

TO PLAINTIFFS: You are hereby notified to file a written response to the enclosed New Matter and Counterclaims within twenty (20) days of the date of service hereof, or judgment may be entered against you.

/s/ Gavin P. Lentz

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**UNITED FIBER & DATA, LLC; THE
POWDER MILL FOUNDATION AND
LOUIS J. APPELL, III**

Plaintiffs

v.

**WILLIAM HYNES; CHAD TAYLOR;
THINK LOUD INVESTMENTS, LLC; 120
YORK, LLC; BKS CAPITAL, LLC; THINK
LOUD DEVELOPMENT, LLC AND YRK,
LLC**

Defendants

: COURT OF COMMON PLEAS
: YORK COUNTY,
: PENNSYLVANIA

: NO: 2020-SU-002006

: **JURY TRIAL DEMANDED**

**DEFENDANTS WILLIAM HYNES AND BKS CAPITAL, LLC'S ANSWER WITH NEW
MATTER AND COUNTERCLAIMS TO PLAINTIFFS' COMPLAINT**

Defendants William Hynes and BKS Capital, LLC (hereinafter "Answering Defendants"), by and through their attorneys Bochetto & Lentz, P.C., hereby answers Plaintiffs' Complaint as follows:

NATURE OF THE CASE

1. This allegation is denied. Hynes is a successful businessman and has extensive experience in the fiber network industry which will be useful to UFD when it accepts him back on the board as required by section 8 of the UFD operating agreement. Hynes only has one prior conviction for bouncing a check more than 10 years ago which is neither relevant or admissible under the PA rules of evidence. Moreover, despite Appell's efforts to have Hynes charged for certain criminal offenses, but he has not been so charged.

2. Hynes admits that through his ownership and control of BKS he owns units of UFD. The remainder of this allegation is denied.

3. This allegation is denied as the facts are wrong and the allegations are malicious and inflammatory.

4. This allegation is denied.

5. This allegation is denied. Hynes use of funds was proper and were expended to make UFD successful.

6. This allegation is denied.

7. This allegation is denied.

8. This allegation is denied.

THE PARTIES

Plaintiffs

9. This allegation is admitted.

10. This allegation is denied as stated.

11. This allegation is denied.

Defendants

- 12. This allegation is admitted.
- 13. This allegation is denied.
- 14. This allegation is admitted.
- 15. This allegation is denied as stated.
- 16. This allegation is denied.
- 17. This allegation is denied.
- 18. This allegation is denied.
- 19. This allegation is denied.

FACTUAL BACKGROUND

Background of UFD

- 20. This allegation is denied as stated.
- 21. This allegation is denied as stated.
- 22. This allegation is denied as stated.

The Appell Family Provided Substantial Financial Support to UFD

- 23. This allegation is denied.
- 24. This allegation is denied.
- 25. This allegation is denied.
- 26. This allegation is denied.
- 27. This allegation is denied.
- 28. This allegation is denied.
- 29. This allegation is denied.
- 30. This allegation is denied.

31. This allegation is denied.

32. This allegation is denied.

Management and Governance of UFD

33. This allegation is denied.

34. This allegation is denied.

35. This allegation is denied.

36. This allegation is denied.

37. This allegation is denied.

38. This allegation is denied as stated. It is admitted only that Appell and BKS are permitted to appoint a manger and then to select a truly “neutral manger” which Appell has refused to do.

39. This allegation is denied.

Fiduciary Duties Under the Law and Operating Agreement

40. This allegation is denied as stated the operating agreement is a writing which speaks for itself.

41. This allegation is denied as a conclusion of law to which no further response is required.

42. This allegation is denied as a conclusion of law to which no further response is required.

43. This allegation is denied as a conclusion of law to which no further response is required.

44. This allegation is denied as a conclusion of law to which no further response is required.

45. This allegation is denied as a conclusion of law to which no further response is required.

Hynes' Long Term Pattern of Self-Dealing

46. This allegation is denied.

47. This allegation is denied.

48. This allegation is denied.

49. This allegation is denied.

50. This allegation is denied.

Defendants' Theft of RACP Grant Money

51. This allegation is denied no theft whatsoever occurred.

52. This allegation is denied.

53. This allegation is denied.

54. This allegation is denied.

55. This allegation is denied.

56. This allegation is denied.

57. This allegation is denied.

58. This allegation is denied.

59. This allegation is denied.

60. This allegation is denied.

61. This allegation is denied.

62. This allegation is denied.

63. This allegation is denied.

64. This allegation is denied.

65. This allegation is denied.

66. This allegation is denied.

67. This allegation is denied.

68. This allegation is denied.

69. This allegation is denied.

70. This allegation is denied.

Using UFD Funds to Promote Hynes' Personal Racing Career

71. This allegation is denied.

72. This allegation is denied.

73. This allegation is denied.

74. This allegation is denied.

75. This allegation is denied.

76. This allegation is denied.

77. This allegation is denied.

78. This allegation is denied.

79. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Hynes Commits a Half Million Dollar Fraud in Connection with Unrecorded Promissory Note from Third-Party Investor David F. Bolger Trust

80. This allegation is denied.

81. This allegation is denied.

82. This allegation is denied.

83. This allegation is denied.

84. This allegation is denied.

85. This allegation is denied.

86. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

The York Lease

87. This allegation is denied.

88. This allegation is denied.

89. This allegation is denied.

90. This allegation is denied.

91. This allegation is denied.

92. This allegation is denied.

93. This allegation is denied.

94. This allegation is denied.

95. This allegation is denied.

96. This allegation is denied.

97. This allegation is denied.

98. This allegation is denied.

99. This allegation is denied.

100. This allegation is denied.

101. This allegation is denied.

102. This allegation is denied.

103. This allegation is denied.

104. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Andretti Autosport

105. This allegation is denied.
106. This allegation is denied.
107. This allegation is denied.
108. This allegation is denied.
109. This allegation is denied.
110. This allegation is denied.
111. This allegation is denied.
112. This allegation is denied.
113. This allegation is denied.
114. This allegation is denied.
115. This allegation is denied.
116. This allegation is denied.
117. This allegation is denied.
118. This allegation is denied.
119. This allegation is denied.
120. This allegation is denied.
121. This allegation is denied.
122. This allegation is denied.
123. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

EPC – Allentown Loan to Think Loud Investments

124. This allegation is denied.

125. This allegation is denied.

126. This allegation is denied.

127. This allegation is denied.

128. This allegation is denied.

129. This allegation is denied.

130. This allegation is denied.

131. This allegation is denied.

132. This allegation is denied.

133. This allegation is denied.

134. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Hynes' Fraud in Connection with UFD's Charitable Contributions

135. This allegation is denied.

136. This allegation is denied.

137. This allegation is denied.

138. This allegation is denied.

139. This allegation is denied.

140. This allegation is denied.

141. This allegation is denied.

142. This allegation is denied.

143. This allegation is denied.

144. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Theft of Company Funds in Connection with Non-Existent Software Application

145. This allegation is denied.

146. This allegation is denied.

147. This allegation is denied.

148. This allegation is denied.

149. This allegation is denied.

150. This allegation is denied.

151. This allegation is denied.

152. This allegation is denied.

153. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

**Self-Dealing of Company Funds in Connection with Cashing Out American Express
Certificate of Deposit**

154. This allegation is denied.

155. This allegation is denied.

156. This allegation is denied.

157. This allegation is denied.

158. This allegation is denied.

159. This allegation is denied.

160. This allegation is denied.

161. This allegation is denied.

162. This allegation is denied.

163. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Other Instances of Self-Dealing

164. This allegation is denied.

165. This allegation is denied.

166. This allegation is denied.

167. This allegation is denied.

168. This allegation is denied.

169. This allegation is denied.

170. This allegation is denied.

171. This allegation is denied.

172. This allegation is denied.

173. This allegation is denied.

174. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Hynes' Latest Criminal Charges & the Repercussions for UFD

175. This allegation regarding a 10-year-old case that is not admissible under the rules of evidence. It is admitted; however, as the fact that Hynes was convicted of one prior offense for bouncing a check.

176. This allegation is denied as stated and such allegation from a news article regarding a domestic dispute with Mr. Hynes former girlfriend is irrelevant to these proceedings.

177. This allegation is denied as stated. The quoting of this article regarding a domestic dispute with Mr. Hynes former girlfriend is not relevant to this case; moreover, Hynes still has the express right under the operating agreement to be a UFD manager now that he has been chosen to be the BKS representative as of February 14, 2022.

178. This allegation is denied.

179. This allegation is denied.

180. (a) (b) and (c) These allegations are denied.

181. This allegation is denied. The company would in fact benefit from Hynes substantial experience in the fiber network industry.

Theft and Self-Dealing in Connection with Social Czars' Reputation-Management Services

182. This allegation is denied. No such theft ever occurred, and Hynes was never charged for such a theft despite Appell reporting him to the authorities.

183. This allegation is denied. The reputation management company at was hired to remove negative information on-line about UFD and its staff. This was an authorized company expenditure under the company operating agreement.

184. This allegation is denied.

185. This allegation is denied.

186. This allegation is denied.

187. This allegation is denied.

188. This allegation is denied.

189. This allegation is denied.

190. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

Hynes Attempts to Reappoint Himself to the Board

191. This allegation is denied. BKS recently reappointed Hynes to the UFD Board on February 14, 2022, but Appell and UFD have unreasonably refused to accept him as a manger , despite that section 8 of the UFD operating agreement requires such acceptance.

192. This allegation is denied.

193. This allegation is denied.

194. This allegation is denied.

195. This allegation is denied.

196. This allegation is denied.

197. This allegation is denied. Moreover, at present Hynes has been reappointed by BKS to the Board and thus has the right to select a truly “neutral” board member but Appell has refused such appointment, even though it is required by the operating agreement. Thus, Hynes and BKS have asserted a counterclaim to this effect seeking a court order compelling compliance with the operating agreement.

CLAIMS FOR RELIEF

COUNT I

CONVERSION

**(UFD v. Hynes; 120 York; YRK, LLC; TL Investments;
BKS; TL Holdings; and TL Development)**

198. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

199. This allegation is denied.

200. This allegation is denied.

201. This allegation is denied.

202. This allegation is denied.

203. This allegation is denied.

204. This allegation is denied.

205. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes and BKS Capital, LLC respectfully request that this Court find in its favor and against Plaintiffs, awarding Defendants all attorneys fees, costs and any other such relief the Court deems appropriate including an order that BKS's chosen board member be installed at UFD.

COUNT II

**Breach of Fiduciary Duties of Loyalty and Care
(UFD against Hynes)**

206. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

207. This allegation is denied.

208. This allegation is denied.

209. This allegation is denied.

210. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate including an order that BKS's chosen board member be installed at UFD.

COUNT III

**Breach of Fiduciary Duties of Loyalty and Care
(UFD against Hynes and Taylor)**

211. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

212. This allegation is denied.

213. This allegation is denied.
214. This allegation is denied.
215. This allegation is denied.
216. This allegation is denied.
217. This allegation is denied.
218. This allegation is denied.
219. This allegation is denied.
220. This allegation is denied.
221. This allegation is denied.
222. This allegation is denied.
223. This allegation is denied.
224. This allegation is denied.
225. This allegation is denied.
226. This allegation is denied.
227. This allegation is denied.
228. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate, including an order that BKS's chosen board member be installed at UFD.

COUNT IV

**Breach of Operating Agreement
(UFD and Appell v. BKS)**

229. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

230. This allegation is denied.

231. This allegation is denied.

232. This allegation is denied.

233. This allegation is denied.

234. This allegation is denied.

235. This allegation is denied.

WHEREFORE, Answering Defendants, William Hynes and BKS Capital, LLC respectfully request that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate, including an order that BKS's chosen board member be installed at UFD.

COUNT V

**Breach of Fiduciary Duty of Loyalty;
Hynes Attempted Re-Appointment to the Board
(UFD v. Hynes)**

236. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

237. This allegation is denied.

238. This allegation is denied.

239. This allegation is denied.

WHEREFORE, Answering Defendants, William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorneys fees, costs and any other such relief the Court deems appropriate, including an order that BKS's chosen board member be installed at UFD.

COUNT VI

**Aiding and Abetting Breach of Fiduciary Duty of Loyalty
(UFD v. BKS)**

240. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

241. This allegation is denied.

WHEREFORE, Answering BKS Capital, LLC respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT VII

**Aiding and Abetting Breach of Duty of Loyalty –
Related to Software Application
(UFD v. YRK)**

242. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

243. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

244. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

245. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

WHEREFORE, Answering Defendants William Hynes and BKS Capital, LLC respectfully request that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT VIII

**Aiding and Abetting Breach of Duty of Loyalty
Related to RACP Grant and York Lease
(UFD v. 120 York)**

246. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

247. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

248. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

249. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

250. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

251. This allegation is not asserted against Hynes nor BKS and thus no further response is required.

WHEREFORE, Answering Defendants William Hynes and BKS Capital, LLC respectfully request that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT IX

**Fraud in Connection with Promissory Notes
(Appell against Hynes)**

252. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

253. This allegation is denied.

254. This allegation is denied.

255. This allegation is denied.

256. This allegation is denied.

257. This allegation is denied.

258. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT X

**Fraud Related to RACP Grant
(Appell against Hynes)**

259. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

260. This allegation is denied.

261. This allegation is denied.

262. This allegation is denied.

263. This allegation is denied.

264. This allegation is denied.

265. This allegation is denied.

266. This allegation is denied.

267. This allegation is denied.

WHEREFORE Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT XI

**Fraud Related to Promissory Note
With Third-Party Investor the Bolger Trust
(UFD against Hynes)**

268. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

269. This allegation is denied.

270. This allegation is denied.

271. This allegation is denied.

WHEREFORE, Answering Defendant William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT XII

**Breach of Contract/Promissory Note: February 2016 Note
(Powder Mill v. Hynes)**

272. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

273. This allegation is denied.

274. This allegation is denied.

275. This allegation is denied.

276. This allegation is denied.

277. This allegation is denied.

278. This allegation is denied.

279. This allegation is denied.

280. This allegation is denied.

281. This allegation is denied.

282. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT XIII

Breach of Contract/Promissory Notes: July 2012 Note (Appell v. TL Investments, Hynes and Taylor)

283. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

284. This allegation is denied.

285. This allegation is denied.

286. This allegation is denied.

287. This allegation is denied.

288. This allegation is denied.

289. This allegation is denied.

290. This allegation is denied.

291. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT XIV

**Breach of Contract/Promissory Notes: October 2013 Note
(Powder Mill v. TL Investments, Hynes and Taylor)**

292. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

293. This allegation is denied.

294. This allegation is denied.

295. This allegation is denied.

296. This allegation is denied.

297. This allegation is denied.

298. This allegation is denied.

299. This allegation is denied.

300. This allegation is denied.

301. This allegation is denied.

302. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT XV

**Breach of Contract/Promissory Notes: April 2014 Note
(Powder Mill v. Hynes and Taylor)**

303. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

304. This allegation is denied.

305. This allegation is denied.

306. This allegation is denied.

307. This allegation is denied.

308. This allegation is denied.

309. This allegation is denied.

310. This allegation is denied.

311. This allegation is denied.

312. This allegation is denied.

313. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this Court find in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

COUNT XVI

**Civil Conspiracy
(UFD and Appell vs. All Defendants)**

314. Denied. This paragraph does not contain a factual averment to which a response is required. To the extent a response is required, denied.

315. This allegation is denied.

316. This allegation is denied.

317. This allegation is denied.

WHEREFORE, Answering Defendants William Hynes respectfully requests that this honorable Court rule in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate.

NEW MATTER

1. Defendants hereby incorporate by reference the prior paragraphs as though set forth more fully herein.

2. Plaintiffs' Complaint fails to set forth a claim upon which relief may be granted.

3. Plaintiffs' claims are barred in whole and in part because they are not the real parties in interest and lack "standing" to prosecute the asserted claims because appropriate approval from authorized managers of UFD to file this case were not obtained in accordance with the UFD operating agreement.

4. Plaintiffs' claims are barred by the misconduct of Appell and others acting at Appell's direction who have refused to recognize BKS's chosen board member (Hynes) and have denied BKS the right to choose a truly independent manager, despite the express requirements of section 8 the UFD operating agreement.

5. Plaintiffs' claims are barred by the applicable statute of limitations.

6. Plaintiffs' claims are barred by the gist of the action doctrine.

7. Plaintiffs' claims are barred by the economic loss doctrine.

8. Plaintiffs' claims are barred by the doctrine of laches.

9. Plaintiffs' claims are barred by the doctrine of unclean hands.

10. Plaintiffs' claims are barred by the doctrines of waiver, set off, release, and estoppel.

11. Defendant's conduct was not the proximate cause of Plaintiff's alleged damages, if any.

12. If the Plaintiffs' suffered damages, which Defendant disputes, the same were caused by the Plaintiffs' misconduct and unauthorized actions.

13. Plaintiffs have failed to mitigate their damages.

14. Defendants reserve the right to amend this New Matter defenses as additional evidence may reveal the basis to assert additional defenses to the claims asserted in this matter.

WHEREFORE, Answering Defendants, William Hynes and BKS Capital, LLC respectfully request that this Court rule in its favor and against Plaintiffs, awarding Defendants all attorney's fees, costs and any other such relief the Court deems appropriate, including an order requiring Appell and UFD to accept BKS's Chosen board member (Hynes) to be installed so that a truly neutral 3rd manager can be selected by both Appell and the BKS manager.

COUNTER-CLAIMS OF ANSWERING DEFENDANT

BKS CAPITAL, LLC v. UFD and APPELL

COUNT I

Request for Declaratory judgment

1. On or about October 31, 2017, UFD adopted its third amended restated liability company agreement. (A copy that agreement is *Exhibit "A"* hereto and is incorporated by reference). This agreement was approved by all UFD members, including Appell and Hynes.

2. At all times material, Mr. Hynes family-owned company BKS was the owner of 321,547 units of UFD which constitutes more than 10% of the outstanding voting units. Thus, at all times, BKS is entitled to have a board seat of its choosing at UFD.

3. Mr. Hynes was also the founder of the company and participated in negotiating terms of the operating agreement which guaranteed him (as the BKS chosen representative) a seat on the board through BKS. Although UFD and Appell admit that section 8 of the UFD operating agreement specifically requires acceptance of the BKS appointed manager, they have unreasonably refused to recognize Hynes as a board member.

4. Mr. Hynes, though the BKS appointment is ready willing and able to begin his activities as a board member having been reappointed by BKS on February 14, 2022; however, the Appell manager and UFD have unreasonably refused to recognize his right to sit on the board. This refusal is harming UFD and its investors as Hynes has plans to turn the company around, attract new capital and to make a profit for all investors.

5. At present, the Appell managers are currently mismanaging the company and are refusing to provide any access to the records of UFD's operations, including financial records. Said counterclaim defendants are further refusing to honor the requirements clearly set forth in the UFD operating agreement by refusing to acknowledge the BKS appointee (Hynes) so that a truly neutral board member can be selected to fill the 3rd board seat.

6. On or about February 14, 2022, UFD board member Dellas Edmisten resigned from the board of UFD because he was concerned regarding the way the company was operating with Appell at the helm. Specifically, he believed the current UFD management was not running the company in a way that protects the investors' best interests. By way of limited example, Appell is overpaying executives at UFD by hundreds of thousands of dollars which is preventing

the company from becoming cash positive. Thus, the BKS appointed manager must be accepted and given the opportunity to select a 3rd neutral board member to replace Mr. Edmisten who resigned in February of 2022. This procedure is expressly required by the UFD operating agreement.

7. The pertinent parts of the UFD operating agreement regarding management provides as follows:

ARTICLE VIII MANAGEMENT

Section 8.01 Establishment of the Board. A board of managers of the Company (the "Board") is hereby established and shall be comprised of natural Persons (each such Person, a "Manager") who shall be appointed in accordance with the provisions of Section 8.02. The business and affairs of the Company shall be managed, operated and controlled by or under the direction of the Board, and the Board shall have, and is hereby granted, the full and complete power, authority and discretion for, on behalf of and in the name of the Company, to take such actions as it may in its sole discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, subject only to the terms of this Agreement.

Section 8.02 Board Composition; Vacancies.

(a) The Company and the Members shall take such actions as may be required to ensure that the number of managers constituting the Board is at all times at least three (3). The Board shall be comprised as follows:

(i) as long as Louis J Appell (the "**Appell Holder**") and his Affiliates continue to hold, in aggregate, at least 10% of the then outstanding Voting Units, one (1) individual (the "Appell Manager") designated by the Appell Holder, who shall initially be Lou Appell;

(ii) as long as BKS Capital, LLC ("**BKS**") and its Affiliates continue to hold, in aggregate, at least 10% of the then outstanding voting units, one (1) individual (The BKS manager") shall be designated by the BKS manager, who shall initially be, William Hynes

(iii) one individual who shall be an independent director, designated by the Appell Manager and the BKS Manager, voting together, which seat shall initially be vacant.

At all times, the composition of any board of directors of any Company Subsidiary shall be the same as that of the Board. At any time and from time to time, subject to Section 8.11, the size of the Board may be increased by a majority vote of the Board.

(b) In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation, or removal of the Appell Manager, then the Appell Holder shall have the right to designate an individual to fill such vacancy and the Company and each Member hereby agree to take such actions as may be required to ensure the election or appointment of such designee to fill such vacancy on the Board.

(c) In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation, or removal of the BKS Manager, then BKS shall have the right to designate an individual to fill such vacancy and the Company and each (see exhibit "A") hereto.

8. The Appell Defendants and UFD have unilaterally appointed a biased and unauthorized manager, Peter Brubaker ("Brubaker") who was not approved by BKS and who has been acting as a "pawn" for Appell to prevent BKS from being involved in operating the company in direct violation of the UFD operating agreement.

9. Brubaker must be removed, and a true "neutral manager" can then be selected by BKS and Appell as required by the operating agreement section 8.02 (a) (iii) which provides as follows:

(iii) one individual who shall be an independent director, designated by the Appell Manager and the BKS Manager, voting together, which seat shall initially be vacant.

10. Manager Brubaker is not independent, as he is currently on the Appell family payroll and was never approved by BKS, thus, he must be removed as a manager under the express terms of the operating agreement.

11. Considering the Appell managers unreasonable refusal to honor the clear requirements of the operating agreement, Mr. Hynes on behalf of BKS seeks a declaratory judgment directing the Appell manager to Accept the BKS appointed manager and to participate in selecting a qualified 3rd Neutral and independent manager as required under section 8 of the operating agreement.

12. Hynes was reappointed by BKS to the UFD board on February 14, 2022 and the current board seat previously held by Mr. Edmiston (who resigned on February 14, 2022) is now vacant and must be filled by a BKS appointee under the express terms of the UFD operating agreement.

13. Appell's continued use of UFD funds to pay for his vindictive lawsuit vs Hynes and BKS is totally unauthorized by any proper UFD board of managers. It is also in direct violation of the operating agreement. Thus, Hynes must be reimbursed all of his legal fees and Appell must reimburse UFD for all legal fees it has incurred in these proceedings.

14. Until an authorized UFD board approves the continuation of UFD's Claims vs BKS and Hynes, those claims must be dismissed. Appell may then continue any meritorious claims he has at his own expense.

WHEREFORE, a declaratory judgment is hereby entered against the Appell manager and UFD as follows:

a. Directing UFD and Appell to recognize Mr. Hynes (as the BKS appointed manager as of February 14, 2022), and requiring the Appell manager and the BKS manager to immediately participate in the selection of a 3rd qualified, Neutral manager in accordance with section 8 of the UFD operating agreement;

b. That Brubaker is immediately removed as an unauthorized UFD manger and that a new independent manager must be selected as set forth in the operating agreement.

c. That UFD shall then have a meeting within the next 3 days from the date of this court's order to determine if this lawsuit should continue, after the new managers have considered that question: and

d. Such other relief as the court deems equitable and just.

COUNT II

BKS CAPITAL, LLC v. UFD and APPELL

Breach of Operating Agreement

15. Counter-Claim Plaintiff repeats and incorporates Paragraphs 1 through 14.

16. For the reasons set forth above, UFD and Appell have intentionally breached the operating agreement and have harmed BKS and Hynes.

17. Considering the Appell managers unreasonable refusal to honor the clear requirements of the operating agreement, Mr. Hynes on behalf of BKS seeks a declaratory judgment directing the Appell manager to accept the BKS appointed manager so that the parties can participate in selecting a qualified Neutral manager as required under section 8 of the UFD operating agreement.

18. Hynes was reappointed by BKS to the UFD board on February 14, 2022 and the current board seat held by Mr. Edmiston (who resigned in February 2022) is vacant and must be filled by a BKS appointee under the express terms of the UFD operating agreement.

19. Appell's use of UFD funds to fund his vindictive and unauthorized lawsuit vs Hynes and BKS is unauthorized by the proper UFD board of managers. Thus, Hynes must be

reimbursed all of his legal fees and Appell must reimburse UFD for all legal fees it incurred in these proceedings.

20. Until an authorized UFD board approves the continuation of UFD's Claims vs BKS and Hynes, those claims must be dismissed. Appell may continue any meritorious claims he has at his own expense.

WHEREFORE, a declaratory judgment is hereby entered against the Appell manager and UFD as follows:

e. Directing UFD and Appell to recognize Mr. Hynes as the BKS appointed manager as of February 14, 2022, and requiring the Appell manager and the BKS manager to immediately participate in the selection of qualified Neutral manager in accordance with terms of the UFD operating agreement;

f. That Brubaker is immediately removed as a UFD manager and that a new independent manager be selected as set forth in the operating agreement.

g. That UFD shall then have a meeting within the 3 days of this Court's order to determine if this lawsuit should continue after the new managers have considered that question: and

h. Such other relief as the court deems just.

COUNT III

Request for Equitable/Injunctive Relief

21. Counter-Claim Plaintiff repeats and incorporates Paragraphs 1 through 20.

22. Hynes and BKS as owners of UFD are suffering irreparable harm due to Appell and UFD's refusal to follow the requirements of the UFD operating agreement.

23. Hynes and BKS have a likelihood of success on the merits as the clear terms of the Operating Agreement require that BKS have a seat on the board and select the 3rd neutral board member. Appell and UFD are unreasonably refusing to allow BKS to exercise its rights under the operating agreement.

WHEREFORE, BKS Capital, LLC seeks emergent relief in the form of an injunction directing Appell and Hynes to honor the UFD operating agreement for all the reasons set forth in the counterclaims, along with such other relief as the court deems equitable and just.

DEMAND FOR JURY TRIAL

A jury trial is demanded by BKS Capital, LLC on all Counter-Claims.

BOCHETTO & LENTZ, P.C.

Date: February 24, 2022

/s/ Gavin P. Lentz
By: _____
Gavin P. Lentz, Esquire
*Attorney for Defendants William Hynes
and BKS Capital, LLC*

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

BOCHETTO & LENTZ, P.C.

/s/ Gavin P. Lentz

Date: February 24, 2022

By: _____

Gavin P. Lentz, Esquire
*Attorney for Defendants William Hynes
and BKS Capital, LLC*

CERTIFICATE OF SERVICE

I, Gavin P. Lentz, Esquire, hereby certify that a true and correct copy of the forgoing pleading was filed electronically through this Court's ECF System and is available for viewing and downloading from this Court's ECF System. I further certify that an electronic copy of the foregoing was served upon all parties of record through this Court's ECF System.

BOCHETTO & LENTZ, P.C.

Date: February 24, 2022

/s/ Gavin P. Lentz
By: _____
Gavin P. Lentz, Esquire
*Attorney for Defendants William Hynes
and BKS Capital, LLC*

VERIFICATION

I, William Hynes, managing member of BKS Capital, LLC verify that the statements made in the foregoing Answer to Complaint with New Matter and Counterclaim to the best of my knowledge, are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 2-24-22



William Hynes, Managing Member of
BKS Capital, LLC

VERIFICATION

I, William Hynes verify that the statements made in the foregoing Answer to Complaint with New Matter and Counterclaim to the best of my knowledge, are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 2-24-22



William Hynes

Exhibit “A”

**THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT**

among

UNITED FIBER & DATA, LLC

and

THE MEMBERS NAMED HEREIN

dated as of

October 31, 2017

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THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

This Third Amended and Restated Limited Liability Company Agreement of United Fiber & Data, LLC, a Pennsylvania limited liability company (the “**Company**”), is entered into as of October 31, 2017 by and among the Company, the Initial Members and each other Person who after the date hereof becomes a Member of the Company and becomes a party to this Agreement by executing a Joinder Agreement.

RECITALS

WHEREAS, the Company, originally named United Federal Data, LLC was formed under the laws of the Commonwealth of Pennsylvania by the filing of a Certificate of Organization with the Secretary of the Commonwealth of Pennsylvania on January 25, 2012 (the “**Certificate of Organization**”);

WHEREAS, the Company changed its name from United Federal Data, LLC to United Fiber & Data, LLC on March 22, 2013.

WHEREAS, the Company and certain of the Initial Members entered into a Limited Liability Company Agreement of United Federal Data LLC on January 25, 2012 (the “**Original Agreement**”), which was later amended by the Amended and Restated Limited Liability Company Agreement of the Company, dated November 23, 2013 (the “**First A&R Operating Agreement**”); which was later amended by the Second Amended and Restated Limited Liability Company Agreement of the Company, dated January 1, 2015 (the “**Second A&R Operating Agreement**” and together with the Original Agreement, the First A&R Agreement, and any other Operating Agreements of the Company dated on or before the date hereof, the “**Prior Operating Agreements**”);

WHEREAS, the Company and certain of the Initial Members entered into a Members Agreement, dated January 1, 2015 (the “**Members Agreement**”) which sets forth certain rights and obligations of the Company and the Members; and

WHEREAS, the Company and the Initial Members desire to amend and restate the Prior Operating Agreements in their entirety by adopting this Agreement, which is also intended to supersede and replace in its entirety the Members Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section 1.01:

“**Acceptance Notice**” has the meaning set forth in Section 9.01(d).

“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 as well as any Family Member of, Family Trust of or Family Entity of 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 Third Amended and Restated Limited Liability Company Agreement, as executed and as it may be amended, modified, supplemented or restated from time to time, as provided herein.

“Appell Holder” has the meaning set forth in Section 8.02(a)(i).

“Appell Manager” has the meaning set forth in Section 8.02(a)(i).

“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.

“Bankruptcy” means, with respect to a Member, the occurrence of any of the following: (a) the filing of an application by such Member for, or a consent to, the appointment of a trustee of such Member’s assets; (b) the filing by such Member of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Member’s inability to pay its debts as they come due; (c) the making by such Member of a general assignment for the benefit of such Member’s creditors; (d) the filing by such Member of an answer admitting the material allegations of, or such Member’s consenting to, or defaulting in answering a bankruptcy petition filed against such Member 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 Member a bankrupt or appointing a trustee of such Member’s assets.

“BKS” has the meaning set forth in Section 8.02(a)(ii).

“BKS Manager” has the meaning set forth in Section 8.02(a)(ii).

“Board” has the meaning set forth in Section 8.01.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in the City of Harrisburg, PA are authorized or required to close.

“Capital Contribution” means, for any Member, the total amount of cash and cash equivalents and the Fair Market Value of any property and services contributed to the Company by such Member.

“Certificate of Organization” has the meaning set forth in the Recitals.

“Change of Control” means: (a) the sale of all or substantially all of the consolidated assets of the Company and the Company Subsidiaries to a Third Party Purchaser; (b) a sale resulting in no less than seventy-five percent (75%) of the Voting Units on a Fully Diluted Basis being held by a Third Party Purchaser; or (c) a merger, consolidation, recapitalization or reorganization of the Company with or into a Third Party Purchaser that results in the inability of the Members to designate or elect a majority of the Managers (or the board of directors (or its equivalent) of the resulting entity or its parent company).

“Class A Units” means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to **“Class A Units”** in this Agreement.

“Class B Units” means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to **“Class B Units”** in this Agreement.

“Class C Units” means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to **“Class C Units”**.

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

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

“Company Opportunity” has the meaning set forth in Section 11.03.

“Company Subsidiary” means a Subsidiary of the Company.

“Confidential Information” has the meaning set forth in Section 11.01(a).

“Covered Person” has the meaning set forth in Section 14.01(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; *provided*, that none of the following shall be a Distribution: (a) any redemption or repurchase by the Company or any Member of any Units or Unit Equivalents; (b) any recapitalization or exchange of securities of the Company; (c) any subdivision (by a split of Units or otherwise) or any combination (by a reverse split of Units or otherwise) of any outstanding Units; or (d) any fees or remuneration paid to any Member in such Member’s capacity as a Service Provider for the Company or a Company Subsidiary. **“Distribute”** when used as a verb shall have a correlative meaning.

“Drag-along Member” has the meaning set forth in Section 10.04(a).

“Drag-along Notice” has the meaning set forth in Section 10.04(c).

“Drag-along Sale” has the meaning set forth in Section 10.04(a).

“Dragging Member” has the meaning set forth in Section 10.04(a).

“Electronic Transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

“Exercise Period” has the meaning set forth in Section 9.01(d).

“Exercising Member” has the meaning set forth in Section 9.01(e).

“Family Entity” means any partnership, limited liability company or S corporation created for the benefit of the applicable Member and/or any combination between or among the Family Members of such Member.

“Family Members” means the parents, grandparents, spouse, domestic partners, descendants (including lineal descendants, adopted children, step children and foster children), siblings, nieces or nephews of the applicable Member, and any individual related by blood or affinity whose close association with the Member is the equivalent of a family relationship.

“Family Trust” means any trust created for the benefit of the applicable Member and/or any combination between or among the Family Members of such Member.

“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 Board based on such factors as the Board, in the exercise of its reasonable business judgment, considers relevant.

“Fiscal Year” means the calendar year, unless the Company elects 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.

“Fully Diluted Basis” means, as of any date of determination, (a) with respect to all the Units, all issued and outstanding Units of the Company and all Units issuable upon the exercise of any outstanding Unit Equivalents as of such date, whether or not such Unit Equivalent is at the time exercisable, or (b) with respect to any specified type, class or series of Units, all issued and outstanding Units designated as such type, class or series and all such designated Units issuable upon the exercise of any outstanding Unit Equivalents as of such date, whether or not such Unit Equivalent is at the time exercisable.

“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.

“Initial Member” has the meaning set forth in the term Member.

“Issuance Notice” has the meaning set forth in Section 9.01(c).

“Joinder Agreement” means the joinder agreement in form and substance attached hereto.

“Liquidator” has the meaning set forth in Section 13.03(a).

“Losses” has the meaning set forth in Section 14.03(a).

“Major Member” means any Member, for so long as each such Member, together with its Affiliates, continues to hold at least 5% of the Voting Units of the Company.

“Manager” has the meaning set forth in Section 8.01.

“Managers Schedule” has the meaning set forth in Section 8.02(d).

“Member” means (a) each Person identified on the Members Schedule as of the date hereof as a Member and who has executed this Agreement (including any prior versions of this Agreement), or a counterpart thereof (each, an **“Initial Member”**); and (b) and each Person who is hereafter admitted as a Member in accordance with the terms of this Agreement and the Pennsylvania Act, in each case so long as such Person is shown on the Company’s books and records as the owner of one or more Units. The Members shall constitute the “members” (as that term is defined in the Pennsylvania Act) of the Company.

“Members Schedule” has the meaning set forth in Section 3.01.

“Membership Interest” means an interest in the Company owned by a Member, including such Member’s right (based on the type and class of Unit or Units held by such Member), as applicable, (a) to a Distributive share of the assets of the Company; (b) to vote on, consent to or otherwise participate in any decision of the Members as provided in this Agreement; and (c) to any and all other benefits to which such Member may be entitled as provided in this Agreement or the Pennsylvania Act.

“New Class A Securities” has the meaning set forth in Section 9.01(b)(ii).

“New Class B Securities” has the meaning set forth in Section 9.01(b)(i).

“New Interests” has the meaning set forth in Section 3.05.

“New Securities” has the meaning set forth in Section 9.01(b)(iii).

“Non-Exercising Member” has the meaning set forth in Section 9.01(e).

“Officers” has the meaning set forth in Section 8.09.

“Original Agreement” has the meaning set forth in the Recitals.

“Other Business” has the meaning set forth in Section 11.03.

“Over-allotment Exercise Period” has the meaning set forth in Section 9.01(e).

“Over-allotment Notice” has the meaning set forth in Section 9.01(e).

“Pennsylvania Act” means the Pennsylvania Uniform Limited Liability Company Act of 2016, et seq, and any successor statute, as it may be amended from time to time.

“Permitted Transfer” means a Transfer of Class A Units or Class B Units carried out pursuant to Section 10.02. **“Permitted Transferee”** means a recipient of a Permitted Transfer.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Pre-emptive Member” has the meaning set forth in Section 9.01(a).

“Pro Rata Portion” means:

(a) for purposes of Section 9.01, with respect to any Pre-emptive Member holding Class A Units or Class B Units, on any issuance date for New Securities, a fraction determined by dividing (A) the number of Class A Units and Class B Units on a Fully Diluted Basis owned by such Pre-emptive Member immediately prior to such issuance by (B) the total number of Class A Units and Class B Units on a Fully Diluted Basis held by the Members on such date immediately prior to such issuance;; and

(b) for purposes of Section 10.3, with respect to an Applicable ROFR Rightholder, a fraction determined by dividing (i) the number of Class A Units and Class B Units on a Fully Diluted Basis owned by such Applicable ROFR Rightholder immediately prior to such Transfer by (ii) the total number of Class A Units and Class B Units on a Fully Diluted Basis held by the Members on such date immediately prior to such Transfer.

“Proposed Transferee” has the meaning set forth in Section 10.05(a).

“Prospective Purchaser” has the meaning set forth in Section 9.01(c).

“Qualified Public Offering” means the sale, in a firm commitment underwritten public offering led by a nationally recognized underwriting firm pursuant to an effective registration statement under the Securities Act, of Units (or common stock of the Company) having an aggregate offering value (net of underwriters’ discounts and selling commissions) of at least \$250,000,000, following which at least 15% of the total Units (or common stock of the Company) on a Fully Diluted Basis shall have been sold to the public and shall be listed on any national securities exchange or quoted on the NASDAQ Stock Market System.

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Sale Notice” has the meaning set forth in Section 10.05(c).

“Securities Act” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“Selling Member” has the meaning set forth in Section 10.05(a).

“Subsidiary” means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

“Tag-along Member” has the meaning set forth in Section 10.05(a).

“Tag-along Notice” has the meaning set forth in Section 10.05(d)(ii).

“Tag-along Period” has the meaning set forth in Section 10.05(d)(ii).

“Tag-along Portion” has the meaning set forth in Section 10.05(d)(i).

“Tag-along Sale” has the meaning set forth in Section 10.05(a).

“Tax Matters Member” has the meaning set forth in Section 12.03(a).

“Third Party Purchaser” means any Person who, immediately prior to the contemplated transaction, (a) does not directly or indirectly own or have the right to acquire any outstanding Class A Units or Class B Units (or applicable Unit Equivalents) or (b) is not a Permitted Transferee of any Person who directly or indirectly owns or has the right to acquire any Class A Units, Class B Units or Class C Units (or applicable Unit Equivalents).

“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 Units owned by a Person or any interest (including a beneficial interest) in any Units or Unit Equivalents 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 a unit representing a fractional part of the Membership Interests of the Members and shall include all types and classes of Units, including the Class A Units, the Class B Units and the Class C Units; *provided*, that any type or class of Unit shall have the privileges, preference, duties, liabilities, obligations and rights set forth in this Agreement and the Membership Interests represented by such type or class or series of Unit shall be determined in accordance with such privileges, preference, duties, liabilities, obligations and rights.

“Unit Equivalents” means any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable or exercisable for Units, and any option, warrant or other right to subscribe for, purchase or acquire Units.

“Unrecovered Capital Contribution” means, with respect to a Member, an amount equal to the excess of such Member’s Capital Contributions over cumulative distributions made to such Member pursuant to Section 7.02(a).

“Voting Members” has the meaning set forth in Section 4.07(a).

“Voting Units” has the meaning set forth in Section 4.06(b).

Section 1.02 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

ARTICLE II ORGANIZATION

Section 2.01 Formation.

(a) The Company was formed on January 25, 2012, pursuant to the provisions of the Pennsylvania Act, upon the filing of the Certificate of Organization with the Secretary of the Commonwealth of Pennsylvania. This Agreement (i) amends and restates the Second A&R Operating Agreement in its entirety and supersedes the Prior Operating Agreements, in their entirety, and (ii) supersedes the Members Agreement in its entirety.

(b) This Agreement shall constitute the “operating agreement” (as that term is used in the Pennsylvania Act) of the Company. The rights, powers, duties, obligations and liabilities of the Members shall be determined pursuant to the Pennsylvania Act and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Pennsylvania Act in the absence of such provision, this Agreement shall, to the extent permitted by the Pennsylvania Act, control.

Section 2.02 Name. The name of the Company is “United Fiber & Data LLC” or such other name or names as the Board may from time to time designate; *provided*, that the name shall always contain the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC.”

Section 2.03 Principal Office. The principal office of the Company is located at 210 York Street, Suite 200, York, PA 17401, or such other place as may from time to time be determined by the Board. The Board shall give prompt notice of any such change to each of the Members.

Section 2.04 Registered Office; Registered Agent.

(a) The registered office of the Company shall be the office of the initial registered agent named in the Certificate of Organization or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by the Pennsylvania Act and Applicable Law.

(b) The registered agent for service of process on the Company in the Commonwealth of Pennsylvania shall be the initial registered agent named in the Certificate of Organization or such other Person or Persons as the Board may designate from time to time in the manner provided by the Pennsylvania Act and Applicable Law.

Section 2.05 Purpose; Powers.

(a) The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Pennsylvania Act and to engage in any and all activities necessary or incidental thereto.

(b) The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Pennsylvania Act.

Section 2.06 Term. The term of the Company commenced on the date the Certificate of Organization was filed with the Secretary of the Commonwealth of Pennsylvania and shall continue in existence perpetually until the Company is dissolved in accordance with the provisions of this Agreement.

**ARTICLE III
UNITS**

Section 3.01 Units Generally. 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 privileges, preference, duties, liabilities, obligations and rights, including voting rights, if any, set forth in this Agreement with respect to such type, class or series. The Board 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 **Schedule A**.

Section 3.02 Authorization and Issuance of Class A Units. Subject to compliance with Section 9.01 and Section 10.01(b), the Company is hereby authorized to issue a class of Units designated as Class A Units.

Section 3.03 Authorization and Issuance of Class B Units. Subject to compliance with Section 9.01 and Section 10.01(b), the Company is hereby authorized to issue a class of Units designated as Class B Units.

Section 3.04 Authorization and Issuance of Class C Units. Subject to compliance with Section 9.01 and Section 10.01(b), the Company is hereby authorized to issue a class of Units designated as Class C Units.

Section 3.05 Other Issuances. In addition to the Class A Units, Class B Units and Class C Units, the Company is hereby authorized, subject to compliance with Section 9.01 and Section 10.01(b), to authorize and issue or sell to any Person any of the following (collectively, “**New Interests**”): (i) any new type, class or series of Units not otherwise described in this Agreement, which Units may be designated as classes or series of the Class A Units, Class B Units or Class C Units but having different rights; and (ii) Unit Equivalents. The Board is hereby authorized, subject to Section 15.09, to amend this Agreement to reflect such issuance and to fix the relative privileges, preference, duties, liabilities, obligations and rights of any such New Interests, including the number of such New Interests to be issued, the preference (with respect to Distributions, in liquidation or otherwise) over any other Units and any contributions required in connection therewith.

Section 3.06 Certification of Units.

(a) The Board in its sole discretion may, but shall not be required to, issue certificates to the Members representing the Units held by such Member.

(b) In the event that the Board shall issue certificates representing Units in accordance with Section 3.06(a), then in addition to any other legend required by Applicable Law, all certificates representing issued and outstanding Units shall bear a legend substantially in the following form:

THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT AMONG THE COMPANY AND ITS MEMBERS, A COPY OF WHICH 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 CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT.

THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR

UNDER ANY OTHER APPLICABLE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER SUCH ACT AND LAWS, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER.

ARTICLE IV MEMBERS

Section 4.01 Admission of New Members.

(a) New Members may be admitted from time to time (i) in connection with an issuance of Units by the Company, subject to compliance with the provisions of Section 9.01 and Section 10.01(b), as applicable, and (ii) in connection with a Transfer of Units, subject to compliance with the provisions of ARTICLE X, and in either case, following compliance with the provisions of Section 4.01(b).

(b) In order for any Person not already a Member of the Company to be admitted as a Member, whether pursuant to an issuance or Transfer of Units, such Person shall, among other things, have executed and delivered to the Company a written undertaking substantially in the form of the Joinder Agreement. Upon the amendment of the Members Schedule by the Board and the satisfaction of any other applicable conditions imposed by the Board, including, if a condition, the receipt by the Company of payment for the issuance of the applicable Units, such Person shall be admitted as a Member and deemed listed as such on the books and records of the Company and thereupon shall be issued his, her or its Units.

Section 4.02 Representations and Warranties of Members. By execution and delivery of this Agreement or a Joinder Agreement, as applicable, each of the Members, whether admitted as of the date hereof or pursuant to Section 4.01, represents and warrants to the Company and acknowledges that:

(a) The Units have not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a public offering and cannot be disposed of unless (i) they are subsequently registered or exempted from registration under the Securities Act and (ii) the provisions of this Agreement have been complied with;

(b) Such Member (i) is an “accredited investor” within the meaning of Rule 501 promulgated under the Securities Act, as amended by Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and agrees that it will not take any action that could have an adverse effect on the availability of the exemption from registration provided by Rule 501 promulgated under the Securities Act with respect to the offer and sale of the Units; or (ii) received the Units held by such Member pursuant to a valid exemption from registration under the Securities Act;

(c) Such Member’s Units are being acquired for its own account solely for investment and not with a view to resale or distribution thereof;

(d) Such Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company Subsidiaries and such Member acknowledges that it has been provided adequate access to the personnel, properties, premises and records of the Company and the Company Subsidiaries for such purpose;

(e) The determination of such Member to acquire Units has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company Subsidiaries that may have been made or given by any other Member or by any agent or employee of any other Member;

(f) Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto;

(g) Such Member is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time;

(h) The execution, delivery and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default in any material respect under any provision of any law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound;

(i) This Agreement is valid, binding and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity); and

(j) Neither the issuance of any Units to any Member nor any provision contained herein will entitle the Member to remain in the employment of the Company or any Company Subsidiary or affect the right of the Company or any Company Subsidiary to terminate the Member's employment at any time for any reason, other than as otherwise provided in such Member's employment agreement or other similar agreement with the Company or Company Subsidiary, if applicable.

Section 4.03 No Personal Liability. Except as otherwise provided, by Applicable Law or expressly in this Agreement, no Member will be obligated personally for any debt, obligation or liability of the Company or of any Company Subsidiaries or other Members, whether arising in contract, tort or otherwise, solely by reason of being a Member.

Section 4.04 No Withdrawal. A Member shall not cease to be a Member as a result of the Bankruptcy of such Member or as a result of any other events specified in § 8661 of the Pennsylvania Act. So long as a Member continues to hold any Units, such Member shall not

have the ability to withdraw or resign as a Member prior to the dissolution and winding up of the Company and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void. As soon as any Person who is a Member ceases to hold any Units, such Person shall no longer be a Member.

Section 4.05 Death. The death of any Member shall not cause the dissolution of the Company. In such event the Company and its business shall be continued by the remaining Member or Members and the Units owned by the deceased Member shall automatically be Transferred to such Member's heirs; *provided*, that within a reasonable time after such Transfer, the applicable heirs shall sign a written undertaking substantially in the form of the Joinder Agreement.

Section 4.06 Voting.

(a) Except as otherwise provided by this Agreement (including Section 15.09) or as otherwise required by the Pennsylvania Act or Applicable Law:

(i) the Class A Units shall be entitled to one vote per Class A Unit on all matters upon which the Members have the right to vote under this Agreement;

(ii) the Class B Units shall be entitled to one vote per Class B Unit on all matters upon which the Members have the right to vote under this Agreement; and

(iii) the Class C Units shall not be entitled to any votes and shall not entitle the holders thereof (by virtue of holding any Class C Units) to vote on any matters required or permitted to be voted on by the Members.

(b) As used herein, the term "**Voting Units**" shall mean:

(i) the Class A Units, for purposes of calling or holding any meeting of the Members holding Class A Units, providing notice of such a meeting, forming a quorum for such a meeting, or taking any action by vote at a meeting or by written consent without a meeting; and

(ii) the Class B Units, for purposes of calling or holding any meeting of the Members holding Class B Units, providing notice of such a meeting, forming a quorum for such a meeting, or taking any action by vote at a meeting or by written consent without a meeting.

Section 4.07 Meetings.

(a) **Calling the Meeting.** Meetings of the Members may be called by (i) the Board or (ii) by a Member or group of Members holding more than 40% of the then-outstanding Voting Units. Only Members who hold Voting Units ("**Voting Members**") shall have the right to attend meetings of the Members.

(b) **Notice.** Written notice stating the place, date and time of the meeting and, in the case of a meeting of the Members not regularly scheduled, describing the purposes for which the meeting is called, shall be delivered not fewer than ten (10) days and not more than thirty (30) days before the date of the meeting to each Voting Member, by or at the direction of the Board or the Member(s) calling the meeting, as the case may be. The Voting Members may hold meetings at the Company's principal office or at such other place as the Board or the Member(s) calling the meeting may designate in the notice for such meeting.

(c) **Participation.** Any Voting Member may participate in a meeting of the Voting Members by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) **Vote by Proxy.** On any matter that is to be voted on by Voting Members, a Voting Member may vote in person or by proxy, and such proxy may be granted in writing, by means of Electronic Transmission or as otherwise permitted by Applicable Law. Every proxy shall be revocable in the discretion of the Voting Member executing it unless otherwise provided in such proxy; *provided*, that such right to revocation shall not invalidate or otherwise affect actions taken under such proxy prior to such revocation.

(e) **Conduct of Business.** The business to be conducted at such meeting need not be limited to the purpose described in the notice and can include business to be conducted by Voting Members holding Class A Units and Voting Members holding Class B Units; *provided*, that the appropriate Voting Members shall have been notified of the meeting in accordance with Section 4.07(b); and *provided, further*, that any Voting Member holding the appropriate Voting Units shall have the right to request removal from the meeting of any Voting Member holding only Class B Units or only Class A Units prior to any discussion of business at the meeting for which such Units do not have a vote pursuant to the provisions of this Agreement. Attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.08 Quorum. A quorum of any meeting of the Voting Members shall require the presence of the Members holding at least 40% of the Voting Units. Subject to Section 4.09, no action at any meeting may be taken by the Members unless the appropriate quorum is present. Subject to Section 4.09 and Section 8.11, no action may be taken by the Members at any meeting at which a quorum is present without the affirmative vote of Members holding a majority of the appropriate Voting Units held by all Members.

Section 4.09 Action Without Meeting. Notwithstanding the provisions of Section 4.08, but subject to Section 8.11, any matter that is to be voted on, consented to or approved by Voting Members may be taken without a meeting, without prior notice and without a vote if consented to, in writing or by Electronic Transmission, by a Member or Members holding not less than a

majority of the appropriate Voting Units held by all Members. A record shall be maintained by the Board of each such action taken by written consent of a Member or Members.

Section 4.10 Power of Members. The Members shall have the power to exercise any and all rights or powers granted to Members pursuant to the express terms of this Agreement and the Pennsylvania Act. Except as otherwise specifically provided by this Agreement or required by the Pennsylvania Act, no Member, in its capacity as a Member, shall have the power to act for or on behalf of, or to bind, the Company.

Section 4.11 No Interest in Company Property. No real or personal property of the Company shall be deemed to be owned by any Member individually, but shall be owned by, and title shall be vested solely in, the Company. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company.

ARTICLE V CAPITAL CONTRIBUTIONS

Section 5.01 Initial Capital Contributions. Prior to the date hereof, each Initial Member has made the Capital Contribution giving rise to such Initial Member's initial Capital Account and is deemed to own the number, type, series and class of Units, in each case, in the amounts set forth opposite such Initial Member's name on the Members Schedule as in effect on the date hereof.

Section 5.02 Additional Capital Contributions.

(a) No Member shall be required to make any additional Capital Contributions to the Company. Any future Capital Contributions made by any Member shall only be made with the consent of the Board and in connection with an issuance of Units made in compliance with Section 9.01.

(b) No Member shall be required to lend any funds to the Company and no Member shall have any personal liability for the payment or repayment of any Capital Contribution by or to any other Member.

Section 5.03 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 shall receive allocations and Distributions pursuant to ARTICLE VI, ARTICLE VII and ARTICLE XIII in respect of such Units.

Section 5.04 No Withdrawal. No Member shall be entitled to receive any Distribution from the Company, except as provided in this Agreement. No Member shall receive any interest, salary or drawing with respect to its Capital Contributions, except as otherwise provided in this Agreement.

Section 5.05 Treatment of Loans From Members. Loans by any Member to the Company shall not be considered Capital Contributions.

ARTICLE VI ALLOCATIONS

Section 6.01 Allocation of Profits and Losses. The Company has elected to be treated as a corporation for federal income tax purposes. Accordingly, none of the profits or losses of the Company shall be allocated to its Members.

ARTICLE VII DISTRIBUTIONS

Section 7.01 General.

(a) Subject to Section 7.01(b) and Section 7.02, the Board shall have sole discretion regarding the amounts and timing of Distributions to Members, including to decide to forego payment of Distributions in order to provide for the retention and establishment of reserves of, or payment to third parties of, such funds as it deems necessary with respect to the reasonable business needs of the Company (which needs may include the payment or the making of provision for the payment when due of the Company's obligations, including, but not limited to, present and anticipated debts and obligations, capital needs and expenses, the payment of any management or administrative fees and expenses, and reasonable reserves for contingencies).

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any Distribution to Members if such Distribution would violate the Pennsylvania Act or other Applicable Law.

Section 7.02 Priority of Distributions. After making all Distributions required for a given Fiscal Year and subject to the priority of Distributions pursuant to Section 13.03(c), if applicable, all Distributions determined to be made by the Board pursuant to Section 7.01 shall be made to the Members holding Units pro rata in proportion to their aggregate holdings of Units.

Section 7.03 Distributions in Kind.

(a) The Board is hereby authorized, in its sole discretion, to make Distributions to the Members in the form of securities or other property held by the Company. In any non-cash Distribution, the securities or property so Distributed will be Distributed among the Members in the same proportion and priority as cash equal to the Fair Market Value of such securities or property would be Distributed among the Members pursuant to Section 7.02.

(b) Any Distribution of securities shall be subject to such conditions and restrictions as the Board determines are required or advisable to ensure compliance with Applicable Law. In furtherance of the foregoing, the Board may require that the Members execute and deliver such documents as the Board may deem necessary or appropriate to ensure compliance with all federal and state securities laws that apply to such Distribution and any further Transfer of the Distributed securities, and may

appropriately legend the certificates that represent such securities to reflect any restriction on Transfer with respect to such laws.

ARTICLE VIII MANAGEMENT

Section 8.01 Establishment of the Board. A board of managers of the Company (the “**Board**”) is hereby established and shall be comprised of natural Persons (each such Person, a “**Manager**”) who shall be appointed in accordance with the provisions of Section 8.02. The business and affairs of the Company shall be managed, operated and controlled by or under the direction of the Board, and the Board shall have, and is hereby granted, the full and complete power, authority and discretion for, on behalf of and in the name of the Company, to take such actions as it may in its sole discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, subject only to the terms of this Agreement.

Section 8.02 Board Composition; Vacancies.

(a) The Company and the Members shall take such actions as may be required to ensure that the number of managers constituting the Board is at all times at least three (3). The Board shall be comprised as follows:

(i) as long as Louis J Appell (the “**Appell Holder**”) and his Affiliates continue to hold, in aggregate, at least 10% of the then outstanding Voting Units, one (1) individual (the “**Appell Manager**”) designated by the Appell Holder, who shall initially be Lou Appell;

(ii) as long as BKS Capital, LLC (“**BKS**”) and its Affiliates continue to hold, in aggregate, at least 10% of the then outstanding Voting Units, one (1) individual (the “**BKS Manager**”) designated by BKS, who shall initially be Bill Hynes; and

(iii) one individual who shall be an independent director, designated by the Appell Manager and the BKS Manager, voting together, which seat shall initially be vacant.

At all times, the composition of any board of directors of any Company Subsidiary shall be the same as that of the Board. At any time and from time to time, subject to Section 8.11, the size of the Board may be increased by a majority vote of the Board.

(b) In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation or removal of the Appell Manager, then the Appell Holder shall have the right to designate an individual to fill such vacancy and the Company and each Member hereby agree to take such actions as may be required to ensure the election or appointment of such designee to fill such vacancy on the Board.

(c) In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation or removal of the BKS Manager, then BKS shall have the right to designate an individual to fill such vacancy and the Company and each

Member hereby agree to take such actions as may be required to ensure the election or appointment of such designee to fill such vacancy on the Board.

(d) The Board shall maintain a schedule of all Managers with their respective mailing addresses (the “**Managers Schedule**”), and shall update the Managers Schedule upon the removal or replacement of any Manager in accordance with this Section 8.02 or Section 8.03. A copy of the Managers Schedule as of the execution of this Agreement is attached hereto as Schedule B.

Section 8.03 Removal; Resignation.

(a) The Appell Manager may be removed or replaced at any time from the Board, with or without cause, upon, and only upon, the written request of the Appell Holder.

(b) The BKS Manager may be removed or replaced at any time from the Board, with or without cause, upon, and only upon, the written request of BKS.

(c) A Manager may resign at any time from the Board by delivering his written resignation to the Board. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Board’s acceptance of a resignation shall not be necessary to make it effective.

Section 8.04 Meetings.

(a) **Generally.** The Board shall meet at regularly scheduled monthly meetings or at such time and at such place as a majority of the Board may designate. Meetings of the Board may be held either in person or by means of telephone or video conference or other communications device that permits all Managers participating in the meeting to hear each other, at the offices of the Company or such other place (either within or outside the Commonwealth of Pennsylvania) as may be determined from time to time by the Board. Written notice of each meeting of the Board shall be given to each Manager at least five (5) days prior to each such meeting.

(b) **Special Meetings.** Special meetings of the Board shall be held on the call of any two (2) Managers upon at least five (5) days’ written notice (if the meeting is to be held in person) or one day’s written notice (if the meeting is to be held by telephone communications or video conference) to the Managers, or upon such shorter notice as may be approved by all the Managers. Any Manager may waive such notice as to himself or herself.

(c) **Attendance and Waiver of Notice.** Attendance of a Manager at any meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 8.05 Quorum; Manner of Acting.

(a) **Quorum.** At least two (2) of the Managers serving on the Board shall constitute a quorum for the transaction of business of the Board. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the Managers present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(b) **Participation.** Any Manager may participate in a meeting of the Board by means of telephone or video conference or other communications device that permits all Managers participating in the meeting to hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. A Manager may vote or be present at a meeting either in person or by proxy, and such proxy may be granted in writing, by means of Electronic Transmission or as otherwise permitted by Applicable Law. Each Manager shall be entitled to designate, by written notice to the Company, one or more representatives who shall be entitled to the same rights and privileges of the Manager, including access to the books and records, facilities, employees, agents and representatives of the Company. The Company may, in its sole determination, require any such designee of a Manager to enter into a customary confidentiality agreement prior to granting such designee any such rights.

(c) **Binding Act.** Each Manager shall have one vote on all matters submitted to the Board or any committee thereof. With respect to any matter properly before the Board, the act of a majority of the Managers present at such meeting shall be the act of the Board.

Section 8.06 Action By Written Consent. Notwithstanding anything herein to the contrary, any action of the Board (or any committee of the Board) may be taken without a meeting if either (a) a written consent of a majority of the Managers on the Board (or committee) shall approve such action; *provided*, that prior written notice of such action is provided to all Managers at least one (1) day before such action is taken, or (b) a written consent constituting all of the Managers on the Board (or committee) shall approve such action. Such consent shall have the same force and effect as a vote at a meeting where a quorum was present and may be stated as such in any document or instrument filed with the Secretary of Commonwealth of Pennsylvania.

Section 8.07 Compensation; No Employment.

(a) Subject to Applicable Law, the Board may determine, from time to time, to compensate the Managers for their service to the Company. Each Manager shall be reimbursed for his reasonable out-of-pocket expenses incurred in the performance of his duties as a Manager, pursuant to such policies as from time to time established by the Board. Nothing contained in this Section 8.07 shall be construed to preclude any Manager from serving the Company in any other capacity and receiving reasonable compensation for such services.

(b) This Agreement does not, and is not intended to, confer upon any Manager any rights with respect to continued employment by the Company, and nothing herein should be construed to have created any employment agreement with any Manager.

Section 8.08 Committees of the Board of Directors. The Board may establish from its Members an audit committee, compensation committee or other committees from time to time and any such committee shall carry out such functions as may from time to time be delegated to it by the Board of Directors. The Appell Manager and BKS Manager shall be entitled to be a member of any committee established by the Board.

Section 8.09 Officers. The Board may appoint individuals as officers of the Company (the “Officers”) as it deems necessary or desirable to carry on the business of the Company and the Board may delegate to such Officers such power and authority as the Board deems advisable. No Officer need be a Member or Manager. Any individual may hold two or more offices of the Company. Each Officer shall hold office until his successor is designated by the Board or until his earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Board. Subject to Section 8.1, any Officer may be removed by the Board (acting by majority vote of all Managers other than the Officer being considered for removal, if applicable) with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal or otherwise, may, but need not, be filled by the Board.

Section 8.10 No Personal Liability. Except as otherwise provided in the Pennsylvania Act, by Applicable Law or expressly in this Agreement, no Manager will be obligated personally for any debt, obligation or liability of the Company or of any Company Subsidiaries, whether arising in contract, tort or otherwise, solely by reason of being a Manager.

Section 8.11 Actions Requiring Member Consent.

(a) Notwithstanding the provisions of this Agreement, including Section 8.05, as long as the Appell Holder and his Affiliates continue to hold, in aggregate, at least 10% of the then outstanding Voting Units the Company shall not, and shall not permit any subsidiary to, without first having obtained the affirmative vote or written consent (including by means of an authorized electronic, stamped or other facsimile signature) of the Appell Holder:

(i) liquidate, dissolve or wind-up the business and affairs of the Company, effect any Change of Control, or consent to any of the foregoing;

(ii) acquire another entity, whether through a merger or consolidation with such entity, the purchase of such entity’s outstanding equity securities, or the purchase, lease, exclusive license or other receipt by the Company or any of its subsidiaries, in a single transaction or series of related transaction, of all or substantially all of the assets of such entity;

(iii) amend, alter or repeal any provision of the Certificate of Organization or this Agreement;

(iv) create, or authorize the creation of or issue or obligate itself to issue any additional class or series of Units;

(v) purchase or redeem (or permit any subsidiary to purchase or redeem) or make any distribution on, any Units other than (i) repurchases of Units from former employees, officers, directors, consultants or other persons who performed services for the Company or any subsidiary pursuant to the provisions of plans or agreements approved by the Board, in connection with the cessation of such employment or service at the lower of the original purchase price and the then-current Fair Market Value thereof, or (ii) a purchase or redemption in connection with a collaboration, license, purchase option, warrant or other strategic transaction with an unaffiliated third party approved by the Board;

(vi) create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Company and its subsidiaries for borrowed money following such action would exceed \$25,000, other than equipment leases or bank lines of credit approved by the Board;

(vii) (i) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Company, (ii) sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Company, or (iii) permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

(viii) increase or decrease the authorized number of Directors constituting the Board;

(ix) increase or decrease the authorized number of Units of the Company;

(x) except pursuant to an equity incentive plan that has been approved by the Board on or after the date hereof, issue any Units of the Company;

(xi) increase the number of Units available for issuance under any equity incentive plan or authorize a new, or materially modify and existing, equity incentive plan;

(xii) form any subsidiary that is not wholly owned by the Company;

(xiii) mortgage, pledge, or otherwise grant a security interest in any property or asset of the Company or its subsidiaries, unless the Company has received the prior approval of the Managers;

(xiv) enter into any employment agreement or commitment for employment with aggregate compensation (including any non-cash compensation and incentive compensation) in excess of \$200,000;

(xv) incur any aggregate indebtedness in excess of \$100,000 that is not already included in a Budget approved by the Board, other than trade credit incurred in the ordinary course of business; or

(xvi) make any individual investment or capital expenditure in excess of \$100,000, or related investments or capital expenditures in excess of \$100,000 that are not already included in a Budget approved by the Board.

(b) Notwithstanding the provisions of this Agreement, including Section 8.05, as long as BKS and its Affiliates continue to hold, in aggregate, at least 10% of the then outstanding Voting Units the Company shall not, and shall not permit any subsidiary to, without first having obtained the affirmative vote or written consent (including by means of an authorized electronic, stamped or other facsimile signature) of BKS:

(i) liquidate, dissolve or wind-up the business and affairs of the Company, effect any Change of Control, or consent to any of the foregoing;

(ii) acquire another entity, whether through a merger or consolidation with such entity, the purchase of such entity's outstanding equity securities, or the purchase, lease, exclusive license or other receipt by the Company or any of its subsidiaries, in a single transaction or series of related transaction, of all or substantially all of the assets of such entity;

(iii) amend, alter or repeal any provision of the Certificate of Organization or this Agreement;

(iv) create, or authorize the creation of or issue or obligate itself to issue any additional class or series of Units;

(v) purchase or redeem (or permit any subsidiary to purchase or redeem) or make any distribution on, any Units other than (i) repurchases of Units from former employees, officers, directors, consultants or other persons who performed services for the Company or any subsidiary pursuant to the provisions of plans or agreements approved by the Board, in connection with the cessation of such employment or service at the lower of the original purchase price and the then-current Fair Market Value thereof, or (ii) a purchase or redemption in connection with a collaboration, license, purchase option, warrant or other strategic transaction with an unaffiliated third party approved by the Board;

(vi) create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Company and its subsidiaries for borrowed money following such action would exceed \$25,000, other than equipment leases or bank lines of credit approved by the Board;

(vii) (i) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Company, (ii) sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary

of the Company, or (iii) permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

(viii) increase or decrease the authorized number of Directors constituting the Board;

(ix) increase or decrease the authorized number of Units of the Company;

(x) except pursuant to an equity incentive plan that has been approved by the Board on or after the date hereof, issue any Units of the Company;

(xi) increase the number of Units available for issuance under any equity incentive plan or authorize a new, or materially modify and existing, equity incentive plan;

(xii) form any subsidiary that is not wholly owned by the Company;

(xiii) mortgage, pledge, or otherwise grant a security interest in any property or asset of the Company or its subsidiaries, unless the Company has received the prior approval of the Managers;

(xiv) enter into any employment agreement or commitment for employment with aggregate compensation (including any non-cash compensation and incentive compensation) in excess of \$200,000;

(xv) incur any aggregate indebtedness in excess of \$100,000 that is not already included in a Budget approved by the Board, other than trade credit incurred in the ordinary course of business; or

(xvi) make any individual investment or capital expenditure in excess of \$100,000, or related investments or capital expenditures in excess of \$100,000 that are not already included in a Budget approved by the Board.

Section 8.12 Deadlock of Managers.

(a) If at two successive meetings of the Board, the Managers are unable to reach a decision by the required vote of an issue submitted for consideration by the Managers at such meetings (a “**Deadlock**”), the matter resulting in such Deadlock shall be submitted to nonbinding mediation before a mutually agreeable mediator, or, if the Managers are unable to agree upon such a mediator, a neutral mediator shall be appointed by Judicial Arbitration and Mediation Services, Inc. to facilitate the Managers’ mediation of the Deadlock. The mediation shall take place within fifteen (15) days of a Manager’s request for mediation. The Managers agree to mediate in good faith and use good faith efforts to resolve the Deadlock. The mediator shall submit a proposal to the Managers for resolution of the matter, which has resulted in a Deadlock.

(b) During the continuation of any Deadlock, the Company shall continue to operate in a manner consistent with its prior practices and this Agreement until such time as such Deadlock is resolved. If the Deadlock is with respect to the approval of the Company's annual business plan or budget, the Company shall operate its business in accordance with the business plan or budget then in effect; *provided*, that all monetary line items set forth therein shall be increased by 5%.

ARTICLE IX PRE-EMPTIVE RIGHTS

Section 9.01 Pre-emptive Right.

(a) **Issuance of New Securities.** The Company hereby grants to each holder of Class A Units or Class B Units (each, a “**Pre-emptive Member**”) the right to purchase its Pro Rata Portion of any New Securities that the Company may from time to time propose to issue or sell to any party between the date hereof and the consummation of a Qualified Public Offering.

(b) **Definition of New Securities.** As used herein:

(i) the term “**New Class A Securities**” shall mean any authorized but unissued Class A Units and any Unit Equivalents convertible into Class A Units, exchangeable or exercisable for Class A Units, or providing a right to subscribe for, purchase or acquire Class A Units;

(ii) the term “**New Class B Securities**” shall mean any authorized but unissued Class B Units and any Unit Equivalents convertible into Class B Units, exchangeable or exercisable for Class B Units, or providing a right to subscribe for, purchase or acquire Class B Units;

(iii) the term “**New Class C Securities**” shall mean any authorized but unissued Class C Units and any Unit Equivalents convertible into Class C Units, exchangeable or exercisable for Class C Units, or providing a right to subscribe for, purchase or acquire Class C Units; and

(iv) the term “**New Securities**” shall mean the New Class A Securities, the New Class B Securities, and the New Class C Securities, as applicable;

provided, that neither the term “New Class B Securities” nor the term “New Class A Securities” shall include Units or Unit Equivalents issued or sold by the Company in connection with: (A) a grant to any existing or prospective Managers, Officers or other service providers pursuant to any equity-based plans or other compensation agreement; (B) the conversion or exchange of any securities of the Company into Units, or the exercise of any warrants or other rights to acquire Units; (C) any acquisition by the Company or any Company Subsidiary of any equity interests, assets, properties or business of any Person; (D) any merger, consolidation or other business combination involving the Company or any Company Subsidiary; (E) the commencement of any Public Offering or any transaction or series of related transactions involving a Change of Control; (F) any subdivision of Units (by a split of Units or

otherwise), payment of Distributions or any similar recapitalization; (G) any private placement of warrants to purchase Membership Interests to lenders or other institutional investors (excluding the Members) in any arm's length transaction in which such lenders or investors provide debt financing to the Company or any Company Subsidiary; (H) a joint venture, strategic alliance or other commercial relationship with any Person (including Persons that are customers, suppliers and strategic partners of the Company or any Company Subsidiary) relating to the operation of the Company's or any Company Subsidiary's business and not for the primary purpose of raising equity capital; or (I) any office lease or equipment lease or similar equipment financing transaction in which the Company or any Company Subsidiary obtains from a lessor or vendor the use of such office space or equipment for its business.

(c) **Additional Issuance Notices.** The Company shall give written notice (an "**Issuance Notice**") of any proposed issuance or sale described in Section 9.01(a) to the Pre-emptive Members within five (5) Business Days following any meeting of the Board at which any such issuance or sale is approved. The Issuance Notice shall, if applicable, be accompanied by a written offer from any prospective purchaser seeking to purchase New Securities (a "**Prospective Purchaser**") and shall set forth the material terms and conditions of the proposed issuance or sale, including:

- (i) the number and description of the New Securities proposed to be issued and the percentage of the Company's Units then outstanding on a Fully Diluted Basis (both in the aggregate and with respect to each class or series of Units proposed to be issued) that such issuance would represent;
- (ii) the proposed issuance date, which shall be at least twenty (20) Business Days from the date of the Issuance Notice;
- (iii) the proposed purchase price per unit of the New Securities; and
- (iv) if the consideration to be paid by the Prospective Purchaser includes non-cash consideration, the Board's good-faith determination of the Fair Market Value thereof.

The Issuance Notice shall also be accompanied by a current copy of the Members Schedule indicating the Pre-emptive Members' holdings of Class A Units and Class B Units in a manner that enables each Pre-emptive Member to calculate its Pro Rata Portion of any New Class B Securities and its Pro Rata Portion of any New Class A Securities.

(d) **Exercise of Pre-emptive Rights.** Each Pre-emptive Member shall for a period of ten (10) Business Days following the receipt of an Issuance Notice (the "**Exercise Period**") have the right to elect irrevocably to purchase all or any portion of its Pro Rata Portion of any New Securities at the purchase price set forth in the Issuance Notice by delivering a written notice to the Company (an "**Acceptance Notice**") specifying the number of New Securities it desires to purchase. The delivery of an Acceptance Notice by a Pre-emptive Member shall be a binding and irrevocable offer by such Member to purchase the New Securities described therein. The failure of a Pre-emptive Member to deliver an Acceptance Notice by the end of the Exercise Period shall

constitute a waiver of its rights under this Section 9.01 with respect to the purchase of such New Securities, but shall not affect its rights with respect to any future issuances or sales of New Securities.

(e) **Over-allotment.** No later than five (5) Business Days following the expiration of the Exercise Period, the Company shall notify each Pre-emptive Member in writing of the number of New Securities that each Pre-emptive Member has agreed to purchase (including, for the avoidance of doubt, where such number is zero) (the “**Over-allotment Notice**”). Each Pre-emptive Member exercising its rights to purchase its Pro Rata Portion of the New Securities in full (an “**Exercising Member**”) shall have a right of over-allotment such that if any other Pre-emptive Member has failed to exercise its right under this Section 9.01 to purchase its full Pro Rata Portion of the New Securities (each, a “**Non-Exercising Member**”), such Exercising Member may purchase its Pro Rata Portion of such Non-Exercising Member’s allotment by giving written notice to the Company within five (5) Business Days of receipt of the Over-allotment Notice (the “**Over-allotment Exercise Period**”).

(f) **Sales to the Prospective Purchaser.** Following the expiration of the Exercise Period and, if applicable, the Over-allotment Exercise Period, the Company shall be free to complete the proposed issuance or sale of New Securities described in the Issuance Notice with respect to which Pre-emptive Members declined to exercise the pre-emptive right set forth in this Section 9.01 on terms no less favorable to the Company than those set forth in the Issuance Notice (except that the amount of New Securities to be issued or sold by the Company may be reduced); *provided*, that: (i) such issuance or sale is closed within twenty (20) Business Days after the expiration of the Exercise Period and, if applicable, the Over-allotment Exercise Period (subject to the extension of such twenty (20) Business Day period for a reasonable time not to exceed forty (40) Business Days to the extent reasonably necessary to obtain any third-party approvals); and (ii) for the avoidance of doubt, the price at which the New Securities are sold to the Prospective Purchaser is at least equal to or higher than the purchase price described in the Issuance Notice. In the event the Company has not sold such New Securities within such time period, the Company shall not thereafter issue or sell any New Securities without first again offering such securities to the Members in accordance with the procedures set forth in this Section 9.01.

(g) **Closing of the Issuance.** The closing of any purchase by any Pre-emptive Member shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice. Upon the issuance or sale of any New Securities in accordance with this Section 9.01, the Company shall deliver the New Securities free and clear of any liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the Company shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such New Securities shall be, upon issuance thereof to the Exercising Members and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. The Company, in the discretion of the Board pursuant to Section 3.06(a), may deliver to each Exercising Member certificates evidencing the New Securities. Each Exercising Member shall deliver to the Company the purchase price for the New Securities purchased by it by

certified or bank check or wire transfer of immediately available funds. Each party to the purchase and sale of New Securities shall take all such other actions as may be reasonably necessary to consummate the purchase and sale including, without limitation, entering into such additional agreements as may be necessary or appropriate.

ARTICLE X TRANSFER

Section 10.01 General Restrictions on Transfer.

(a) Each Member acknowledges and agrees that, until the consummation of a Qualified Public Offering, such Member (or any Permitted Transferee of such Member) shall not Transfer any Units or Unit Equivalents except as permitted pursuant to Section 10.02 or in accordance with the procedures described in this ARTICLE X, as applicable. No Transfer of Units or Unit Equivalents to a Person not already a Member of the Company shall be deemed completed until the prospective Transferee is admitted as a Member of the Company in accordance with Section 4.01(b) hereof.

(b) Notwithstanding any other provision of this Agreement (including Section 10.02), prior to the consummation of a Qualified Public Offering, each Member agrees that it will not, directly or indirectly, Transfer any of its Units or Unit Equivalents, and the Company agrees that it shall not issue any Units or Unit Equivalents:

(i) except as permitted under the Securities Act and other applicable federal or state securities or blue sky laws, and then, with respect to a Transfer of Units or Unit Equivalents, if requested by the Company, only upon delivery to the Company of an opinion of counsel in form and substance satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act;

(ii) if such Transfer or issuance would affect the Company's existence or qualification as a limited liability company under the Pennsylvania Act;

(iii) if such Transfer or issuance would cause the Company or any of the Company Subsidiaries to be required to register as an investment company under the Investment Company Act of 1940, as amended; or

(iv) if such Transfer or issuance would cause the assets of the Company or any of the Company Subsidiaries to be deemed "Plan Assets" as defined under the Employee Retirement Income Security Act of 1974 or its accompanying regulations or result in any "prohibited transaction" thereunder involving the Company or any Company Subsidiary.

In any event, the Board may refuse the Transfer to any Person if such Transfer would have a material adverse effect on the Company as a result of any regulatory or other restrictions imposed by any Governmental Authority.

(c) Any Transfer or attempted Transfer of any Units or Unit Equivalents in violation of this Agreement shall be null and void, no such Transfer shall be recorded on

the Company's books and the purported Transferee in any such Transfer shall not be treated (and the purported Transferor shall continue be treated) as the owner of such Units or Unit Equivalents for all purposes of this Agreement.

(d) For the avoidance of doubt, any Transfer of Units or Unit Equivalents permitted by Section 10.02 or made in accordance with the procedures described in ARTICLE X, as applicable, and purporting to be a sale, transfer, assignment or other disposal of the entire Membership Interest represented by such Units or Unit Equivalents, inclusive of all the rights and benefits applicable to such Membership Interest as described in the definition of the term "**Membership Interest**," shall be deemed a sale, transfer, assignment or other disposal of such Membership Interest in its entirety as intended by the parties to such Transfer, and shall not be deemed a sale, transfer, assignment or other disposal of any less than all of the rights and benefits described in the definition of the term "**Membership Interest**," unless otherwise explicitly agreed to by the parties to such Transfer.

Section 10.02 Permitted Transfers. The provisions of Section 10.01(a), Section 10.04 (with respect to the Dragging Member only) and Section 10.05 shall not apply to any of the following Transfers by any Member of any of its Units or Unit Equivalents:

(a) With respect to any Member, to (i) such Member's Family Members, (ii) a trust under which the distribution of Units may be made only to such Member and/or any Family Member of such Member, (iii) a corporation, partnership or limited liability company, the stockholders, partners or members of which are only such Member and/or Family Members of such Member, or (iv) by will or by the laws of intestate succession, to such Member's executors, administrators, testamentary trustees, legatees or beneficiaries; *provided*, that any Member who Transfers Units shall remain bound by the provisions of Section 11.01; or

(b) Pursuant to a Public Offering.

Section 10.03 Right of First Refusal.

(a) Offered Units.

(i) At any time prior to the consummation of a Qualified Public Offering, and subject to the terms and conditions specified in Section 10.1, Section 10.2 and this Section 10.3, the Company, first, and each Member holding Class A Units and/or Class B Units (as applicable) (the "**Applicable ROFR Rightholders**"), second, shall have a right of first refusal if any other Member (the "**Offering Member**") receives a bona fide offer that the Offering Member desires to accept to Transfer all or any portion of the Units (or applicable Unit Equivalents) it owns (the "**Offered Units**").

(ii) [Reserved]

(b) Offering; Exceptions. Each time the Offering Member receives an offer for a Transfer of any of its Class A Units and/or Class B Units (or applicable Unit

Equivalents) (other than Transfers that (i) are permitted by Section 10.2, (ii) are proposed to be made by a Dragging Member or required to be made by a Drag-along Member pursuant to Section 10.4, or (iii) are made by a Tag-along Member upon the exercise of its tag-along right pursuant to Section 10.5 after the Company and Applicable ROFR Rightholders have declined to exercise their rights in full under this Section 10.3), the Offering Member shall first make an offering of the Offered Units to the Company, *first*, and the Applicable ROFR Rightholders, *second*, all in accordance with the following provisions of this Section 10.3, prior to Transferring such Offered Units to the proposed purchaser.

(c) Offer Notice.

(i) The Offering Member shall, promptly upon determining to accept a bona fide Transfer offer, give written notice (the "**Offering Member Notice**") to the Company and the Applicable ROFR Rightholders stating that it has received a bona fide offer for a Transfer of its Units (or applicable Unit Equivalents) and specifying:

(A) the number of Offered Units to be Transferred by the Offering Member;

(B) the proposed date, time and location of the closing of the Transfer, which shall not be less than 60 (sixty) days from the date of the Offering Member Notice;

(C) the purchase price per Applicable Offered Unit (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and

(D) the name of the Person who has offered to purchase such Offered Units.

(ii) The Offering Member Notice shall constitute the Offering Member's offer to Transfer the Offered Units to the Company and the Applicable ROFR Rightholders, which offer shall be irrevocable until the end of the ROFR Rightholder Option Period described in Section 10.3(d)(iv).

(iii) By delivering the Offering Member Notice, the Offering Member represents and warrants to the Company and each Applicable ROFR Rightholder that:

(A) the Offering Member has full right, title and interest in and to the Offered Units;

(B) the Offering Member has all the necessary power and authority and has taken all necessary action to Transfer such Offered Units as contemplated by this Section 10.3; and

(C) the Offered Units are free and clear of any and all liens other than those arising as a result of or under the terms of this Agreement.

(d) Exercise of Right of First Refusal.

(i) Upon receipt of the Offering Member Notice, the Company and each Applicable ROFR Rightholder shall have the right to purchase the Offered Units in the following order of priority: *first*, the Company shall have the right to purchase all or any portion of the Offered Units in accordance with the procedures set forth in Section 10.3(d)(iii), and *thereafter*, the Applicable ROFR Rightholders shall have the right to purchase the Offered Units, in accordance with the procedures set forth in Section 10.3(d)(iv), to the extent the Company does not exercise its right in full. Notwithstanding the foregoing, the Company and the Applicable ROFR Rightholders may only exercise their right to purchase the Offered Units if, after giving effect to all elections made under this Section 10.3(d), no less than all of the Offered Units will be purchased by the Company and/or the Applicable ROFR Rightholders.

(ii) [Reserved]

(iii) The initial right of the Company to purchase any Offered Units shall be exercisable with the delivery of a written notice (the "**Company ROFR Exercise Notice**") by the Company to the Offering Member and the Applicable ROFR Rightholders within ten (10) days of receipt of the Offering Member Notice (the "**Company Option Period**"), stating the number (including where such number is zero) and type of Offered Units the Company elects irrevocably to purchase on the terms and respective purchase prices set forth in the Offering Member Notice. The Company ROFR Exercise Notice shall be binding upon delivery and irrevocable by the Company.

(iv) If the Company shall have indicated an intent to purchase any less than all of the Offered Units, the Applicable ROFR Rightholders shall have the right to purchase the remaining Offered Units not selected by the Company. For a period of fifteen (15) days following the receipt of a Company ROFR Exercise Notice in which the Company has elected to purchase less than all the Offered Units (such period, the "**ROFR Rightholder Option Period**"), each Applicable ROFR Rightholder shall have the right to elect irrevocably to purchase all or none of its Pro Rata Portion of the remaining Offered Units by delivering a written notice to the Company and the Offering Member (a "**Member ROFR Exercise Notice**") specifying its desire to purchase its Pro Rata Portion of the remaining Offered Units, on the terms and respective purchase prices set forth in the Offering Member Notice. In addition, each Applicable ROFR Rightholder shall include in its Member ROFR Exercise Notice the number of remaining Offered Units that it wishes to purchase if any other Applicable ROFR Rightholders do not exercise their rights to purchase their entire Pro Rata Portions of the remaining Offered Units. Any Member ROFR Exercise Notice shall be binding upon delivery and irrevocable by the Applicable ROFR Rightholder.

(v) The failure of the Company or any Applicable ROFR Rightholder to deliver a Company ROFR Exercise Notice or Member ROFR Exercise Notice, respectively, by the end of the Company Option Period or ROFR Rightholder Option Period, respectively, shall constitute a waiver of their respective rights of first refusal under this Section 10.3(d)**Error! Reference source not found.** with respect to the Transfer of Offered Units, but shall not affect their respective rights with respect to any future Transfers.

(e) **Allocation of Offered Units.** Upon the expiration of the ROFR Rightholder Option Period, the Offered Units not selected for purchase by the Company pursuant to Section 10.3(d)(iii) shall be allocated for purchase among the Applicable ROFR Rightholders as follows:

(i) First, to each Applicable ROFR Rightholder having elected to purchase its entire Pro Rata Portion of such Units, such Applicable ROFR Rightholder's Pro Rata Portion of such Units; and

(ii) Second, the balance, if any, not allocated under clause (i) above (and not purchased by the Company pursuant to Section 10.3(d)(iii)), shall be allocated to those Applicable ROFR Rightholders who set forth in their Member ROFR Exercise Notices a number of Offered Units that exceeded their respective Pro Rata Portions (the "**Purchasing Rightholders**"), in an amount, with respect to each such Purchasing Rightholder, that is equal to the lesser of:

(A) the number of Offered Units that such Purchasing Rightholder elected to purchase in excess of its Pro Rata Portion; or

(B) the product of (x) the number of Offered Units not allocated under clause (i) (and not purchased by the Company pursuant to Section 10.3(d)(iii)), multiplied by (y) a fraction, the numerator of which is the number of Offered Units that such Purchasing Rightholder was permitted to purchase pursuant to clause (i), and the denominator of which is the aggregate number of Offered Units that all Purchasing Rightholders were permitted to purchase pursuant to clause (i).

The process described in clause (ii) shall be repeated until no Offered Units remain or until such time as all Purchasing Rightholders have been permitted to purchase all Offered Units that they desire to purchase.

(f) **Consummation of Sale.** In the event that the Company and/or the Applicable ROFR Rightholders shall have, in the aggregate, exercised their respective rights to purchase all and not less than all of the Offered Units, then the Offering Member shall sell such Offered Units to the Company and/or the Applicable ROFR Rightholders, and the Company and/or the Applicable ROFR Rightholders, as the case may be, shall purchase such Offered Units, within sixty (30) days following the expiration of the ROFR Rightholder Option Period (which period may be extended for a reasonable time not to exceed sixty (60) days to the extent reasonably necessary to obtain required approvals or

consents from any Governmental Authority). Each Member shall take all actions as may be reasonably necessary to consummate the sale contemplated by this Section 10.3(f), including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate. At the closing of any sale and purchase pursuant to this Section 10.3(f), the Offering Member shall deliver to the Company and/or the participating Applicable ROFR Rightholders certificates (if any) representing the Offered Units to be sold, free and clear of any liens or encumbrances (other than those contained in this Agreement), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from the Company and/or such Applicable ROFR Rightholders by certified or official bank check or by wire transfer of immediately available funds.

(g) **Sale to Proposed Purchaser.** In the event that the Company and/or the Applicable ROFR Rightholders shall not have collectively elected to purchase all of the Offered Units, then, provided the Offering Member has also complied with the provisions of Section 10.5, to the extent applicable, the Offering Member may Transfer all of such Offered Units, at a price per Applicable Offered Unit not less than specified in the Offering Member Notice and on other terms and conditions which are not materially more favorable in the aggregate to the proposed purchaser than those specified in the Offering Member Notice, but only to the extent that such Transfer occurs within ninety (90) days after expiration of the ROFR Rightholder Option Period. Any Offered Units not Transferred within such 90-day period will be subject to the provisions of this Section 10.3 upon subsequent Transfer.

Section 10.04 Drag-along Rights.

(a) **Participation.** At any time prior to the consummation of a Qualified Public Offering, if one or more Members (together with their respective Permitted Transferees) holding no less than a majority of all the Voting Units (such Member or Members, the “**Dragging Member**”), proposes to consummate, in one transaction or a series of related transactions, a Change of Control (a “**Drag-along Sale**”), the Dragging Member shall have the right, after delivering the Drag-along Notice in accordance with Section 10.04(c) and subject to compliance with Section 10.04(d), to require that each other Member (each, a “**Drag-along Member**”) participate in such sale (including, if necessary, by converting their Unit Equivalents into the Units to be sold in the Drag-along Sale) in the manner set forth in Section 10.04(b); provided, that, no Drag-along Sale shall be effective until approved by the Board, the Appell Holder, and BKS (such approval, in each case, not to be unreasonably withhold, conditioned or delayed).

(b) **Sale of Units.** Subject to compliance with Section 10.04(d):

(i) If the Drag-along Sale is structured as a sale resulting in a majority of the Voting Units of the Company on a Fully Diluted Basis being held by a Third Party Purchaser, then each Drag-along Member shall sell, with respect to each class or series of Units proposed by the Dragging Member to be included in the Drag-along Sale, the number of Units and/or Unit Equivalents of such class or series equal to the product

obtained by multiplying (i) the number of applicable Units on a Fully Diluted Basis held by such Drag-along Member by (ii) a fraction (x) the numerator of which is equal to the number of applicable Units on a Fully Diluted Basis that the Dragging Member proposes to sell in the Drag-along Sale and (y) the denominator of which is equal to the number of applicable Units on a Fully Diluted Basis held by the Dragging Member at such time; and

(ii) If the Drag-along Sale is structured as a sale of all or substantially all of the consolidated assets of the Company and the Company Subsidiaries or as a merger, consolidation, recapitalization, or reorganization of the Company or other transaction requiring the consent or approval of the Members, then notwithstanding anything to the contrary in this Agreement (including Section 4.06), each Drag-along Member shall vote in favor of the transaction and otherwise consent to and raise no objection to such transaction, and shall take all actions to waive any dissenters', appraisal or other similar rights that it may have in connection with such transaction. The Distribution of the aggregate consideration of such transaction shall be made in accordance with Section 13.03(c).

(c) **Sale Notice.** The Dragging Member shall exercise its rights pursuant to this Section 10.04 by delivering a written notice (the "**Drag-along Notice**") to the Company no more than ten (10) Business Days after the execution and delivery by all of the parties thereto of the definitive agreement entered into with respect to the Drag-along Sale and, in any event, no later than twenty (20) Business Days prior to the closing date of such Drag-along Sale. Upon receipt of the Drag-along Notice, the Company shall promptly forward such notice to each Drag-along Member. The Drag-along Notice shall make reference to the Dragging Members' rights and obligations hereunder and shall describe in reasonable detail:

(i) The name of the person or entity to whom such Units are proposed to be sold;

(ii) The proposed date, time and location of the closing of the sale;

(iii) The number of each class or series of Units to be sold by the Dragging Member, the proposed amount of consideration for the Drag-along Sale and the other material terms and conditions of the Drag-along Sale, including a description of any non-cash consideration in sufficient detail to permit the valuation thereof and including, if available, the purchase price per Unit of each applicable class or series; and

(iv) A copy of any form of agreement proposed to be executed in connection therewith.

(d) **Conditions of Sale.** The obligations of the Drag-along Members in respect of a Drag-along Sale under this Section 10.04 are subject to the satisfaction of the following conditions:

(i) The consideration to be received by each Drag-along Member shall be the same form and amount of consideration to be received by the Dragging Member per Unit of each applicable class or series (the Distribution of which shall be made in

accordance with Section 10.04(b)) and the terms and conditions of such sale shall, except as otherwise provided in Section 10.04(d)(iii), be the same as those upon which the Dragging Member sells its Units;

(ii) If the Dragging Member or any Drag-along Member is given an option as to the form and amount of consideration to be received, the same option shall be given to all Drag-along Members; and

(iii) Each Drag-along Member shall execute the applicable purchase agreement, if applicable, and make or provide the same representations, warranties, covenants, indemnities and agreements as the Dragging Member makes or provides in connection with the Drag-along Sale; *provided*, that each Drag-along Member shall only be obligated to make individual representations and warranties with respect to its title to and ownership of the applicable Units, authorization, execution and delivery of relevant documents, enforceability of such documents against the Drag-along Member, and other matters relating to such Drag-along Member, but not with respect to any of the foregoing with respect to any other Members or their Units; *provided, further*, that all representations, warranties, covenants and indemnities shall be made by the Dragging Member and each Drag-along Member severally and not jointly and any indemnification obligation shall be pro rata based on the consideration received by the Dragging Member and each Drag-along Member, in each case in an amount not to exceed the aggregate proceeds received by the Dragging Member and each such Drag-along Member in connection with the Drag-along Sale.

(e) **Cooperation.** Each Drag-along Member shall take all actions as may be reasonably necessary to consummate the Drag-along Sale, including, without limitation, entering into agreements and delivering certificates and instruments, in each case, consistent with the agreements being entered into and the certificates being delivered by the Dragging Member, but subject to Section 10.04(d)(iii).

(f) **Expenses.** The fees and expenses of the Dragging Member incurred in connection with a Drag-along Sale and for the benefit of all Drag-along Members (it being understood that costs incurred by or on behalf of a Dragging Member for its sole benefit will not be considered to be for the benefit of all Drag-along Members), to the extent not paid or reimbursed by the Company or the Third Party Purchaser, shall be shared by the Dragging Member and all the Drag-along Members on a pro rata basis, based on the consideration received by each such Member; *provided*, that no Drag-along Member shall be obligated to make any out-of-pocket expenditure prior to the consummation of the Drag-along Sale.

Section 10.05 Tag-along Rights.

(a) **Participation.** At any time prior to the consummation of a Qualified Public Offering, and subject to the terms and conditions specified in Section 10.01 and Section 10.02, if one or more Members (the “**Selling Members**”) propose to Transfer any of their Units (or any Unit Equivalents of such Units) on a Fully Diluted Basis to any Person (a “**Proposed Transferee**”), each other Member (each, a “**Tag-along Member**”)

shall be permitted to participate in such sale (a “**Tag-along Sale**”) on the terms and conditions set forth in this Section 10.05.

(b) **Application of Transfer Restrictions.** The provisions of this Section 10.05 shall only apply to Transfers after given effect to Section 10.03 and in which the Dragging Member has elected to not exercise its drag-along right under Section 10.04.

(c) **Sale Notice.** Prior to the consummation of any Transfer of Units (or any Unit Equivalents of such Units) qualifying under Section 10.05(b) the Selling Member shall deliver to the Company and each other Member holding Units (or any Unit Equivalents of such Units) of the class or series proposed to be Transferred a written notice (a “**Sale Notice**”) of the proposed Tag-along Sale as soon as practicable. The Sale Notice shall make reference to the Tag-along Members’ rights hereunder and shall describe in reasonable detail:

- (i) The aggregate number of Units (or any Unit Equivalents of such Units) the Proposed Transferee has offered to purchase;
- (ii) The identity of the Proposed Transferee;
- (iii) The proposed date, time and location of the closing of the Tag-along Sale;
- (iv) The purchase price per applicable Unit (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and
- (v) A copy of any form of agreement proposed to be executed in connection therewith.

(d) **Exercise of Tag-along Right.**

(i) The Selling Member and each Tag-along Member timely electing to participate in the Tag-along Sale pursuant to Section 10.05(d)(ii) shall have the right to Transfer in the Tag-along Sale the number of Units (and applicable Unit Equivalents, if any) equal to the product of (x) the aggregate number of Units (and applicable Unit Equivalents) that the Proposed Transferee proposes to buy as stated in the Sale Notice and (y) a fraction (A) the numerator of which is equal to the number of Units on a Fully Diluted Basis then held by the applicable Member, and (B) the denominator of which is equal to the number of Units on a Fully Diluted Basis then held by the Selling Member and all of the Tag-along Members timely electing to participate in the Tag-along Sale pursuant to Section 10.05(d)(ii) (such amount the “**Tag-along Portion**”).

(ii) Each Tag-along Member shall exercise its right to participate in a Tag-along Sale by delivering to the Selling Member a written notice (a “**Tag-along Notice**”) stating its election to do so and specifying the number of Units and/or Unit Equivalents (up to its Tag-along Portion) to be Transferred by it no later than ten (10) Business Days after receipt of the Sale Notice (the “**Tag-along Period**”).

(iii) The offer of each Tag-along Member set forth in a Tag-along Notice shall be irrevocable, and, to the extent such offer is accepted, such Tag-along Member shall be bound and obligated to consummate the Transfer on the terms and conditions set forth in this Section 10.05.

(e) **Waiver.** Each Tag-along Member who does not deliver a Tag-along Notice in compliance with Section 10.05(d)(ii) shall be deemed to have waived all of such Tag-along Member's rights to participate in the Tag-along Sale with respect to the Units (and/or Unit Equivalents) owned by such Tag-along Member, and the Selling Member shall (subject to the rights of any other participating Tag-along Member) thereafter be free to sell to the Proposed Transferee the Units and/or Unit Equivalents identified in the Sale Notice at a per Unit price that is no greater than the applicable per Unit price set forth in the Sale Notice and on other terms and conditions which are not in the aggregate materially more favorable to the Selling Member than those set forth in the Sale Notice, without any further obligation to the non-accepting Tag-along Members.

(f) **Conditions of Sale.**

(i) Each Member participating in the Tag-along Sale shall receive the same consideration per Unit, after deduction of such Member's proportionate share of the related expenses in accordance with Section 10.05(i) below.

(ii) Each Tag-along Member shall make or provide the same representations, warranties, covenants, indemnities and agreements as the Selling Member makes or provides in connection with the Tag-along Sale; *provided*, that each Tag-along Member shall only be obligated to make individual representations and warranties with respect to its title to and ownership of the applicable Units, authorization, execution and delivery of relevant documents, enforceability of such documents against the Tag-along Member, and other matters relating to such Tag-along Member, but not with respect to any of the foregoing with respect to any other Members or their Units; *provided, further*, that all representations, warranties, covenants and indemnities shall be made by the Selling Member and each Tag-along Member severally and not jointly and any indemnification obligation shall be pro rata based on the consideration received by the Selling Member and each Tag-along Member, in each case in an amount not to exceed the aggregate proceeds received by the Selling Member and each such Tag-along Member in connection with the Tag-along Sale.

(iii) Each holder of then currently exercisable Unit Equivalents with respect to a class or series of Units proposed to be Transferred in a Tag-along Sale shall be given an opportunity to convert such Unit Equivalents into the applicable class or series of Units prior to the consummation of the Tag-along Sale and participate in such sale as holders of such class or series of Units.

(g) **Cooperation.** Each Tag-along Member shall take all actions as may be reasonably necessary to consummate the Tag-along Sale, including, without limitation, entering into agreements and delivering certificates and instruments, in each case,

consistent with the agreements being entered into and the certificates being delivered by the Selling Member.

(h) **Expenses.** The fees and expenses of the Selling Member incurred in connection with a Tag-along Sale and for the benefit of all Tag-along Members (it being understood that costs incurred by or on behalf of a Selling Member for its sole benefit will not be considered to be for the benefit of all Tag-along Members), to the extent not paid or reimbursed by the Company or the Proposed Transferee, shall be shared by the Selling Member and all the participating Tag-along Members on a pro rata basis, based on the consideration received by each such Member; *provided*, that no Tag-along Member shall be obligated to make any out-of-pocket expenditure prior to the consummation of the Tag-along Sale.

(i) **Consummation of Sale.** The Selling Member shall have sixty (60) days following the expiration of the Tag-along Period in which to consummate the Tag-along Sale, on terms not more favorable to the Selling Member than those set forth in the Tag-along Notice (which such 60-day period may be extended for a reasonable time not to exceed ninety (90) days to the extent reasonably necessary to obtain required approvals or consents from any Governmental Authority). If at the end of such period the Selling Member has not completed the Tag-along Sale, the Selling Member may not then effect a Transfer that is subject to this Section 10.05 without again fully complying with the provisions of this Section 10.05.

ARTICLE XI COVENANTS

Section 11.01 Confidentiality.

(a) Each Member acknowledges that during the term of this Agreement, he will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, the Company Subsidiaries and their Affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, “**Confidential Information**”). In addition, each Member acknowledges that: (i) the Company has invested, and continues to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company with a competitive advantage over others in the marketplace; and (iii) the Company would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which any Member is subject, no Member shall, directly or indirectly, disclose or use (other than solely for the purposes of such Member monitoring and analyzing his investment in the Company or performing his duties as a Manager, Officer, employee, consultant or other service provider of the Company) at any time, including,

without limitation, use for personal, commercial or proprietary advantage or profit, either during his association or employment with the Company or thereafter, any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in Section 11.01(a) shall prevent any Member from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Member; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other Members; (vi) to such Member's Representatives who, in the reasonable judgment of such Member, need to know such Confidential Information and agree to be bound by the provisions of this Section 11.01 as if a Member; or (vii) to any potential Permitted Transferee in connection with a proposed Transfer of Units from such Member, as long as such Transferee agrees to be bound by the provisions of this Section 11.01 as if a Member; *provided*, that in the case of clause (i), (ii) or (iii), such Member shall notify the Company and other Members of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company and other Members) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) The restrictions of Section 11.01(a) shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Member in violation of this Agreement; (ii) is or becomes available to a Member or any of its Representatives on a non-confidential basis prior to its disclosure to the receiving Member and any of its Representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Member without use of Confidential Information; or (iv) becomes available to the receiving Member or any of its Representatives on a non-confidential basis from a source other than the Company, any other Member or any of their respective Representatives; *provided*, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality agreement with the disclosing Member or any of its Representatives.

Section 11.02 [Reserved]

Section 11.03 Other Business Activities. The parties hereto expressly acknowledge and agree that: (i) Members are permitted to have, and may presently or in the future have, investments or other business relationships, ventures, agreements or arrangements with entities engaged in the business of the Company, other than through the Company and the Company Subsidiaries (an "**Other Business**"); (ii) the Members have or may develop a strategic relationship with businesses that are or may be competitive with the Company and the Company Subsidiaries; (iii) none of the Members will be prohibited by virtue of the Member's investment in the Company from pursuing and engaging in any such activities; (iv) none of the Members

will be obligated to inform the Company of any such opportunity, relationship or investment (a “**Company Opportunity**”) or to present Company Opportunity, and the Company hereby renounces any interest in a Company Opportunity and any expectancy that a Company Opportunity will be offered to it; (v) nothing contained herein shall limit, prohibit or restrict any Board designee of the Appell Holder or BKS from serving on the board of directors or other governing body or committee of any Other Business; and (vi) the Members will not acquire, be provided with an option or opportunity to acquire, or be entitled to any interest or participation in any Other Business as a result of the participation therein of any of the Members. The parties hereto expressly authorize and consent to the involvement of the Members in any Other Business; *provided*, that any transactions between the Company and/or the Company Subsidiaries and an Other Business will be on terms no less favorable to the Company and/or the Company Subsidiaries than would be obtainable in a comparable arm’s-length transaction. The parties hereto expressly waive, to the fullest extent permitted by Applicable Law, any rights to assert any claim that such involvement breaches any fiduciary or other duty or obligation owed to the Company or any Member or to assert that such involvement constitutes a conflict of interest by such Persons with respect to the Company or any Member.

ARTICLE XII ACCOUNTING; TAX MATTERS

Section 12.01 [Reserved]

Section 12.02 Income Tax Status. It is the intent of the Company and the Members that the Company shall be treated as a corporation for U.S., federal, state, and local income tax purposes. Accordingly, the Company has made an election for the Company to be classified as a corporation pursuant to Treasury Regulations Section 301.7701-3.

ARTICLE XIII DISSOLUTION AND LIQUIDATION

Section 13.01 Events of Dissolution. Subject to Section 8.11, the Company shall be dissolved and its affairs wound up only upon the occurrence of any of the following events:

- (a) The determination of the Board to dissolve the Company;
- (b) An election to dissolve the Company made by holders of a majority of the Voting Units;
- (c) The sale, exchange, involuntary conversion, or other disposition or Transfer of all or substantially all the assets of the Company; or
- (d) The entry of a decree of judicial dissolution under § 8871 of the Pennsylvania Act.

Section 13.02 Effectiveness of Dissolution. Dissolution of the Company shall be effective on the day on which the event described in Section 13.01 occurs, but the Company shall not terminate until the winding up of the Company has been completed, the assets of the

Company have been distributed as provided in Section 13.03 and the Certificate of Organization shall have been cancelled as provided in Section 13.04.

Section 13.03 Liquidation. If the Company is dissolved pursuant to Section 13.01, the Company shall be liquidated and its business and affairs wound up in accordance with the Pennsylvania Act and the following provisions:

(a) **Liquidator.** The Board, or, if the Board is unable to do so, a Person selected by the Board, shall act as liquidator to wind up the Company (the “**Liquidator**”). The Liquidator shall have full power and authority to sell, assign, and encumber any or all of the Company’s assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner.

(b) **Accounting.** As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company’s assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(c) **Distribution of Proceeds.** The Liquidator shall liquidate the assets of the Company and Distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of Applicable Law:

(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 Board in its sole discretion 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 7.02.

Section 13.04 Discretion of Liquidator. Notwithstanding the provisions of Section 13.03(c) that require the liquidation of the assets of the Company, but subject to the order of priorities set forth in Section 13.03(c), if upon dissolution of the Company the Liquidator determines that an immediate sale of part or all of the Company’s assets would be impractical or could cause undue loss to the Members, the Liquidator may defer the liquidation of any assets except those necessary to satisfy Company liabilities and reserves, and may, in its absolute discretion, Distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.03(c), undivided interests in such Company assets as the Liquidator deems not suitable for liquidation. Any such Distribution in kind will be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operating of such properties at such time. For purposes of any such Distribution, any property to be Distributed will be valued at its Fair Market Value.

Section 13.05 Cancellation of Certificate. Upon completion of the Distribution of the assets of the Company as provided in Section 13.03(c) hereof, the Company shall be terminated and the Liquidator shall cause the cancellation of the Certificate of Organization in the Commonwealth of Pennsylvania and of all qualifications and registrations of the Company as a foreign limited liability company in jurisdictions other than the Commonwealth of Pennsylvania and shall take such other actions as may be necessary to terminate the Company.

Section 13.06 Survival of Rights, Duties and Obligations. Dissolution, liquidation, winding up or termination of the Company for any reason shall not release any party from any Loss which at the time of such dissolution, liquidation, winding up or termination already had accrued to any other party or which thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up or termination. For the avoidance of doubt, none of the foregoing shall replace, diminish or otherwise adversely affect any Member's right to indemnification pursuant to Section 14.03.

Section 13.07 Recourse for Claims. Each Member shall look solely to the assets of the Company for all Distributions with respect to the Company, such Member's Capital Account, and such Member's share of Net Income, Net Loss and other items of income, gain, loss and deduction, and shall have no recourse therefor (upon dissolution or otherwise) against the Board, the Liquidator or any other Member.

ARTICLE XIV INDEMNIFICATION

Section 14.01 Indemnification.

(a) **Covered Persons.** As used herein, the term "**Covered Person**" shall mean (i) each Member, (ii) each current and former officer, director, shareholder, partner, member, controlling Affiliate, employee, agent or representative of each Member, and each of their controlling Affiliates, and (iii) each Manager, Officer, employee, agent or representative of the Company.

(b) **Indemnification.** To the fullest extent permitted by the Pennsylvania Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Pennsylvania Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, "**Losses**") to which such Covered Person may become subject by reason of:

(i) Any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company, any Member or any direct or indirect Subsidiary of the foregoing in connection with the business of the Company; or

(ii) The fact that such Covered Person is or was acting in connection with the business of the Company as a partner, member, stockholder, controlling Affiliate, manager, director, officer, employee or agent of the Company, any Member, or any of their respective controlling Affiliates, or that such Covered Person is or was serving at the request of the Company as a partner, member, manager, director, officer, employee or agent of any Person including the Company or any Company Subsidiary;

provided, that (x) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful, and (y) such Covered Person's conduct did not constitute fraud or willful misconduct, in either case as determined by a final, nonappealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud or willful misconduct.

(c) **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 14.03; *provided*, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section 14.03, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(d) **Entitlement to Indemnity.** The indemnification provided by this Section 14.03 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 14.03 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 14.03 and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

(e) **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 Board may 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.

(f) **Funding of Indemnification Obligation.** Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 14.03 shall be provided out of and to the extent of Company assets only, and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the Company.

(g) **Savings Clause.** If this Section 14.03 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 14.03 to the fullest extent permitted by any applicable portion of this Section 14.03 that shall not have been invalidated and to the fullest extent permitted by Applicable Law.

(h) **Amendment.** The provisions of this Section 14.03 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 14.03 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this Section 14.03 that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

Section 14.02 Survival. The provisions of this ARTICLE XIV shall survive the dissolution, liquidation, winding up and termination of the Company.

ARTICLE XV MISCELLANEOUS

Section 15.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with the preparation and execution of this Agreement, or any amendment or waiver hereof, and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 15.02 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, the Company and each Member hereby agrees, at the request of the Company or any other Member, to execute and deliver such additional documents, instruments, conveyances and assurances and to take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

Section 15.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date

sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 15.03):

If to the Company:	United Fiber & Data, LLC 210 York St., Suite 200, York, PA 17403 E-mail: andrew@ufd.com Attention: Andrew Paxton, General Counsel
with a copy to:	Mintz Levin Cohn Ferris Glovsky & Popeo, PC 701 Pennsylvania Ave, NW, Washington, DC 20004 E-mail: mtsimpson@mintz.com Attention: Matthew T. Simpson, Esq.

If to a Member, to such Member's respective mailing address as set forth on the Members Schedule.

Section 15.04 Headings. The headings in this Agreement are inserted for convenience or reference only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision of this Agreement.

Section 15.05 Severability. If any term or provision of this Agreement is held to be invalid, illegal or unenforceable under Applicable Law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination, subject to Section 11.02(d), that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 15.06 Entire Agreement. This Agreement, together with the Certificate of Organization and all related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter, including the Prior Operating Agreements.

Section 15.07 Successors and Assigns. Subject to the restrictions on Transfers set forth herein, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 15.08 No Third-party Beneficiaries. Except as provided in ARTICLE XIV, which shall be for the benefit of and enforceable by Covered Persons as described therein, this Agreement is for the sole benefit of the parties hereto (and their respective heirs, executors, administrators, successors and assigns) and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any creditor of the Company, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 15.09 Amendment. Subject to Section 8.11, no provision of this Agreement may be amended or modified except by an instrument in writing executed by the Company and approved by the Board. Any such written amendment or modification will be binding upon the Company and each Member; *provided*, that an amendment or modification modifying the rights or obligations of any Member in a manner that is disproportionately adverse to (i) such Member relative to the rights of other Members in respect of Units of the same class or series or (ii) a class or series of Units relative to the rights of another class or series of Units, shall in each case be effective only with that Member's consent or the consent of the Members holding a majority of the Units in that class or series, as applicable. Notwithstanding the foregoing, amendments to the Members Schedule following any new issuance, redemption, repurchase or Transfer of Units in accordance with this Agreement may be made by the Board without the consent of or execution by the Members.

Section 15.10 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. For the avoidance of doubt, nothing contained in this Section 15.10 shall diminish any of the explicit and implicit waivers described in this Agreement, including in Section 4.07(f), Section 8.04(c), Section 9.01(d), Section 10.04(b)(ii), Section 10.05(f) and Section 15.13 hereof.

Section 15.11 Governing Law. All issues and questions concerning the application, construction, validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

Section 15.12 Submission to Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce 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 in the United States District Court for the Middle District of Pennsylvania, so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed

to have arisen from a transaction of business in the Commonwealth of Pennsylvania. Each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding 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. Service of process, summons, notice or other document by registered mail to the address set forth in Section 15.03 shall be effective service of process for any suit, action or other proceeding brought in any such court.

Section 15.13 Waiver of Jury Trial. Each party hereto hereby acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 15.14 Equitable Remedies. Each party hereto acknowledges that a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

Section 15.15 Attorneys' Fees. In the event that any party hereto institutes any legal suit, action or proceeding, including arbitration, against another party in respect of a matter arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs

Section 15.16 Remedies Cumulative. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided in Section 14.02 to the contrary.

Section 15.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

The Company:

United Fiber & Data, LLC

By: 

Name: William T. Hynes

Title: CEO

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MANAGER

By: 

Name: William T. Hynes

Title: Manager

Exhibit A

FORM OF JOINDER AGREEMENT

Schedule A**MEMBERS SCHEDULE**

Member Name and Address	Class A Units	Class B Units	Class C Units
[MEMBER NAME AND ADDRESS]	[NUMBER]	[NUMBER]	[NUMBER]
[MEMBER NAME AND ADDRESS]	[NUMBER]	[NUMBER]	[NUMBER]
[MEMBER NAME AND ADDRESS]	[NUMBER]	[NUMBER]	[NUMBER]
Total:	[NUMBER]	[NUMBER]	[NUMBER]

Schedule B**MANAGERS SCHEDULE**

Manager Name and Address
Louis J. Appell, III 14656 Encendido San Diego, CA 92127
William T. Hynes PO BOX 122 Nazareth, PA 18064
[INDEPENDENT MANAGER NAME AND ADDRESS]