities located on the Grantor's property and agrees to repair or replace as necessary any drainage as a result of the easement herein conveyed. The Grantee also agrees that where the track structure areas are disturbed by the construction, use, maintenance, repair or reconstruction within the easement those areas shall be reshaped to drain freely to the Grantor's satisfaction and, in addition, areas within the easement area but outside the track structure shall be loamed and seeded in accordance with acceptable erosion control practices. The Grantor shall be the sole determining entity in regard to the grading and reshaping areas.
10. Notwithstanding this easement, the Grantor retains all ownership rights, including the right-of-way, and such track or right-of-way as may hereinafter be constructed, operated or utilized by the Grantor or by its lessees or assigns. In the event of the restoration of rail service an appropriate modification to aforesaid facility or another facility, if necessary, shall be constructed and maintained within the easement area by the Grantee to allow the use and maintenance of the above-mentioned easement.
11. The Grantee shall be considered in default of this easement if the Grantee fails to perform any covenant of this agreement. Upon the occurrence of default, the Grantor shall give the Grantee written notice specifying the Event of Default and a reasonable time frame when the Grantee must remedy the Event of Default. In the absence of any specification of time, thirty (30) days from the date of notice shall be the time period. If the Event of Default is not timely remedied, the Grantee agrees to reimburse the Grantor any costs that are incurred to remedy the Grantee's acts or omissions that have resulted in the Event of Default. In addition, the Grantor may terminate the easement and/or treat the easement as breached and pursue any of its remedies at law or in equity or both.

TO HAVE AND TO HOLD said premises to the Grantee, its successors and assigns forever the use and purposes herein before described.

IN WITNESS WHEREOF, The STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION has executed this easement for an electric transmission line by its duly authorized agent on this 8th day of July, 2024.

Signed Sealed and Delivered
in the presence of

GRANTOR: STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

Natasha Tueli

William [Signature]
Commissioner

In the presence of:

GRANTEE: GSPP Gilman L.L.C

[Signature]

Print Name and Title
Jason Kuflik, Manager

Connecticut
THE STATE OF ~~NEW HAMPSHIRE~~

COUNTY OF Fairfield

On this 16th, day of May, 2024, before me, Amy Vaughn the undersigned officer, personally appeared JASON KUFLIK known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

[Signature]
NOTARY PUBLIC



The foregoing Agreement, having been reviewed by this office, is approved as to form and execution on August 2nd, 2024.

OFFICE OF THE ATTORNEY GENERAL

By:  _____
Assistant Attorney General

Approved by New Hampshire Council on Resources and Development on June 23, 2022.
Approved by Long Range Capital Planning and Utilization Committee on September 15, 2023.
Approved by the Governor and Executive Council on _____, 20____, Item # _____.

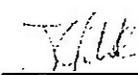
**CERTIFICATE OF AUTHORITY
GSPP GILMAN, LLC**

I, Jason Kuflik, hereby certify, that I am a manager of GSPP Holdco, LLC, a New York limited liability company, the Manager of GSPP Gilman, LLC (the "Company") and further as follows:

1. Attached hereto as Exhibit 1 is a true, correct and complete copy of the Operating Agreement of the Company made and entered into as of July 12, 2017, which is in effect on the date hereof without further amendment, waiver, rescission or modification.

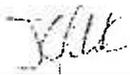
2. Attached hereto as Exhibit 2 is an original Certificate of Status of the Company issued by the Secretary of State of New Hampshire, issued on May 6, 2024, and no event has occurred since the date thereof which would impair such standing.

3. The following individual is the Manager of GSPP Holdco, LLC, the Manager of the Company and on the date hereof hold the office set forth opposite his name. The signature set forth opposite his name is his true and genuine signature.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Jason Kuflik	Manager of GSPP Holdco, LLC, the Manager of the Company	 _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, I have hereunto signed my name as of May 14, 2024.

By: 
Name: Jason Kuflik
Title: Manager

[SIGNATURE PAGE TO CERTIFICATE OF AUTHORITY OF GSPP HOLDCO, LLC]

EXHIBIT 1

Operating Agreement

see attached

**OPERATING AGREEMENT
OF
GSPP GILMAN, LLC
a New York Limited Liability Company**

THIS OPERATING AGREEMENT ("Agreement") of GSPP GILMAN, LLC, a New York limited liability company ("Company"), is made and entered into as of the 12th day of July, 2017 (the "Effective Date"), by and among the Company and the Members listed on Exhibit A attached hereto.

Recitals

A. The Company was formed on July 12, 2017, pursuant to Articles of Organization filed with the New York Secretary of State.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are conclusively acknowledged, the parties, intending to be legally bound, agree as follows:

**ARTICLE I
RECITALS; DEFINED TERMS**

1.1 Recitals. The foregoing recitals are true and correct in every respect and are incorporated by reference into this Agreement.

1.2 Defined Terms. The following capitalized terms shall have the meanings as set forth in this Section 1.2.

"Act" means the New York Limited Liability Company Act, as it may be amended from time to time.

"Additional Capital Contributions" has the meaning set forth in Section 3.2.

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

(a) crediting to such Capital Account any amount that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i); and

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

"Affiliate" means, with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the

direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

"Agreement" means this Operating Agreement, as it may be amended and/or restated from time to time.

"Applicable Law" means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

"Articles of Organization" means the Articles of Organization of the Company filed with the New York Secretary of State, as they may from time to time be amended.

"Available Net Cash Flow" means all cash received by the Company during any taxable year, less all cash disbursements made by the Company during such year, and less such reasonable and customary reserves for working capital, contingencies and anticipated short-term obligations (including debt service and capital improvements), as the Manager shall deem reasonably necessary in the ordinary course of business. Available Net Cash Flow shall not include Capital Contributions, but shall be increased by the reduction of any reserve previously established.

"Bankruptcy" means, with respect to a Person, the occurrence of any of the following: (a) the filing of an application by such Person for, or a consent to, the appointment of a trustee of such Person's assets; (b) the filing by such Person of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Person's inability to pay such Person's debts as they come due; (c) the making by such Person of a general assignment for the benefit of such Person's creditors; (d) the filing by such Person of an answer admitting the material allegations of, or such Person's consenting to, or defaulting in answering, a bankruptcy petition filed against such Person in any bankruptcy proceeding; or (e) the expiration of sixty (60) days following the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Person a bankrupt or appointing a trustee of such Person's assets.

"Book Depreciation" means, with respect to any Company asset for each Fiscal Year, the Company's depreciation, amortization, or other cost recovery deductions determined for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such Fiscal Year, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero and the Book Value of the asset is positive, Book Depreciation shall be determined with reference to such beginning Book Value using any

permitted method selected by the Manager in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3).

“Book Value” means, with respect to any Company asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) the initial Book Value of any Company asset contributed by a Member to the Company shall be the gross Fair Market Value of such Company asset as of the date of such contribution;

(b) immediately prior to the Distribution by the Company of any Company asset to a Member, the Book Value of such asset shall be adjusted to its gross Fair Market Value as of the date of such Distribution;

(c) the Book Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as reasonably determined by the Manager, as of the following times:

(i) the acquisition of an additional Membership Interest in the Company by a new or existing Member in consideration for more than a *de minimis* Capital Contribution;

(ii) the Distribution by the Company to a Member of more than a *de minimis* amount of property (other than cash) as consideration for all or a part of such Member's Membership Interest in the Company; and

(iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g);

provided, that adjustments pursuant to clauses (i) and (ii) above need not be made if the Manager reasonably determines that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members and that the absence of such adjustment does not adversely and disproportionately affect any Member;

(d) the Book Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted tax basis of such Company asset pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Account balances pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); provided that Book Values shall not be adjusted pursuant to this paragraph (d) to the extent that an adjustment pursuant to paragraph (c) above is made in conjunction with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d); and

(e) if the Book Value of a Company asset has been determined pursuant to paragraph (a) or adjusted pursuant to paragraphs (a) or (b) above, such Book Value shall thereafter be adjusted to reflect the Book Depreciation taken into account with respect to such Company asset for purposes of computing Net Income and Net Losses.

“Capital Account” has the meaning set forth in Section 3.5.

“Capital Contribution” means, for any Member, the total amount of cash and cash equivalents and the Book Value of any property contributed to the Company by such Member, including Additional Capital Contributions.

“Class A Member” means each Member from time to time identified as a Class A Member on Exhibit A attached hereto and who is the record owner of Class A Units.

“Class A Unit” means a Unit initially issued to a Class A Member in such Person’s capacity as a Class A Member and designated in this Agreement and on Exhibit A as a Class A Unit.

“Class B Member” means each Member from time to time identified as a Class B Member on Exhibit A attached hereto and who is the record owner of Class B Units.

“Class B Unit” means a Unit initially issued to a Class B Member in such Person’s capacity as a Class B Member and designated in this Agreement and on Exhibit A as a Class B Unit.

“Code” means the Internal Revenue Code of 1986, as amended.

“Common Unit” means a Class A Unit and/or a Class B Unit, as the case may be, and such other classes or types of Units as may hereafter be issued and designated as Common Units in accordance with the terms and conditions of this Agreement.

“Company” has the meaning set forth in the Preamble.

“Company Minimum Gain” means “partnership minimum gain” as defined in Treasury Regulations Section 1.704-2(b)(2), substituting the term “Company” for the term “partnership” as the context requires.

“Covered Person” has the meaning set forth in Section 6.11(a).

“Distribution” means a distribution made by the Company to a Member, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise.

“Effective Date” has the meaning set forth in the Preamble.

“Events of Dissolution” has the meaning set forth in Section 9.1.

“Fair Market Value” of any asset as of any date means the purchase price that a willing buyer having all relevant knowledge would pay a willing seller for such asset in an arm’s length transaction, as determined in good faith by the Manager based on such factors as the Manager, in the exercise of its reasonable judgment, considers relevant.

“Fiscal Year” means the calendar year, unless the Company is required to have a taxable year other than the calendar year, in which case Fiscal Year shall be the period that conforms to its taxable year.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

“Major Decisions” shall refer to any of the decisions described in Section 6.3.

“Majority in Interest of Members” shall refer to those Members who, in the aggregate, hold more than fifty percent (50%) of the outstanding Common Units held by all Members holding Common Units.

“Manager” mean that Person or Persons serving as the Manager(s) of the Company pursuant to and in accordance with Section 6.5.

“Member” mean each Person listed as a Class A Member or a Class B Member on Exhibit A attached hereto and made a part hereof, and any other Person(s) who subsequently become admitted to the Company as a Class A Member or Class B Member in accordance with this Agreement, in each case with respect to such Person’s capacity as owner of Units of the Company. The Members shall constitute the “members”, as that term is defined in the Act, of the Company.

“Member Nonrecourse Debt” means “partner nonrecourse debt” as defined in Treasury Regulations Section 1.704-2(b)(4), substituting the term “Company” for the term “partnership” and the term “Member” for the term “partner” as the context requires.

“Member Nonrecourse Debt” means “partner nonrecourse debt” as defined in Treasury Regulations Section 1.704-2(b)(4), substituting the term “Company” for the term “partnership” and the term “Member” for the term “partner” as the context requires.

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

“Member Nonrecourse Deduction” means “partner nonrecourse deduction” as defined in Treasury Regulations Section 1.704-2(i), substituting the term “Member” for the term “partner” as the context requires.

“Membership Interest” or “Membership Interests” means an interest in the Company owned by a Member, including such Member’s right (a) to his, her or its distributive share of Net Income, Net Losses and other items of income, gain, loss and deduction of the Company; (b) to his, her or its distributive share of the assets of the Company; (c) to vote on,

consent to, approve or otherwise participate in any decision of the Members as and to the extent provided in this Agreement; and (d) to any and all other benefits to which such Member may be entitled as provided in this Agreement or the Act. The Membership Interest of each Member shall be expressed as a number of Units, and shall be as set forth on Exhibit A attached hereto, as may be amended by the Manager from time to time to reflect the issuance of new Units or the Transfer of Units to any new or existing Member in accordance with the terms of this Agreement.

“Net Income” and “Net Loss” means, for each Fiscal Year or other period specified in this Agreement, an amount equal to the Company’s taxable income or taxable loss, or particular items thereof, determined in accordance with Code Section 703(a) (where, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or taxable loss), but with the following adjustments:

(a) any income realized by the Company that is exempt from federal income taxation, as described in Code Section 705(a)(1)(B), shall be added to such taxable income or taxable loss, notwithstanding that such income is not includable in gross income;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B), including any items treated under Treasury Regulations Section 1.704-1(b)(2)(iv)(I) as items described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or taxable loss, notwithstanding that such expenditures are not deductible for federal income tax purposes;

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

(d) any items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted tax basis shall be computed by reference to the property's Book Value (as adjusted for Book Depreciation) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

(e) if the Book Value of any Company property is adjusted as provided in the definition of Book Value, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of such taxable income or taxable loss; and

(f) to the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulations 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).

“Nonrecourse Deductions” has the meaning set forth in Treasury Regulations Section 1.704-2(b).

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

“Officer” has the meaning set forth in Section 6.10.

“Percentage Interest” means, with respect to any Member and as of the relevant time of determination, the quotient, expressed as a percentage, determined by dividing (x) the then total number of Common Units then outstanding held by such Member, by (y) the total number of all Common Units then outstanding held by all of the Members.

“Permitted Transferee” means (a) each existing Member who is a party to this Agreement; (b) any Person who is a lineal descendant or spouse of a Member; (c) a trustee of any trust the beneficiaries of which are Permitted Transferees; (d) any corporation in which (at the time of the Transfer and for as long as the Transferee owns any Membership Interest), each class of stock is 100% owned by a Member or one or more Permitted Transferees; (e) any partnership in which (at the time of the Transfer and for as long as the Transferee owns any Membership Interest), each class of partnership interest is 100% owned by a Member or one or more Permitted Transferees; and (f) any limited liability company or other form of incorporated or unincorporated business organization in which (at the time of the Transfer and for as long as the Transferee owns any Membership Interest) each class of stock, membership or other equity interest is 100% owned by a Member or one or more Permitted Transferees.

“Person” means a natural person, corporation, association, partnership, joint venture, limited liability company, trust or any other entity defined as a “person” under the Act.

“Regulatory Allocations” has the meaning set forth in Section 4.2.

“Tax Distribution” has the meaning set forth in Section 5.2.

“Transfer” means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Membership Interests owned by a Person or any interest (including a beneficial interest) in any Membership Interests owned by a Person. “Transfer” when used as a noun shall have a correlative meaning. “Transferor” and “Transferee” mean a Person who makes or receives a Transfer, respectively.

“Treasury Regulations” means the final or temporary regulations issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

“Unit” means one of the specified number of each class of Membership Interest held by each Member of the Company and shall include all types, classes, and series of units, including Common Units (including Class A Units and Class B Units) now or hereafter issued, and any other additional Common Units of any class or series, and any additional types or classes of equity interests in the Company hereafter issued (including, without limitation, preferred units and other incentive units); provided, that any type or class of Unit shall have the rights, privileges, preferences, duties, liabilities, obligations and rights set forth in this Agreement, as it may be amended or amended and restated from time to time, and the Act, and the Membership Interests represented by such type or class or series of Unit shall be determined in accordance with such rights, privileges, preferences, duties, liabilities, obligations and rights.

“Unitholder” means any Member or other owner of Units as reflected on the Company’s books and records.

“Unreturned Capital Contributions” means, in respect of any Member as of a particular date, an amount (but not below zero) equal to the aggregate Capital Contributions made and funded to the Company by such Member in respect of such Member’s Units through such date, less the aggregate amounts distributed to such Member pursuant to Article V (including, without limitation, by operation of Article IX) of this Agreement.

ARTICLE II

GENERAL PROVISIONS

2.1 Formation; Authorized Representative. The Company was formed on, July 12, 2017, as a New York limited liability company. The Members of the Company hereby ratify, confirm and approve the execution and filing of the Articles of Organization by their authorized representative under the Act.

2.2 Name of Company. The name of the Company is GSPP Gilman, LLC. The Company may do business under that name or such other name as the Manager may from time to time determine. If the Company does business under a name other than that set forth in its Articles of Organization, the Company shall file a fictitious name certificate as required by Applicable Law.

2.3 Place of Business. The Company’s principal place of business shall be at 1360 Garrison Avenue, Bronx, New York 10474, or at such other place or places as the Manager may from time to time determine.

2.4 Purpose. The purpose of the Company is to engage, directly or indirectly, in the business of owning and operating a solar energy generating facility, including without limitation, the provision of energy consulting services, solar installations, and other energy services, and to engage in any and all activities necessary or incidental thereto (the “Business”).

2.5 Term. The term of the Company commenced upon the filing of its Articles of Organization with the New York Secretary of State and shall continue in perpetual existence until the Company is dissolved pursuant to Section 9.1.

2.6 Sole and Exclusive Operating Agreement; Effect of Inconsistencies with the Act. The terms and conditions of this Agreement, as the same may from time to time be amended, supplemented, or restated (solely in accordance with this Agreement), are intended to be the sole and exclusive “operating agreement” of the Company for purposes of the Act. To the extent any provision of this Agreement is prohibited or otherwise invalid or ineffective under the Act, this Agreement shall be considered amended (to the least extent possible) in order to make such provision permitted, valid and effective under the Act. Subject to the foregoing, if any term in this Agreement governs, provides for or otherwise addresses any matter (including relations among the Members or between the Members and the Company or the Manager, the rights or duties of a Person, or the activities or affairs of the Company), and such matter is also governed by one or more provisions of the Act, then such term in this Agreement shall prevail over the corresponding provision of the Act. The preceding sentence shall apply regardless of whether the term in this Agreement expressly states that it is intended to replace, supplement or otherwise modify such provision of the Act, and regardless of whether the term in this Agreement applies only partially or by implication to the matter governed by such provision of the Act. It is the intent of the Company and the Members that any court (or any arbitrator or other Person charged with the interpretation or enforcement of this Agreement) shall give maximum effect to the principle of freedom of contract and to the enforceability of this Agreement. Accordingly, if a term in this Agreement does not expressly or directly displace or modify a provision of the Act, but enforcement or other effectuation of such term in this Agreement cannot occur but for the displacement or modification of such provision of the Act, then such provision of the Act shall be deemed to have been displaced or modified accordingly. Without limiting the foregoing, and for the avoidance of any doubt: (i) it is the intent of the parties to this Agreement that this Agreement definitively and completely contains the agreements and understandings of the parties with respect to transactions that may otherwise be subject to the Act; and (ii) each of the provisions of this Agreement (whether considering it as a whole or any part(s) thereof) are fair and reasonable under the circumstances, were negotiated at arms-length by highly sophisticated and capable parties who were separately represented by competent legal counsel, and such provisions will not be deemed manifestly unreasonable, invalid or otherwise improper under the Act.

2.7 Executory Agreement in Bankruptcy. The parties to this Agreement acknowledge and agree that this Agreement constitutes an “executory” agreement with respect to all Units issued by the Company and shall be governed by 11 U.S.C. § 365 in connection with any Bankruptcy of the Company or of any Member because, among other provisions and obligations, this Agreement imposes on each party material and affirmative duties, which constitute material and unperformed future obligations. Accordingly, any trustee in a Bankruptcy proceeding holding a right in or claim to any Units issued by the Company shall be required to comply with the terms of this Agreement and New York law governing this Agreement, including, without limitation, the restrictions of the rights of a creditor of a Member pursuant to New York law.

ARTICLE III

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; LOANS; UNITS

3.1 Initial Capital Contributions. The Members hereby confirm that as their total Capital Contributions to the Company they have contributed cash or other property in exchange for their respective Units in the Company, as described in Exhibit A attached hereto.

3.2 No Required Additional Capital Contributions. The Members may, but shall not be required to, make additional contributions to the capital of the Company (“Additional Capital Contributions”).

3.3 No Interest on Capital Contributions. Members shall not be paid interest on their Capital Contributions.

3.4 Return of Capital Contributions; No Partition. Except as expressly provided in this Agreement, no Member shall be entitled to a return of the Capital Contributions made by such Member until the full and complete winding-up and liquidation of the business and affairs of the Company. No Member shall have the right to bring any action for partition against the Company with respect to its property, or to demand and receive property other than cash in return for its Capital Contributions.

3.5 Maintenance of Capital Accounts. The Company shall establish and maintain for each Member a separate capital account (a “Capital Account”) on its books and records in accordance with this Section 3.5. Each Capital Account shall be established and maintained in accordance with the following provisions:

(a) Each Member’s Capital Account shall be increased by the amount of:

(i) such Member’s Capital Contributions, including such Member’s initial Capital Contribution and any Additional Capital Contributions;

(ii) any Net Income or other item of income or gain allocated to such Member pursuant to ARTICLE IV; and

(iii) any liabilities of the Company that are assumed by such Member or secured by any property distributed to such Member.

(b) Each Member’s Capital Account shall be decreased by:

(i) the cash amount or Book Value of any property distributed to such Member pursuant to ARTICLE V and Section 9.2(a)(iii);

(ii) the amount of any Net Loss or other item of loss or deduction allocated to such Member pursuant to ARTICLE IV; and

(iii) 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.

3.6 Succession Upon Transfer. In the event that any Units are Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Units and, subject to Section 4.4, shall receive allocations and Distributions pursuant to ARTICLE IV, ARTICLE V and ARTICLE IX in respect of such Units.

3.7 Negative Capital Accounts. If any Member shall have a deficit balance in such Member's Capital Account, such Member shall have no obligation, during the existence of the Company or upon dissolution or liquidation thereof, to restore such negative balance or make any Capital Contributions to the Company by reason thereof, except as may be required by Applicable Law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

3.8 Loans by Members. The Members may, but shall not be required to, make any loans to the Company, upon such terms and conditions as determined by the Manager. Any such loans shall be evidenced by separate promissory notes specifying the terms and conditions of such loans.

3.9 Treatment of Loans from Members. Loans by any Member to the Company shall not be considered Capital Contributions and shall not affect the maintenance of such Member's Capital Account, other than to the extent provided in Section 3.5(a)(iii), if applicable.

3.10 Units.

(a) The Membership Interests of the Members shall be represented by issued and outstanding Units, which may be divided into one or more types, classes or series. Each type, class or series of Units shall have the rights, privileges, preferences, duties, liabilities, obligations and rights, including voting rights, if any, set forth in this Agreement with respect to such type, class or series. The Manager shall maintain a schedule of all Members, their respective mailing addresses and the amount and series of Units held by them (the "Members Schedule"), and shall update the Members Schedule upon the issuance or Transfer of any Units to any new or existing Member. A copy of the Members Schedule as of the execution of this Agreement is attached hereto as Exhibit A.

(b) The Company is authorized to issue the following classes of Common Units: Class A Units and Class B Units. As of the date hereof, Class A and Class B Units have been issued and are outstanding in the amounts set forth on Exhibit A.

(c) As of the Effective Date, 1,000 Units are and shall be designated as Common Units, and, of those, 990 shall be designated as Class A Units, and 10 shall be designated as Class B Units. As of the Effective Date, (i) 990 Class A Units are issued and outstanding; and (ii) 10 Class B Units are issued and outstanding.

(d) The Class B Units shall in all respects be identical to the Class A Units, except that the holders of Class A Units shall be entitled to priority distributions as set forth in this Agreement.

(e) Each Unit shall constitute a "security" within the meaning of and shall be governed by (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of New York, and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

3.11 Additional Membership Interests. The Manager have the right, and each Member acknowledges that this Agreement grants the Manager the right, in accordance with the terms hereof, including the requirement of the approval of a Majority in Interest of Members, to authorize and issue additional Class A or Class B Units and to create, authorize, and issue any new classes and series of Units in each case including additional Units in which the Members on the Effective Date may not hold an interest or otherwise participate, including, without limitation, classes and series established after such Member was admitted to the Company and classes and series with rights, preferences and privileges senior to Common Units. Each Member acknowledges that, unless and only to the extent, if any, expressly provided in this Agreement, such Member has no right to participate in any issuance of Units after the Effective Date or in any issuance of any newly created class or series of Units, and such Member's Units, rights and interests in the Company are subject to dilution and other adverse effects in the event any additional Units or any newly created class or series of Units are authorized or issued.

3.12 Additional Members. Upon the issuance by the Company of new Units to a Person in accordance with the terms and conditions of this Agreement, such Person may be admitted as a Member of the Company (an "Additional Member"), and Units may be issued to such Person upon such Person furnishing to the Manager a fully executed counterpart to (i) this Agreement and (ii) such other agreements, documents or instruments as the Manager deems necessary or appropriate in their sole discretion to effect such Person's subscription for or acquisition of Units and admission as a Member (including completing and entering into an investor representation agreement, investor questionnaire, subscription agreement or confidentiality agreement or providing or executing such other agreements, documents and instruments as the Manager may deem appropriate in their sole discretion). Such admission shall become effective on the date on which the Manager determines that all such conditions have been satisfied and when any such admission is shown on the books and records of the Company. Upon the admission of an Additional Member in accordance with this provision, the Company shall cause Exhibit A to be amended to include such Additional Member, and the Manager may amend this Agreement, with the approval of a Majority in Interest of Members, but otherwise without the consent of any Member, to the extent required to authorize the issuance of the additional Units to the Additional Member. The requirements set forth in this Section shall not apply to a Person admitted as a Member as a result of a Transfer otherwise expressly permitted in accordance with this Agreement.

3.13 Certificates of Units. The Units owned by the Members shall be represented by one or more certificates substantially in the form of the certificate attached to this Agreement as Exhibit C (each a "Membership Interest Certificate"). The Membership Interest Certificates shall bear legends substantially in the form of the legends set forth in Exhibit C. Membership Interest Certificates shall be numbered and executed by the Manager or the President or any Vice President of the Company and shall be entered into a membership transfer register as they are issued, which register shall be maintained by the Manager. Upon surrender to the Company of a Membership Interest Certificate duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, it shall be the duty of the Company to issue a new Membership Interest Certificate to the person or entity entitled thereto, to cancel the surrendered Membership Interest Certificate, and to record the transaction in the membership transfer register.

ARTICLE IV ALLOCATIONS

4.1 Allocation of Net Income and Net Loss. For each Fiscal Year (or portion thereof), except as otherwise provided in this Agreement, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss or deduction) of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 4.2, the Capital Account balance of each Member, immediately after making such allocations, is, as nearly as possible, equal to (i) the Distributions that would be made to such Member pursuant to Section 9.2(a)(iii) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Value, all Company liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Book Value of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 9.2(a)(iii), to the Members immediately after making such allocations, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

4.2 Regulatory and Special Allocations. Notwithstanding the provisions of Section 4.1:

(a) If there is a net decrease in Company Minimum Gain (determined according to Treasury Regulations Section 1.704-2(d)(1)) during any Fiscal Year, each Member shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.2(a) is intended to comply with the "minimum gain chargeback" requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Nonrecourse Deductions shall be allocated in the manner required by Treasury Regulations Section 1.704-2(i). Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, each Member that has a share of such Member Nonrecourse Debt Minimum Gain shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. Items to be allocated pursuant to this paragraph shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.2(b) is intended to comply with the "minimum gain chargeback" requirements in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) In the event any Member unexpectedly receives any adjustments, allocations or Distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), Net Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations or Distributions as quickly as possible. This Section 4.2(c) is intended to comply with

the qualified income offset requirement in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) The allocations set forth in paragraphs (a), (b) and (c) above (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations under Code Section 704. Notwithstanding any other provisions of this ARTICLE IV (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating Net Income and Net Losses among Members so that, to the extent possible, the net amount of such allocations of Net Income and Net Losses and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

4.3 Tax Allocations. Notwithstanding the provisions of Section 4.1:

(a) Subject to Section 4.3(b), Section 4.3(c) and Section 4.3(d), all income, gains, losses and deductions of the Company shall be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses and deductions among the Members for computing their Capital Accounts, except that if any such allocation for tax purposes is not permitted by the Code or other Applicable Law, the Company's subsequent income, gains, losses and deductions shall be allocated among the Members for tax purposes, to the extent permitted by the Code and other Applicable Law, so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) and the traditional method with curative allocations of Treasury Regulations Section 1.704-3(c), so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value.

(c) If the Book Value of any Company asset is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) as provided in clause (c) of the definition of Book Value, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c).

(d) Allocations of tax credit, tax credit recapture and any items related thereto shall be allocated to the Members according to their interests in such items as determined by the Manager taking into account the principles of Treasury Regulations Section 1.704-1(b)(4)(ii).

(e) Allocations pursuant to this Section 4.3 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Losses, Distributions or other items pursuant to any provisions of this Agreement.

4.4 Allocations in Respect of Transferred Units. In the event of a Transfer of Units during any Fiscal Year made in compliance with the provisions of ARTICLE VIII, Net Income, Net Losses and other items of income, gain, loss and deduction of the Company attributable to such Units for such Fiscal Year shall be determined using any method of allocating between the transferor and the transferee that is acceptable under the Code and approved by the Manager.

ARTICLE V DISTRIBUTIONS

5.1 Distributions of Available Net Cash Flow. Subject to the terms and conditions of this Agreement, including, without limitation, Section 3.10(e) above, any Available Net Cash Flow during any Fiscal Year of the Company shall be distributed periodically, at such times and in such amounts as determined by the Manager, in the following order and priority:

(a) first, 100% to the Class A Members on a proportionate basis in accordance with the respective Unreturned Capital Contributions, until their Unreturned Capital Contributions are reduced to zero; and

(b) second, 100% to the Members on a proportionate basis in accordance with their then-current respective Percentage Interests.

In the event the Company makes distributions, it shall have no obligation to do so in kind, and no Member shall have the right to demand or receive any properly declared distribution by the Company in any form other than cash, regardless of the nature of such Member's prior Capital Contributions. If the Company chooses to distribute property other than cash to its Members, the amount of such distribution shall be deemed to be equal to the Fair Market Value of the property distributed, net of any liabilities which such property may be subject to or which may be assumed by the Members in connection therewith.

5.2 Minimum Distribution for Taxes. To the extent funds of the Company may be available for Distribution by the Company and Distribution thereof is permitted by Applicable Law, the Manager shall cause the Company to distribute to the Members with respect to each fiscal quarter an amount of cash (a "Tax Distribution") which in the good faith judgment of the Manager equals (i) the aggregate amount of taxable income allocable to the Members in respect of such fiscal quarter (net of taxable Losses allocated to the Members in respect of prior fiscal quarters and not previously taken into account under this clause), multiplied by (ii) such rate as is determined by the Manager to be the maximum combined federal, state and local aggregate income or other tax rate applicable to any Member or individual that is an indirect owner of a Member, with such Tax Distribution to be made to the Members in the same proportions that taxable income was allocated to the Members during such fiscal quarter (net of taxable Losses allocated to the Members in respect of prior fiscal quarters and not previously taken into account under this clause). To the extent the Company does not make the full amount of a Tax Distribution with respect to a fiscal quarter, the shortfall shall be added to all subsequent fiscal quarters until it is paid in full. Tax Distributions shall be considered advance Distributions to the Members (and reduce future Distributions) made pursuant to Section 5.1.

5.3 Payments to Tax Authorities. Notwithstanding anything to the contrary in this Agreement, the Company shall withhold such amounts as may be required pursuant to the Code (including without limitation Section 1446 thereof), the Treasury Regulations thereunder, or any provision of any state, local, or foreign law with respect to any payment, distribution, or allocation of income to the Members, and such withheld amounts shall constitute and be treated for all purposes of this Agreement as amounts distributed to the Members to which such withholdings are attributable, and distributions to be made to such Members shall be reduced by the amount so withheld. The Company shall pay over to any federal, state, local or foreign government any amounts required to be so withheld in accordance with Applicable Law.

ARTICLE VI

MANAGEMENT OF THE COMPANY

6.1 Management of the Company. The Company shall be a manager-managed Company under Applicable Law. Except as otherwise provided in this Agreement, the overall management and control of the business and affairs of the Company shall be vested solely in the Manager. The Manager shall not be required to devote their full-time efforts to the business and affairs of the Company, but only such time as the Manager deems reasonably necessary to manage the business and affairs of the Company to the Company's best advantage. The Manager may, but need not, be a Member of the Company or a Person owning the equity of or controlling a Member that is not a natural Person.

6.2 Rights and Powers of Manager. In addition to the rights and powers which the Manager may have under the Act, and except as otherwise specifically vested in the Members hereunder or under the Articles of Organization or the Act, the Manager of the Company shall have all rights and powers necessary for the management of the Company, including, without limitation, the right and power to do the following:

(a) To execute any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the management of the Company or its assets or necessary for the conduct of the business of the Company;

(b) To engage in any kind of activity and to perform and carry out contracts of any kind necessary to or in connection with or incidental to the accomplishment of the purpose of the Company as may be lawfully carried on or performed under the laws of the State of New York;

(c) To acquire, by purchase, lease, option, or otherwise, any property or any interest therein, which may be necessary, convenient, or incidental to the accomplishment of the purposes of the Company;

(d) To sell, lease or otherwise dispose of, any property or any interest therein;

(e) To purchase insurance on the business and assets of the Company;

(f) To invest the Capital Contributions of the Members and reinvest the proceeds from the sale of the Company assets in such investments and upon such terms as the Managers shall determine;

(g) To employ any Persons (including any Member) in connection with management of the Company's assets and business;

(h) To retain counsel, accountants, financial advisors, and other professional personnel;

(i) To file federal, state, and local tax returns on behalf of the Company and make such elections as are required or permitted under federal, state, or local tax laws;

(j) To designate the depository or depositories in which all bank accounts of the Company shall be kept and the person or persons upon whose signature or signatures withdrawals therefrom shall be made; provided that all checks in excess of \$5,000 (other than checks for recurring expenses incurred in the ordinary course of business for rent, utilities, insurance, and payroll) shall require two signatures; and

(k) To engage in such other activities and incur such other expenses as may in their judgment be necessary or appropriate for the furtherance of the Company's purposes, and to execute, acknowledge and deliver any and all instruments necessary to the foregoing.

6.3 Member Approval Required for Major Decisions. Notwithstanding anything to the contrary in this Agreement, the following actions (the "Major Decisions") shall require the prior written consent and approval of a Majority in Interest of Members:

(a) The Transfer of all or substantially all of the assets of the Company;

(b) The acquisition, sale, lease, exchange or other Transfer by the Company of any real property;

(c) Incurring or assuming any indebtedness in any single transaction in excess of \$25,000 or in the aggregate in excess of \$75,000 in any calendar year, or refinancing any indebtedness of the Company;

(d) The granting of any mortgage, lien, claim, encumbrance or security interest with respect to the Company's assets, as security for the debts and obligations of the Company or otherwise, other than purchase money loans or capital or operating leases involving assets valued at Fifteen Thousand Dollars (\$15,000) or less in any calendar year;

(e) Providing any loan, guarantee, indemnity or other financial support by the Company other than in the ordinary course or for the benefit of affiliates of the Company;

(f) Prosecuting, defending, settling, compromising, waiving or submitting to arbitration, any suits, actions or claims at law or in equity to which the Company is a party or by which the Company is affected, or stipulating to the entry of any order, judgment or decree in each case involving Twenty-Five Thousand Dollars (\$25,000) or more in any calendar year;

(g) Entering into, modifying, extending or terminating any agreement that delegates the management of the Company's business to any Person that is not a Manager or employed by the Company;

(h) Converting, merging or consolidating the Company with or into any partnership, limited liability company or other entity, or consummating any other business combination or reorganization of the Company;

(i) Making any capital expenditures in excess of \$25,000 in any single transaction;

(j) The redemption or purchase by the Company of any Member's Units, other than any purchase of Units in accordance with this Agreement;

(k) Changing the nature of the Company's business;

(l) Admitting any additional or substitute Members (other than pursuant to a Permitted Transfer);

(m) The amendment or restatement of the Company's Articles of Organization or this Agreement (except as otherwise expressly provided herein);

(n) Except as permitted under this Agreement, entering into any transactions with a Member or an Affiliate of a Member; or

(o) The filing of a voluntary petition in Bankruptcy or a voluntary petition in liquidation by the Company or allowing the filing of an involuntary petition in Bankruptcy or an involuntary petition in liquidation of the Company.

6.4 Role of Members. Except for Major Decisions and as otherwise set forth herein, in the Articles of Organization, or in the Act, the Members (other than a Member acting in the capacity of a Manager) shall not participate in the management, control or conduct of the Company's business, and shall not have any authority or right to act for or bind the Company other than as a duly authorized agent of the Company.

6.5 Appointment and Tenure of Manager. The Manager of the Company shall be GSPP Holdco, LLC, a New York limited liability company, until its resignation or removal, or until its successor, if any, is duly elected by the affirmative vote of a Majority in Interest of Members. The Manager may be removed at any time by the affirmative vote of a Majority in Interest of Members. The number of Managers may be increased (and, if increased, further increased or decreased) from time to time by the affirmative vote of a Majority in Interest of Members, and any vacancies created by an increase in the number of Managers or upon the death, Disability, resignation or removal of a Manager shall be filled by the affirmative vote of a Majority in Interest of Members. For purposes of this Section 6.5, the term "Disability" shall mean the inability of a Manager to perform the Manager's ordinary and customary duties as a Manager for and on behalf of the Company for a continuous period of ninety (90) days due to a physical or mental illness or impairment, as determined by two (2) licensed physicians, one of whom shall be the Manager's regularly attending physician, if any.

6.6 Resignation of Manager. A Manager may resign from such position at any time upon giving at least thirty (30) days' prior written notice to the Members of the Company.

6.7 Meeting of Managers; Voting. Except as otherwise provided herein, if there is one Manager of the Company, all actions to be taken by the Manager shall be taken by the sole Manager, and if there is more than one Manager of the Company, all actions taken by the Managers on behalf of the Company shall require the consent and approval of a majority of the Managers. For avoidance of doubt, for such time as there are two (2) Managers of the Company, all actions taken by the Managers on behalf of the Company shall require the consent and approval of both Managers. Meetings of the Managers may be called by any Manager by giving written notice of such meeting to the other Managers in a manner similar to that set forth in Section 7.2 with regard to meetings of Members. Managers shall be deemed present at a meeting of the Managers if a conference telephone or similar communications equipment is used, by means of which all persons participating in the meeting may simultaneously hear each other. Each Manager, acting alone and without the joinder of any other Manager, shall have the authority to execute contracts or otherwise act on behalf of or bind the Company in connection with any matter, provided that such matter was duly authorized and approved by the Managers.

6.8 Action by Managers Without a Meeting. Any action required or permitted to be taken by the Managers at a meeting of Managers may be taken without a meeting if a written consent, setting forth the action so taken, shall be signed by all of the Managers.

6.9 Compensation of Manager; Reimbursement for Expenses. The Managers of the Company shall receive such compensation for the performance of the duties and responsibilities of the Managers contained herein, as approved in writing by a Majority in Interest of Members. No Manager shall be precluded from receiving a salary or other compensation because such Manager is also a Member. The Company shall reimburse the Managers for all reasonable expenses incurred by the Managers in connection with and arising out of the performance of the duties and responsibilities of the Managers contained herein, provided that such expenses are supported by adequate documentation.

6.10 Officers.

(a) Election and Term of Office; Duties. Each year, and from time to time, the Managers of the Company may elect such officers (each an "Officer") of the Company as the Managers shall determine, which may include any of the following: (i) the President, whose duties, subject to the limitations set forth in this Agreement, shall include the management of the day-to-day business affairs of the Company under the direction of the Managers; (ii) one or more Vice Presidents, whose duties, subject to the limitations set forth in this Agreement, shall include the management of the day-to-day business affairs of the Company under the direction of the President; (iii) the Secretary, whose duties shall include keeping minutes of all meetings of the Managers, issuing all notices required hereunder, serving as custodian of the Company records, and in general performing all duties incident to the office of Secretary; and (iv) the Treasurer, whose duties shall include responsibility for all funds and securities of the Company and maintaining all Company bank accounts and financial records, and in general performing all duties incident to the office of Treasurer. Officers of the Company shall serve until their

successors shall have been duly elected and qualified, or until their death, resignation or removal. An Officer may hold more than one office of the Company.

(b) Removal and Resignation of Officers; Vacancies. Any Officer of the Company may be removed, either for or without cause, by the Managers of the Company. Any Officer may resign at any time by giving written notice of resignation to the Managers. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified in such notice, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office because of death, resignation, removal, or any other cause may be filled by the Managers of the Company.

(c) Compensation of Officers; Reimbursement for Expenses. The Officers of the Company, if any, shall receive such compensation for the performance of their duties and responsibilities contained herein, as approved in writing by the Managers. The Company shall reimburse the Officers, if any, for all reasonable expenses incurred by them in connection with and arising out of the performance of their duties and responsibilities contained herein, provided that such expenses have been approved in writing by the Managers and are supported by adequate documentation.

6.11 Exculpation and Indemnification.

(a) Exculpation of Covered Persons.

(i) No Manager, Officer, or Member (including their respective Affiliates, managers, directors, officers or other agents, as applicable) (a "Covered Person") shall be liable to the Company or any Member for any loss or other damages relating to or arising from such Covered Person's duties, services or responsibilities for the Company, including any statement, vote, decisions, or failure to act regarding any management or policy decisions by such Covered Person, unless caused by an act or omission constituting bad faith, willful or intentional misconduct, or a knowing violation of law, in each case as determined in a final, non-appealable judgement of a U.S. Federal or state court of competent jurisdiction. Any repeal or modification of this Section 6.11(a)(i) shall not adversely affect any right of a Covered Person to claim exculpation hereunder with regard to matters that occurred prior to such repeal or modification. For the avoidance of doubt, any firm, business, contractor or other Person providing products or services to the Company, or to any client or customer of the Company on behalf or at the request of the Managers or a Member shall not be deemed a duly authorized agent of the Company by reason of such actions alone.

(ii) The Members have agreed that, to the maximum extent, if any, allowed by Applicable Law, (A) the Managers shall have no fiduciary duties of care or loyalty, other than as expressly set forth in this Agreement; and (B) no other sources of law or principles related to the duties of care or loyalty, whether arising under the Act or common law or equitable principles, shall be deemed to apply to the performance of the duties and responsibilities of the Manager, notwithstanding any provision of the Act to the contrary. Without limiting the foregoing exoneration of a Covered Person, to the fullest extent provided for under the Act, no Manager or Member (whether directly, or

indirectly through its Affiliates or other Persons acting on its behalf of the Company) shall be deemed to have breached any duty or obligation described therein, unless the conduct of the Manager or Member (or such other Person) in question was (i) in bad faith; (ii) constituted willful or intentional misconduct, or (iii) constituted a violation of law. For this purpose "conduct" includes refraining from acting as well as overt acts.

(iii) Each Manager's duty of care in the discharge of the Manager's duties to the Company and the other Members is limited to refraining from engaging in negligent or reckless conduct, intentional misconduct, or a knowing violation of law. In discharging his duties, a Manager shall be fully protected in relying in good faith upon the records required to be maintained, and upon such information, opinions, reports or statements by any Members, or agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

(b) Indemnification.

(i) Indemnification. Subject to the limitations and conditions as provided in this Section 6.11, each Covered Person ("Indemnitee") who is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or arbitral (a "Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that the Covered Person was, at the time of the incident giving rise to the Proceeding, a Manager, or a duly appointed officer of the Company, or another Person (including a Member and its managers, directors, officers, or other agents) who was duly authorized by the Managers to act as an agent of the Company and/or to carry out any specified duties and responsibilities of the Manager or otherwise perform services for the benefit of the Company at the express request of the Managers, shall be indemnified by the Company against judgments, penalties (including without limitation excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) incurred by the Indemnitee in connection with such Proceeding (collectively, "Losses"); provided that the Covered Person's actions or omissions which are the subject of or otherwise related to the reasons for the Proceeding did not constitute any of the following, in each case as determined in a final, non-appealable judgement of the U.S. federal or state court of competent jurisdiction: (i) bad faith, willful or intentional misconduct, or a knowing violation of law, (ii) a transaction from which the Covered Person derived an improper personal benefit (which shall not be deemed to include any benefit or other consideration arising from a transaction with a Person with whom the Covered Person was affiliated if such transaction was approved by a Majority in Interest of Members, or was not determined to be unfair to the Company, or was disclosed in or contemplated by this Agreement), (iii) a circumstance under which the Covered Person consented to an improper distribution in violation of the Act; or (iv) a breach of the Covered Person's duties or obligations under the Act resulting in personal

liability under the Act, in each case as the same have been permissibly modified by this Agreement. The Company's indemnification obligations under this ARTICLE VI shall continue as to a Covered Person who has ceased to serve in the capacity which initially entitled such Covered Person to indemnification hereunder. No amendment, modification or repeal of this ARTICLE VI shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification or repeal. For the avoidance of doubt, any firm, business, contractor or other Person providing products or services to the Company, or to any client or customer of the Company on behalf of or at the request of the Managers, shall not be deemed a duly authorized agent of the Company by reason of such actions alone.

(ii) Control of Defense. Upon a Covered Person's discovery of any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 6.11(b), the Covered Person shall give prompt written notice to the Company of such claim, lawsuit or proceeding, provided, that the failure of the Covered Person to provide such notice shall not relieve the Company of any indemnification obligation under this Section 6.11(b), unless the Company shall have been materially prejudiced thereby. Subject to the approval of the disinterested Members, the Company shall be entitled to participate in or assume the defense of any such claim, lawsuit or proceeding at its own expense. After notice from the Company to the Covered Person of its election to assume the defense of any such claim, lawsuit or proceeding, the Company shall not be liable to the Covered Person under this Agreement or otherwise for any legal or other expenses subsequently incurred by the Covered Person in connection with investigating, preparing to defend or defending any such claim, lawsuit or other proceeding. If the Company does not elect (or fails to elect) to assume the defense of any such claim, lawsuit or proceeding, the Covered Person shall have the right to assume the defense of such claim, lawsuit or proceeding as it deems appropriate, but it shall not settle any such claim, lawsuit or proceeding without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed).

(iii) Reimbursement. The Company shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 6.11(b); provided, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section 6.11(b), then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(iv) Entitlement to Indemnity. The indemnification provided by this Section 6.11(b) shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 6.11(b) shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this

Section 6.11(b) and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

(v) Insurance. To the extent available on commercially reasonable terms, the Company may purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Managers may reasonably determine; provided, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

(vi) Savings Clause. If this Section 6.11 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, the indemnity obligations set forth in any applicable portion of this Section 6.11 that shall not have been invalidated shall apply to the fullest extent permitted by applicable law.

(c) Survival. The provisions of this Section 6.11 shall survive the dissolution, liquidation, winding up and termination of the Company.

ARTICLE VII MEMBERS

7.1 Meetings. Nothing in this Agreement shall require any meeting of Members in lieu of or in addition to any action by written consent, and the Company shall not be required to hold an annual or special meeting of Members. A general meeting of the Members of the Company may be held each year on such date and at such time as the Manager may designate for the transaction of such business as may properly come before the Members at such meeting. In addition, special meetings of the Members of the Company may be held if called by the Manager. Such general or special meetings shall be held at the principal office of the Company or at such other such place as determined by the Manager. If a Member cannot be physically present at a general or special meeting, that Member may participate in such meeting by telephone so long as all participating Members can hear and speak to each other.

7.2 Notice of Meeting. Written notice stating the place, day and hour of the meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting, and stating the purpose or purposes for which the meeting is called shall be delivered to each Member at least five (5) business days prior to the meeting. Notices may be delivered either personally, or by telephone (provided that the notice is communicated directly to the Member), facsimile or other form of electronic communication, or by mail or courier service. Written notice is effective on the earlier of receipt or three (3) business days after deposit in the United States mail, addressed to the Member at the Member's address as it appears on the records of the Company, with postage thereon prepaid.

7.3 Waiver of Notice. A Member may waive any notice required hereunder either before or after the date and time stated in the notice. The waiver must be in writing signed by the Member entitled to such notice, and delivered to the other Members. Neither the business to be transacted at, nor the purpose of, any general or special meeting of the Members need be specified in any written waiver of notice. Attendance of a Member at any meeting of Members shall constitute a waiver of notice of such meeting, except if at the beginning of the meeting, the Member objects to the transaction of any business. Attendance shall also constitute a waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

7.4 Voting. Except as otherwise specifically provided herein, (i) all matters which require the consent and approval of, or other determination by, of the Members under this Agreement shall require the affirmative vote or written consent of a Majority in Interest of Members, and (ii) the affirmative vote or written consent of a Majority in Interest of Members as to each matter to come before the Members shall be the act of the Members. Each Member shall be entitled to vote in proportion to that Member's Units.

7.5 Action by Members without a Meeting. Any action required or permitted to be taken by the Members at a meeting of said Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the Members who, in the aggregate, hold Units having not less than the minimum amount that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote thereon were present and voted. Prompt notice (and in any event notice given within ten (10) days after obtaining authorization by written consent) of the taking of the action without a meeting by less than unanimous written consent shall be given to each Member who has not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting, provided that failure to give such notice shall not invalidate any action so taken.

7.6 Limitations on and Waivers of Certain Member Rights.

(a) Except as may be expressly provided in this Agreement, no Member has the right, directly or indirectly, (i) to resign, retire, withdraw, or dissociate from the Company; (ii) to receive the return of any Capital Contribution or receive any other distribution, including upon the Member's withdrawal or other dissociation from the Company; (iii) to receive any property from the Company, other than distributions at the time and in the manner prescribed in this Agreement; (iv) to cause the dissolution of the Company; or (v) to cause the Company, or any property of the Company, to be subject to any partition, bankruptcy, insolvency, or similar proceedings).

(b) To the extent the appraisal rights provisions of New York law may apply to any merger, conversion, interest exchange, sale of assets, amendment of this Agreement, or to any other action or event described thereunder, the Members hereby evidence their acknowledgement of such appraisal rights provisions and hereby irrevocably and unconditionally waive all such rights to the maximum extent allowable thereunder.

7.7 Voting Agreements. An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interest held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

7.8 Power of Attorney. Each Member constitutes and appoints each Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place, and stead, to make, execute, sign, acknowledge and file: (i) one or more Articles of Organization; (ii) all documents (including amendments to Articles of Organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change or modification of this Agreement; (iii) any and all other certificates or other instruments required to be filed by the Company under the laws of the State of New York or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of New York; (iv) one or more fictitious or trade name certificates; and (v) all documents which may be required to dissolve and terminate the Company and to cancel its Articles of Organization after a vote by a Majority in Interest of Members to dissolve and terminate the Company, all as they relate to form only. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of a Membership Interest, except that if the Transferee is admitted as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorneys-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorneys-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or disaffirm the action of the Attorneys-in-Fact taken in good faith under this power of attorney.

7.9 Restrictive Covenants.

(a) Non-Compete; Non-Solicitation; Non-Disparagement. In consideration of the rights and obligations of the parties hereto, each Member agrees that:

(i) As used in this Section 7.9, (A) the term "Non-Competition Period" means the period during which a Person is a Member of the Company and the additional period that terminates on the second anniversary of the later of the date that such Person is no longer a Member or employee of the Company or any of its Affiliates, and (B) the term "Competition" means to directly or indirectly own any interest in, manage, operate, control, invest in or acquire an interest in, participate in, consult with, render services for, operate or in any manner engage in the Business or any other business or enterprise (including any division, group or franchise of a larger organization), whether as a proprietor, owner, member, partner, stockholder, director, officer, employee, consultant, joint venturer, investor, sales representative or other participant, in which the Company or any of its Affiliates engaged at any time during the two (2) year period immediately preceding the date such Member is no longer a Member of the Company in the United States and any other jurisdiction in which the Company or any of its Affiliates so engaged in such business.

(ii) During the Non-Competition Period, no Member shall directly or indirectly engage in Competition. Notwithstanding anything to the contrary contained herein, such Member shall not be prohibited from owning up to five percent (5%) of the outstanding stock of a corporation that is engaged in Competition and that is publicly traded on a national securities exchange or in the over the counter market so long as such Member has no active participation in connection with the business of such corporation. Nothing herein shall be deemed to prohibit any Member from owning any interest in, managing, operating, controlling, investing in or acquiring an interest in, participating in, consulting with, rendering services for, or in any manner engaging in any other business or enterprise (including any division, group or franchise of a larger organization), whether as a proprietor, owner, member, partner, stockholder, director, officer, employee, consultant, joint venturer, investor, sales representative or other participant, in any entity that is an Affiliate of the Company.

(iii) During the Non-Competition Period, no Member shall, directly or indirectly, and shall not permit any Person controlled by such Member to: (i) induce or attempt to induce any employee of the Company or any of its Affiliates to leave the employ of the Company or its Affiliates or (ii) subject to the restrictions of any applicable law, induce or attempt to induce any customer, supplier, vendor, licensee, distributor, contractor or other business relation of the Company or any of its Affiliates to cease doing business with, or materially alter its business relationship with, the Company or any of its Affiliates.

(iv) At all times following the date hereof, no Member shall make or solicit or encourage others to make or solicit directly or indirectly any derogatory or negative statement or communication about the Company or any of its Affiliates or any of their respective businesses, products, services or activities; provided, however, that such restriction shall not prohibit truthful testimony compelled by valid legal process.

(b) Confidentiality.

(i) Each Member recognizes that Confidential Information (as defined below) may have been and may be disclosed to such Member by the Company or any of its Affiliates. Each Member shall not use, and shall cause its Affiliates and/or Subsidiaries not to use, or disclose to any third party (other than (i) to any of such Member's limited partners and equity holders and their Affiliates, investment committees, directors, officers, employees, managers, oversight members, current and prospective investors, and professional advisors (including financial advisors, auditors and legal counsel) who have been informed of the confidentiality obligations hereof and have, unless already subject to confidentiality obligations, agreed to be bound by the confidentiality provisions contained in this Section 7.9(b), and (ii) to other Members), any Confidential Information without the prior written consent of the Manager and shall use due care to ensure that such Confidential Information is kept confidential, including by treating such information as such party would treat its own Confidential Information during the period such Member is a Member of the Company and for a period of two years from and after the date such Member ceases to be a Member of the Company. Notwithstanding the foregoing, the Members shall have the right to share any Confidential Information with any proposed Transferee of their Units, each of whom shall be required to agree to keep confidential such Confidential Information to the extent required of the Members under this Section 7.9(b). Nothing in this Section 7.9(b) shall prohibit any Member or any of its Affiliates from disclosing

the terms of this Agreement to or any court or other governmental entity in connection with the enforcement by such Member of this Agreement. If any Member is requested to disclose any Confidential Information by any federal, state, local or foreign court or legislative, executive or regulatory agency, such Member will promptly notify the Company to permit it to seek a protective order or take other action that the Manager in its sole discretion deems appropriate, and such Member will cooperate (at the Company's expense) in any such efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information. If, in the absence of a protective order, such Member is compelled as a matter of law to disclose any such information in any proceeding or pursuant to legal process, such Member may disclose to the party compelling disclosure only the part of such Confidential Information as is required by law to be disclosed (in which case, prior to such disclosure, such Member will advise and, if requested by the Manager, consult with the Company and its counsel as to such disclosure and the nature and wording of such disclosure and such Member will use its reasonable best efforts (at the Company's expense) to obtain confidential treatment therefor). Each Member shall indemnify each other Member and the Company for any loss, damage, liability, claims and expenses incurred, suffered or sustained by any of them as a result of any breach by such Member or its Affiliate of this Section 7.9(b). Notwithstanding any other provision of this Agreement, the Manager shall have the right to keep confidential from all or some of the Members (and specifically from Members who are subject to freedom of information acts, public records laws or similar laws) for such period of time as the Manager determines is reasonable (a) any information that the Manager reasonably believes to be in the nature of trade secrets and (b) any other information (i) the disclosure of which the Manager in good faith believes is not in the best interest of the Company or could damage the Company or its investments or (ii) that the Company is required by law or by agreement with a third Person to keep confidential. The Manager may disclose any information concerning the Company or the Members necessary to comply with applicable laws and regulation, including any money laundering or anti-terrorist laws or regulations, and each Member shall provide the Manager, promptly upon request, all information that the Manager reasonably deems necessary to comply with such laws and regulations.

(ii) "Confidential Information" as used herein means all confidential or proprietary information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of the Company or any of its Affiliates (including any of the terms of this Agreement) from whatever source obtained, except for any such confidential or proprietary information, knowledge, systems or data which (a) at the time of disclosure was, or thereafter becomes, in the public domain unless such confidential or proprietary information, knowledge, systems or data was placed into the public domain or became known to such disclosing person in violation of any non-disclosure obligation to the Company, including by violation of this Section 12.19, or (b) was independently developed or conceived by such disclosing Person without the use of Confidential Information.

(c) Enforcement; Partial Invalidity.

(i) Each Member hereby acknowledges and agrees that the enforcement of the provisions of this Section 7.9 may potentially interfere with such Person's ability to pursue a similar livelihood during the Non-Competition Period. Each Member acknowledges and agrees that the Members hereto entered into this Agreement in reliance on the

provisions of this Section 7.9 and the enforcement of this Agreement is necessary to ensure the preservation, protection and continuity of the business, Confidential Information and goodwill of the Company to the extent and for the periods of time expressly agreed to herein. Each Member agrees that, due to the nature of the Company's business, the restrictions set forth in this Agreement (including in this Section 7.9) are reasonable as to time and scope.

(ii) Notwithstanding any provision to the contrary herein (including without limitation, this Section 7.9), (A) the Company may pursue, at its discretion, enforcement of the provisions of this Section 7.9 in any court of competent jurisdiction (each, a "Court"), and (B) in no event shall the Company be held liable for a breaching Member's legal fees or costs in pursuit of such claim, unless there is a final determination by such Court that the Company acted in bad faith.

(iii) Whenever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law. In the case that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction, such provision or provisions shall be ineffective to the extent, and only to the extent, of such invalidity, illegality or unenforceability and shall not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein. More specifically, if any Court determines that any of the covenants set forth in this Section 7.9 are overbroad under applicable law in time, geographical scope or otherwise, the Members specifically agree and authorize such Court to rewrite this Agreement to reflect the maximum time, geographical and/or other restrictions permitted under applicable law to be reasonable and enforceable.

(iv) The Members agree that money damages would not be an adequate remedy for any breach of the provisions of this Section 7.9 and any breach of the terms of this Section 7.9 would result in irreparable injury and damage to the Company for which the Company would have no adequate remedy at law. Therefore, in the event of a breach or threatened breach of the provisions of this Section 7.9, the Company and its successors and assigns, in addition to any other rights and remedies existing in their favor at law or in equity, shall be entitled to specific performance and/or immediate injunctive or other equitable relief from a Court in order to enforce, or prevent any violations of, the provisions of this Section 7.9 (without posting a bond or other security), without having to prove damages. The terms of this Section 7.9 shall not prevent the Company from pursuing any other available remedies for any breach or threatened breach of this Agreement.

7.10 Death, Retirement or Resignation of Member. If a Member or the Person controlling a Member that owns Units of the Company dies, or if such Member or Person controlling a Member retires or resigns from employment with the Company, then the Company, in its sole and absolute discretion, may redeem all of the Units owned by such Member (or the estate of the deceased Member) for 100% of the Fair Market Value of such Units (the "Section 7.10 Purchase Price"). If the Company elects to exercise this right, it shall do so by written notice given to the Member or the deceased Member's legal representative, as applicable, within thirty (30) days following the date that the Company first becomes aware of the death of the Member or the Person controlling a Member that owns Units of the Company, or the date that

the Member retires or resigns. Unless otherwise agreed to by the Company and the Member or the deceased Member's legal representative, as applicable, the Section 7.10 Purchase Price shall be evidenced by a promissory note which shall provide for (a) payment of principal in equal quarterly installments on the first day of each calendar quarter over a period of two years, (b) no interest, and (c) prepayment in whole or in part without penalty or premium.

ARTICLE VIII
TRANSFERABILITY OF UNITS;
WITHDRAWAL OR DISSOCIATION OF MEMBERS;
ADMISSION OF NEW MEMBERS

8.1 General Restriction on Transfers. Except as otherwise set forth in this Agreement, Units (or any portion thereof) may not be the subject of a Transfer, directly or indirectly, voluntarily or involuntarily, without the prior written consent of the Manager and a Majority in Interest of Members. If the Manager and a Majority in Interest of Members do not approve of the proposed Transfer of said Units, the Transferee of said Units shall have no right to participate in the management or conduct of the Company's activities and affairs or to become a Member of the Company (or exercise any rights or powers of a Member including, without limitation, any voting rights), except as otherwise provided in the Act, and, absent such written consent, the Transferee shall only be a "transferee" within the meaning of the Act and shall be entitled to receive only the distributions to which the transferor Member otherwise would be entitled. A Transfer of the ownership interests of a Member or Transferee that is an entity shall be considered a Transfer of Units in the Company for this purpose.

8.2 Issuance of Additional Units. The Company shall not issue any additional Units, including to any existing Member, without the prior written consent of the Manager and a Majority in Interest of Members, except as otherwise provided in this Agreement.

8.3 Unauthorized Transfer. Any Transfer of Units in violation of this Agreement shall be deemed invalid, null and void, and of no force and effect, and neither the Company nor any of the Members shall have any obligation to recognize any such unauthorized Transfer. In the event that the Company is required by law or any court or other governmental authority or instrumentality to recognize a Transfer of Units which is not in compliance with the terms and conditions of this Agreement, then the transferee of the Transfer shall receive, hold, and be entitled to an assignee's economic interest only; shall not succeed to any voting, consent, or approval rights otherwise accorded with respect to the Transferred Units; and shall take such assignee's economic interest subject to the covenants and obligations of this Agreement.

8.4 Substituted Members. Except as expressly provided in this ARTICLE VIII, no Transferee of any Units shall have the right to become a substituted Member in place of the Transferor, unless: (i) the prior written consent of the Manager and a Majority in Interest of Members to such substitution shall have been obtained; and (ii) the Transferee shall have executed a counterpart of this Agreement, as it may be amended from time to time, evidencing such Transferee's agreement to be bound by the terms and conditions herein.

8.5 Withdrawal or Dissociation of Member. No Member shall have the power or right to voluntarily withdraw or dissociate from the Company prior to the dissolution and

winding up of the Company and any such withdrawal or dissociation or attempted withdrawal or dissociation by a Member prior to the dissolution and winding up of the Company shall be null and void.

8.6 Admission of New Members. Except as expressly provided in this ARTICLE VIII, no Person shall be admitted to the Company as a new or substitute Member unless (i) the prior written consent of the Manager and a Majority in Interest of Members to such admission shall have been obtained; and (ii) such Person shall have executed a counterpart of this Agreement evidencing the intention and agreement of the new Member to be bound by the terms and conditions herein. The applicable term and conditions of such admission, including, without limitation, the consideration payable by the new Member and the Membership Interest to be acquired by the new Member, shall be determined by the written consent and approval of a Majority in Interest of Members.

8.7 Permitted Transfers. Notwithstanding anything herein to the contrary, any Member may Transfer at any time all or any part of its Units to any Permitted Transferee hereunder without the prior written consent of the Manager and a Majority in Interest of Members, provided that the Permitted Transferee shall have executed a counterpart of this Agreement, as it may be amended from time to time, evidencing such Permitted Transferee's agreement to be bound by the terms and conditions herein.

8.8 Spousal Consent. Each individual Member and each individual Transferee who becomes a substitute or additional Member and who is either married at the time of acquiring any Membership Interest or becomes married while owning any Membership Interest shall cause his or her spouse to execute and deliver to the Company a Spousal Consent in the form attached to this Agreement as Exhibit B.

ARTICLE IX DISSOLUTION AND WINDING UP

9.1 Events of Dissolution. The Company shall be dissolved and liquidated in the manner provided in this Agreement upon the occurrence of any of the following events (referred to herein as "Events of Dissolution"):

- (a) The written agreement of a Majority in Interest of Members to dissolve the Company; or
- (b) Any other event causing a dissolution of the Company under the Act.

9.2 Procedure for Winding Up of Company.

(a) Following the occurrence of an Event of Dissolution, the Company's activities shall be strictly limited to winding up its affairs by selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales), and applying the proceeds of such sale, together with other funds held by the Company, according to the following order of priority:

(i) First, to the payment of all of the Company's debts and liabilities to its creditors (including Members, if applicable) and the expenses of liquidation (including sales commissions incident to any sales of assets of the Company);

(ii) Second, to the establishment of and additions to reserves that are determined by the Manager to be reasonably necessary for any contingent unforeseen liabilities or obligations of the Company; and

(iii) Third, to the Members in the same manner as Distributions are made under Section 5.1.

Notwithstanding anything to the contrary herein, a Member shall not participate in any such distribution in respect of an Event of Dissolution on account of a Profits Interest held by such Member until the aggregate distributions under this Section 9.2 and Section 5.1(a) equal the Fair Market Value of the Company as of the date on which such Profits Interest were originally issued by the Company (whether or not the holder is the Member who originally acquired such Profits Interest from the Company) as determined and approved by the Manager (including pursuant to any agreement or contract entered into by the Company in accordance with this Agreement), and any distribution not made to a Member by reason of the foregoing proviso shall instead be divided among, and distributed to, the other Members holding Units whose right to participate in such distribution is not limited by the foregoing proviso, as provided in the next sentence. Each such Member shall receive a portion of such distribution equal to the total amount of such distribution multiplied by a fraction, the numerator of which is the Percentage Interest held by such Member entitled to participate in such distribution and the denominator of which is the aggregate Percentage Interests of all Members entitled to participate in such distribution. No Member shall receive distributions of any kind in respect of unvested Units.

(b) All income, gain and loss recognized by the Company after the date of an Event of Dissolution shall continue to be allocated among the Members according to the provisions of ARTICLE IV hereof.

(c) The Manager in office at the time of dissolution of the Company (or if none, the Members) shall thereafter be the trustees ("Liquidating Trustees") for the Members and creditors of the dissolved Company and shall have exclusive authority and responsibility for winding up the Company in the manner provided for herein, subject to the provisions of the Act. The Liquidating Trustees shall have the authority to distribute any Company property discovered after dissolution, to convey or assign any real estate or other assets of the Company, and take such other action as may be necessary on behalf of and in the name of the dissolved Company to finally wind-up its affairs.

9.3 Winding Up; Filing of Articles of Dissolution and Statement of Termination. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefore has been made, and all of the remaining assets of the Company have been distributed to the Members in the manner provided in Section 9.2. Upon completion of the winding up of the Company following the occurrence of an Event of Dissolution, the Manager (or if none, the Members)

shall file Articles of Dissolution with the New York Secretary of State in the manner provided under the Act.

ARTICLE X
BOOKS/RECORDS; ACCOUNTING AND TAX MATTERS

10.1 Bank Accounts. All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts and the Persons who will have authority with respect to the accounts and the funds therein. No fidelity bond shall be required as to any of the authorized signatories.

10.2 Books and Records. The books and records of the Company shall be maintained at the principal office of the Company. Each Member has the right, upon reasonable request and during normal business hours, to inspect such records.

10.3 Financial Information. The Manager shall maintain, or cause to be maintained, the financial records of the Company and each Member shall have access to all financial, accounting and banking information with respect to the Company.

10.4 Tax Information. Within ninety (90) days after the end of each taxable year of the Company, the Manager shall cause to be sent to each Person who was a Member at any time during the taxable year then ended such information concerning the Company as is necessary to complete the Member's income tax returns for that year.

10.5 Tax Matters Member. The Manager, or such other Person as may be designated by a Majority in Interest of Members, may cause the Company to make all elections required or permitted to be made under the Code in accordance with the terms and conditions of this Agreement. If the role of the "Tax Matters Partner" is eliminated under changes to the Code, the Manager, or such other Person as may be designated by a Majority in Interest of Members, shall serve in the position which is most like that of "Tax Matters Partner" under the successor provisions of the Code or regulations thereunder. For example, if the Company is required to have a "partnership representative" under P.L. 114-74 (The Bipartisan Budget Act of 2015) or similar legislation, then the Manager shall act in that capacity on behalf of the Company and its Members. Without limiting the authority which the Manager (or other Person designated in accordance with this Section) would have in that position, the Manager or such other Person shall have the right, in their discretion, to opt-out of the new rules which become effective under such legislation (on an annual or other periodic basis, if applicable), if that option is available to the Company, including any rule which would require the Company to be liable for tax resulting from any audit adjustments.

10.6 Accounting Elections. The Company shall use the cash method of accounting, or such other method of accounting selected by the Manager, subject to compliance with federal income tax laws.

10.7 Reserves. The Company shall maintain reserves for working capital and/or contingencies in such amounts as the Manager deems necessary or appropriate.

ARTICLE XI
NOTICES

All notices, demands, requests, offers or responses permitted or required to be given under this Agreement shall be in writing and shall be deemed given when: (i) personally delivered; or (ii) if sent by U.S. Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the Members at their address as shown on the records of the Company and to the Company at its registered address, with the date of delivery to be evidenced by the date on the Return Receipt. Any Member may change the address to which notices shall be sent by written notice of such new or changed address given to the Company.

ARTICLE XII
SPECIAL PURPOSE ENTITY PROVISIONS

12.1 Adoption of Provisions. This Article XII is being adopted to comply with certain provisions necessary to qualify the Company as a "special purpose" entity, and shall apply in the event the Company arranges a loan from an institutional lender secured by a pledge of the Membership Interests (the "Loan").

12.2 Limited Purpose. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, so long as a Loan is outstanding, the nature of the business and of the purposes to be conducted and promoted by the Company shall be limited to those set forth in Paragraph 2.4 of this Agreement.

12.3 Certain Prohibited Activities. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the provisions of this Section 12.3 shall govern. For so long as any Loan is outstanding, neither the Members nor the Manager shall cause or permit the Company, without the prior consent of the lender making a Loan, amend any material provision of this Agreement or the Articles of Organization.

12.4 Separateness Covenants. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the provisions of this Section 12.4 shall govern. For so long as any Loan is outstanding, in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this Agreement, the Manager shall cause the Company to, and the Company shall:

- (a) maintain its books, records and bank accounts separate from those of any other Person;
- (b) at all times hold itself out to the public and all other Persons as a legal entity separate from the Members and from any other Person;
- (c) file its own tax returns separate from those of any other Person, except to the extent that the Company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, and pay any taxes required to be paid under applicable law;

- (d) not commingle its assets with assets of any other Person;
- (e) conduct its business only in its own name and comply with all organizational formalities necessary to maintain its separate existence;
- (f) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliate provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company from such Affiliate and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the Company's own separate balance sheet;
- (g) pay its own liabilities and expenses only out of its own funds;
- (h) except for capital contributions or capital distributions permitted under the terms and conditions of this Agreement and properly reflected on the books and records of the Company, not enter into any transaction with an Affiliate of the Company except on commercially reasonable terms similar to those available to unaffiliated parties in an arm's length transaction;
- (i) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;
- (j) not hold out its credit or assets as being available to satisfy the obligations of any other Person;
- (k) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for shared office space and for services performed by an employee of an Affiliate;
- (l) use separate stationery, invoices and checks bearing its own name;
- (m) except as permitted under the Loan documents, not pledge its assets to secure the obligations of any other Person;
- (n) correct any known misunderstanding regarding its separate identity and not identify itself as a department or division of any other Person;
- (o) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require the Members to make additional capital contributions to the Company;
- (p) not acquire any obligation or securities of the Members or of any Affiliate of the Company; and

(q) cause the Manager, agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company.

Failure of the Company, or the Members or the Manager on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Members or the Manager.

ARTICLE XIII **MISCELLANEOUS**

13.1 Title to Company Property. All real and personal property acquired by the Company shall be acquired and held by the Company in its name.

13.2 Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, ~~deleting any or all of the offending provision, adding additional language to this Agreement or~~ by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by Applicable Law. Additionally, the parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

13.3 Further Assurances. The parties hereto agree that they will execute and deliver such further instruments and documents as may be required or appropriate to carry out the intent and purpose of this Agreement; provided, however, that no such documents or instruments shall change the substantive provisions or requirements of this Agreement without the consent of each party hereto.

13.4 Captions. Any titles or captions of articles or paragraphs contained in this Agreement are for convenience only and shall not be deemed part of the context of this Agreement.

13.5 Binding Effect. Except as otherwise herein provided, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and all persons hereafter having or holding Units in the Company, whether as Transferees, substituted Members or otherwise. This Agreement shall also be binding upon any

Transferee who has received any Units in accordance with the provisions of this Agreement and the heirs, legal representatives, successors and assigns of that Transferee. This Agreement shall further be binding upon any person or entity to whom any Units are Transferred in violation of the provisions of this Agreement and the heirs, legal representatives, successors and assigns of that Transferee.

13.6 Amendments and Waiver. Neither this Agreement nor the Articles of Organization may be amended or otherwise modified except by a written instrument executed by the Manager and a Majority in Interest of Members. Each Member expressly waives any claim that this Agreement may be modified now or at any time in the future by any of the following means (and any right or power to modify this Agreement by any such means which may arise under the Act is hereby waived and rendered null and void for all purposes): (i) orally, (ii) by implication, (iii) in a record (as defined in the Act) which is not signed by the Manager and a Majority in Interest of Members, or (iv) in any combination thereof.

13.7 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter addressed herein, and all prior understandings and agreements, whether written, oral, implied or in a record, between and among the parties hereto relating to the subject matter of this Agreement, including, without limitation, any prior operating agreement, are merged in this Agreement. The Members stipulate and agree that this Agreement is the sole and exclusive "operating agreement" of the Company for all purposes of the Act. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the expressed provisions hereof. Each party ~~specifically acknowledges, represents and warrants that they have not been induced to sign this Agreement by any belief that the other will waive or modify the provisions of this Agreement in the future. For the avoidance of any doubt, no other communications or conduct by the parties, whether oral, implied, in a record, or any combination thereof, shall be deemed part of the Company's "operating agreement."~~

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

13.9 Counterparts; Delivery. This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. This Agreement may be delivered by facsimile or other electronic transmission with the same effect as delivery of an original.

13.10 No Waiver of Breach. The waiver or inaction by the Company or any party to this Agreement or a breach of any condition of this Agreement by any Member shall not be construed as a waiver of any subsequent breach by the Member or such party, nor shall it constitute a waiver of the Company's rights, actual or inherent. The failure of the Company or any party in any instance to insist upon a strict performance of the terms of this Agreement or to exercise any option herein shall not be construed as a waiver or a relinquishment in the future of such term or option, but that the same shall continue in full force and effect.

13.11 No Presumption. The fact that this Agreement was prepared by counsel for any party to it shall create no presumptions and specifically shall not cause any ambiguities to be construed against the other party.

13.12 Plural and Gender. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

13.13 Specific Performance. In addition to any other remedies available in law or equity, the parties hereto shall have the right to enforce this Agreement through specific performance of these provisions as contemplated herein.

13.14 No Third Party Rights. None of the provisions contained in this Agreement shall be for the benefit of or enforceable by any third parties, including creditors of the Company.

13.15 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right not to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.16 Submission to Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce, interpret, or challenge the enforceability of any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought exclusively in the courts of the State of New York, so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York. Each of the parties hereby unconditionally and irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and unconditionally and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient form.

13.17 Waiver of Jury Trial. WITH RESPECT TO ANY SUIT FOR THE ENFORCEMENT, INTERPRETATION, OR CHALLENGE TO THE ENFORCEABILITY OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, EACH PARTY HEREBY AGREES TO THE FULLEST EXTENT PERMITTED BY LAW NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM, OR OTHER ACTION ARISING IN CONNECTION HEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY OTHERWISE WOULD ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

13.18 Attorneys' Fees. In any suit, action, or proceeding to enforce, interpret, or challenge the enforceability of this Agreement, the prevailing Party in such suit, action, or proceeding shall be entitled, in addition to all other damages to which it may be entitled, to its reasonable attorneys' fees, court costs, and all other costs of litigation or other action, through all appeals.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the undersigned parties have executed, or have caused this Agreement to be executed as of and effective as of the Effective Date set forth hereinabove.

COMPANY:

GSPG GILMAN, LLC

By: GSPG HOLDCO, LLC, its Manager

By: 

Name: Scott Kerner

Title: Manager

MEMBERS:

GSPG HOLDCO, LLC

By: 

Name: Scott Kerner

Title: Manager

**EXHIBIT A
TO
OPERATING AGREEMENT
OF
GSPP GILMAN, LLC
a New York Limited Liability Company**

Schedule of Members and their Initial Capital Contributions and
Membership Interests as of the Effective Date

<u>Member</u>	<u>Initial Capital Contribution</u>	<u>Class A Units</u>	<u>Class B Units</u>
GSPP Holdco, LLC	\$	990	10

EXHIBIT B

SPOUSAL CONSENT

The undersigned acknowledges as follows:

- (a) The undersigned has read the foregoing Operating Agreement (herein referred to as the "Agreement") and understands the contents of the Agreement, and is aware that by the provisions of the Agreement, the undersigned's spouse agrees to sell and to grant options to purchase the Membership Interest of the Company, including but not limited to the undersigned's equitable distribution interest therein (if any). THE UNDERSIGNED HAS BEEN ADVISED TO CONSULT WITH COUNSEL OF HIS OR HER CHOOSING IN CONNECTION WITH THIS SPOUSAL CONSENT AND BY SIGNING BELOW HE OR SHE HAS BEEN GIVEN OPPORTUNITY TO DO SO. IF THE UNDERSIGNED HAS NOT CONSULTED WITH COUNSEL IN CONNECTION HEREWITH, THE UNDERSIGNED HAS KNOWINGLY AND WILLINGLY ELECTED NOT TO DO SO.

- (b) The undersigned (1) consents to any such sale and to the granting of such options, (2) agrees that the undersigned's spouse shall have the sole and exclusive management power with respect to the Membership Interest owned by the undersigned's spouse subject to the Agreement, (3) agrees that the undersigned will not effect or attempt to effect any sale or other transfer of such Membership Interest owned by the undersigned's spouse, or of any interest therein, (4) agrees and directs that the residuary clause in the undersigned's will shall not be deemed to apply to the undersigned's interest, if any, in such Membership Interest owned by the undersigned's spouse, (5) agrees that should the undersigned acquire any such Membership Interest by any means whatsoever such event shall constitute a Triggering Event for the purpose of the Agreement and the undersigned agrees to comply with the terms of said Article, and (6) agrees that any attempted transfers made in contravention of the above requirements shall be null and void.

- (c) The undersigned shall perform any further acts and execute and deliver any further documents or procure any court orders which may be deemed by the Members of the Company to be reasonably necessary to carry out the provisions of this Spousal Consent.

Name:

Spouse of: _____

EXHIBIT C

FORM OF MEMBERSHIP INTEREST CERTIFICATE

THE UNITS REPRESENTED BY THIS MEMBERSHIP INTEREST CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH THE ACT AND APPLICABLE STATE SECURITIES LAWS, AND THE COMPANY MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO IT THAT NO VIOLATION OF SUCH ACT AND SUCH STATE SECURITIES LAWS WILL RESULT FROM ANY PROPOSED SALE, TRANSFER, OR OTHER DISPOSITION OF SUCH UNITS.

THIS MEMBERSHIP INTEREST CERTIFICATE EVIDENCES AN INTEREST IN UNITS OF THE COMPANY, AND SHALL BE A SECURITY FOR PURPOSES OF ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK.

GSPG GILMAN, LLC,

a New York limited liability company

Membership Interest Certificate

This certifies that [____], a [____], is the owner of [____] Units of GSPG GILMAN, LLC, a New York limited liability company (the "Company"), which Units are subject to the terms and conditions of an Operating Agreement of the Company, dated as of July 12, 2017 (as the same may be further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Agreement"). All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement. A copy of the Agreement is on file at the principal executive office of the Company. No transfer, sale, assignment, pledge, hypothecation or other disposition of the Units represented by this Membership Interest Certificate may be made except in accordance with the provisions of the Agreement.

IN WITNESS WHEREOF, the Company has caused this Membership Interest Certificate to be signed on behalf of the Company by its duly authorized officer this ____ day of _____, 20__.

GSPG GILMAN, LLC

BY: GSPG Holdco, LLC, Manager

By: _____

Name:

Title:

EXHIBIT 2

New Hampshire Certificate of Good Standing

see attached

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that GSPP GILMAN, LLC is a New York Limited Liability Company registered to transact business in New Hampshire on April 10, 2018. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 792241

Certificate Number: 0006683122



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 6th day of May A.D. 2024.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/6/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 615 East Britton Road Oklahoma City OK 73114	CONTACT NAME: Tasha Miller PHONE (A/C, No, Ext): 405-235-6633 FAX (A/C, No): 405-235-6634 E-MAIL ADDRESS: Tasha_Miller@AJG.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED GSPP Gilman, LLC GSPP Holdco Fund, LLC 1 Landmark Square, Suite 320 Stamford CT 06901	INSURER A: United Specialty Insurance Company	NAIC # 12537
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES **CERTIFICATE NUMBER:** 1414036402 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION WAIVED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	Y		GRU24GL00247	5/30/2024	5/30/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT - (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
NH DOT - Bureau of Rail and Transit and Merrimack and Grafton Railroad are included an Additional Insureds as respects the General Liability policy, pursuant to and subject to the policy's terms, definitions, conditions and exclusions. The insurance provided in the General Liability policy is primary and any other insurance shall be excess. All required by written contract.

CERTIFICATE HOLDER NH DOT - Bureau of Rail and Transit Attn: Lou Baker PO Box 483 Concord NH 03302 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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PPS Specialty Underwriters, Inc

ADDITIONAL INSURED ENDORSEMENT

Who is an Insured is amended to include as an additional insured those persons or organizations who are required under a written contract or written agreement with you to be named as an additional insured, but only with respect to liability for **bodily injury, property damage, or personal and advertising injury** caused, in whole or in part, by your acts or omissions or the acts or omissions of your subcontractors:

- a. In the performance of your ongoing operations or **your work**, including **your work** that has been completed;
or
- b. In connection with your premises owned by or rented to you.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

Notwithstanding the Additional Insureds When Required By Written Contract or Agreement, this insurance is extended to indemnify as follows:-

Additional Insureds As listed in the policy Declarations and agreed by Insurers to be included as additional insureds for their respective rights and interests.

The following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

1. Primary Insurance when Required by Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in 4 below.

2. Primary and Non-Contributory to Other Insurance When Required by Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insureds own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs 1 and 2 do not apply to other insurance to which the additional insured has been added as an additional insured.

3. Excess Insurance

When this insurance is excess, we will have no duty under Coverages A or B to defend the **Insured** against any **suit** if any other insurer has a duty to defend the **Insured** against that **suit**. If no other insurer defends, we will undertake to do so, but we will be entitled to the **Insured's** rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) the total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) the total of all deductible and self-insured amounts under all that other insurance. We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.



PPS Specialty Underwriters, Inc

4. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or until none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable Limits of Insurance of all insurers.

All other terms, exclusions, conditions, definitions and limitations otherwise remain unchanged.

**STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION**

From: Maggie Baldwin, PE *MB*
Administrator

Date: August 7, 2023.

AT: Dept. of Transportation
Bureau of Rail and Transit

Thru: Stephen LaBonte *SL*
Administrator, Bureau of Right-of-Way

**Approved by the Long Range
Capital Planning & Utilization
Committee September 15, 2023**

Subject: State-owned Mountain Division Railroad Corridor
Proposed Easement Town of Lunenburg, VT (RSA 4:40, RSA 228:67)

To: Rep. Mark McConkey, Chairman
Long Range Capital Planning and Utilization Committee

REQUESTED ACTION

The Department of Transportation, pursuant to the provisions of RSA 4:40 and RSA 228:67, requests authorization to grant an Easement for electric transmission wires over a parcel of land, average 10 feet in length and 99 feet in width (approximately 1,000 square feet/0.02 acres), of the state-owned Mountain Division Railroad Corridor in the Town of Lunenburg, VT to Green Street Power Partners for \$500. There is also a one-time administrative fee of \$1,100 of which the Department is in receipt of \$500. The requested easement area consists of a strip of land across the railroad corridor, which is the approximate width of the crossarms bearing the electric conductors. Enclosed is a plan and maps that show the location.

EXPLANATION

The applicant, Green Street Power Partners, maintains an overhead utility that crosses over the state-owned railroad property; they also lease abutting property and have secured long-term financing to construct a solar collector field on the abutting property. At the time of property development, and during the process of obtaining regulatory approval for the solar collector field, Green Street Power Partners obtained a Crossing Agreement with the State of New Hampshire through the Bureau of Rail & Transit.

After entering into the Crossing Agreement with the State, Green Street Power Partners was notified that to meet the requirements of financial institutions that were underwriting the solar installation project, they needed to secure a formal property right over the state-owned railroad corridor at least as long as the term of their loan. In response to this, Green Street Power Partners submitted a request to obtain an easement over the subject state-owned railroad property, which included documentation of property rights on the

parcel abutting the state-owned railroad corridor on the south. Consequently, the Bureau reviewed the proposed easement area, including the existing utility layout (overhead wires and supporting pole locations) and connection to facilities along River Road (a Town-maintained Street which abuts the state-owned railroad property to the north at this location).

It is the Bureau's opinion that the subject crossing of railroad property exceeds all railroad clearance criteria and therefore does not impact current or future corridor use.

A staff appraiser from the Department completed an opinion of value (attached) for the subject parcel based on market capitalization. The appraiser determined the estimated value of the subject parcel, effective as of January 27, 2023, to be \$500.

~~Authorization is requested to grant an Easement to the Green Street Power Partners, as outlined above.~~

Attachments

- 1) Surplus Property Appraisal Approval and Review Summary, dated January 27, 2023
- 2) Topo
- 3) Aerial
- 4) Facility Plan
- 5) Val Map V18-03 Location (Mountain Division)
- 6) Railroad Clearance Exhibit
- ~~7) GORD Concurrence Letter~~
- 8) Executed Crossing Agreement



New Hampshire Council on Resources and Development
NH Office of Planning and Development
100 N Main St., Concord, NH 03301

CORD MEMORANDUM

TO: Lou Barker, Railroad Planner, NH DOT Bureau of Rail and Transit

FROM: Stephanie N. Verdile, Principal Planner *SNV*
NH Office of Planning and Development

DATE: June 27, 2022

Re: 2021 SLR 007 (Lunenburg, Vt)
Request from the Bureau of Rail & Transit to propose to grant an easement over a parcel approx. 1320 sq ft of railroad land in the Town of Lunenburg, Vermont to Green Street Power Partners.

On June 23, 2022, the Council on Resources and Development (CORD) voted to recommend approval of the above referenced Surplus Land Review Application #2021 SLR-007, with the following conditions:

- The grantee maintains vertical clearances over the railroad corridor and horizontal offsets for their poles and
- Submit documentation to the NH Division of Historical Resources regarding consultation with the Vermont State Historic Preservation Officer to determine if there are concerns regarding historical properties.

Cc via email: Taylor Caswell, Commissioner, NH Dept of Business and Economic Affairs and Chair, Council on Resources and Development Taylor.Caswell@livefree.nh.gov
Shelley Winters, Administrator Bureau of Rail & Transit, NH Department of Transportation Michelle.L.Winters@dot.nh.gov
Olivia Sproviero, Green Street Power Partners osproviero@gspp.com
Pamela Ellis, Chair, Legislative Long Range Capital Planning and Utilization Committee Pamela.Ellis@leg.state.nh.us