# OPERATING AGREEMENT OF

**SJ SOLAR, LLC**

**THIS OPERATING AGREEMENT is made and entered into effective for all purposes as of the 20th  day of November, 2015 by the members, and SJ Solar, LLC.**

**WHEREAS**, the Member caused SJ Solar, LLC to be formed as a limited liability company pursuant to the Articles of Organization filed on November 12, 2015 with the Office of the Secretary of State of the State of Colorado.

**NOW, THEREFORE**, the Members, intending to be legally bound, hereby agree as follows

# SECTION 1 DEFINITIONS

Capitalized words and phrases used in this Operating Agreement have the following meanings:

**“Act”** means the Colorado Limited Liability Company Act, as amended from time to time (or any corresponding provisions of succeeding law).

**“Affiliate”** means, with respect to any Person (i) any individual, corporation, limited liability company, partnership, trust or other legal entity directly or indirectly controlling, controlled by or under common control with such Person, (ii) any officer, director, general partner, member or trustee of such Person or (iii) any individual who is an officer, director, general partner, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms “controlling,” “controlled by” or “under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least 50% of the directors, general partners, members or persons exercising similar authority with respect to such Person.

**“Agreement”** or **“Operating Agreement”** means this Operating Agreement of
 SJ Solar, LLC as amended from time to time, which shall constitute the limited liability company agreement of the Company for all purposes of the Act. Words such as “herein,” “hereinafter,” “hereof,” “hereto” and “hereunder” refer to this Agreement as a whole, unless the context otherwise requires.

**“Certificate”** means the Certificate of Formation filed with the Secretary of State of the State of Colorado pursuant to the Act to form the Company, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

**“Company”** means the limited liability company, known as SJ Solar, LLC formed pursuant to this Agreement and the Certificate.

**“Indemnified Person”** means the Managers, any officer or agent of the Company appointed by the Managers, and any Affiliate which performs services for the benefit of the Company, each of their respective partners, officers, directors, shareholders, members or employees and such other Persons as the Members may designate from time to time, in its sole and absolute discretion.

**“Liquidator”** means the Managers or such other Person appointed by the Members.

**“Manager”** means the Manager.

**“Members”** means the Persons named in the recitals hereof and in *Exhibit A*.

**“Person”** means any individual, partnership (whether general or limited), Limited Liability Company, corporation, trust, estate, association, nominee or other entity.

**“Property”** means real property owned by and Limited Liability Company of which the Company is a Manager and/or a member.

# SECTION 2

# THE COMPANY

## Name.

The name of the Company is SJ Solar, LLC and all business of the Company shall be conducted in such name or in such other name as the Manager may designate.

## Purpose; Powers.

* + 1. The business and purpose of the Company is to act as a manager and/or member of Persons which transacts any lawful business.
		2. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each Member's interest in the Company shall be personal property for all purposes.
		3. The Company shall conduct its business and operations in accordance with the following provisions:
			1. maintain books and records and bank accounts separate from those of any other person;
			2. maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
			3. hold regular meetings, as appropriate, to conduct the business of the Company, and observe all customary organizational and operational formalities;
			4. hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
			5. prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;
			6. allocate and charge fairly and reasonably any common employee or overhead shared with affiliates and maintain a sufficient number of employees in light of its contemplated business operations;
			7. transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements;
			8. conduct business in its own name, and use separate stationery, invoices and checks;
			9. not commingle its assets or funds with those of any other person;
			10. not assume, guarantee or pay the debts or obligations of any other person;
			11. pay its own liabilities out of its own funds;
			12. not acquire obligations or securities of its members;
			13. not pledge its assets for the benefit of any other entity or make any loans or advances to any entity;
			14. correct any known misunderstanding regarding its separate identity;
			15. intend to maintain adequate capital in light of its contemplated business operations; and
			16. maintain all required qualifications to do business in the state in which the property is located.
	1. ***Withdrawal of a Member***
		1. In the event a Member withdraws or retires for any reason, including bankruptcy, death, dissolution, liquidation, termination, or adjudication of incompetence of a Member, the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member.
		2. A withdrawing Member or their assigns or successors shall be obligated to give sixty (60) days prior written notice of his/her intention to withdraw or retire and shall be obligated to sell his/her interest in the Company. No Member shall transfer interest in the Company to any other party without the written consent of the remaining Member(s).
		3. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Company interest shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent Member.
		4. The foregoing shall apply to the extent permitted by applicable law.

## Authorized Person; Principal Place of Business; Agent for Service of Process.

1. , on behalf of the Company, filed the Articles of Organization with the Secretary of State on . Any Manager or any Person designated by the Manager(s) shall be authorized from and after the date of filing of the Certificate for purposes of executing all documents required to be filed with the Secretary of State.
2. The principal place of business of the Company shall be located at
 or as otherwise determined by the Manager.
3. The registered agent for service of process on the Company in the State of Colorado shall be (managing member) or any successor as appointed by the Manager in accordance with the Act.
4. The initial registered office of the Company in the State of Colorado is:

## Term.

The term of the Company commenced on the date the Certificate was filed in the Office of the Secretary of State of the State of Colorado in accordance with the Act and shall continue until dissolved.

# SECTION 3

**CAPITAL CONTRIBUTIONS AND OTHER MATTERS**

## Capital Contributions.

The Member(s) will make initial capital contribution in cash to the Company, in the amount respectively set forth on *Exhibit A*. In consideration of the initial capital contribution, the Members will receive 100% of the membership interests in the Company, and the Percentage Interests of the Members shall be as specified in *Exhibit A*. The Members may, but shall not be required to, make subsequent capital contributions to the Company.

## Other Matters.

* + 1. The Members shall not be liable for the debts or any other obligations of the Company, nor shall the Members be required to guarantee any debts, liabilities, contracts or obligations of the Company.
		2. The Members shall not be required to lend any funds to the Company.

# SECTION 4

**PROFIT, LOSS, INCOME AND DEDUCTIONS**

## Determination of Profit and Loss.

The net profit or net loss of the Company shall be determined in accordance with the accounting methods followed for federal income tax purposes and otherwise in accordance with generally accepted accounting principles and procedures applied in a consistent manner. The accountants employed by the Company as soon as possible after the close of each such taxable year to determine the profit or loss of the Company, which shall be credited or debited, as the case may be, to the Members, shall make an accounting for each taxable year.

## Allocation and Distribution of Profits, Losses, Income and Deductions.

One hundred percent (100%) of the net profits, net losses and gain and loss of the Company shall be allocated to the Members in proportion to their respective Percentage Interests. The Manager may make distributions to the Members from time to time in their discretion.

# SECTION 5 MANAGEMENT AND INDEMNIFICATION

## Actions by the Member.

The Members shall not have authority to act for or on behalf of the Company, or to bind the Company in any way solely by virtue of being the member of the Company.

## Manager.

The business and affairs of the Company shall be managed by the manager. The manager shall have full, exclusive and complete discretion, power and authority, subject in all cases to the provisions of this Agreement and the requirements of applicable law, to manage, control, administer and operate the business and affairs of the Company for the purposes herein stated, to make all decisions affecting such business and affairs, to adopt such accounting rules and procedures as it deems appropriate in the conduct of the business and affairs of the Company and to do all things it deems necessary or desirable in the conduct of the business and affairs of the Company. The members/managers may appoint and delegate responsibilities to such officers and other agents, as it deems appropriate in its sole discretion. Michael Weatherwax is the Manager.

## Indemnification of the Manager.

The Company shall defend, indemnify, and save harmless each Indemnified Person for all loss, liability, damage, cost, or expense (including reasonable attorneys’ fees) incurred by reason of any demands, claims, suits, actions, or proceedings arising out of (a) the Indemnified Person’s relationship to the Company or (b) such Indemnified Person’s capacity as a Manager or as a Transaction Manager or as an officer, except for such loss, liability, damage, cost, or expense as arises out of the theft, fraud, willful misconduct, or gross negligence by such Indemnified Person. Expenses incurred in defending a civil or criminal action suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding, and not less often than monthly upon receipt of an undertaking by and on behalf of the Indemnified Person to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified by the Company.

## Meetings of and Voting by Members.

A meeting of the Members may be called at any time by the Manger or by those Members holding at least nine percent (9%) of the Percentage Interests.

* + 1. Meetings shall be held at the Company's principal place of business or at any other place designated by the Persons calling the meeting. The Persons calling the meeting shall give at least ten (10) days written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting.
		2. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person (including by telephone or videoconference) or by proxy of Members holding more than fifty percent (50%) of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney-in-fact.
		3. Except as otherwise provided in this Agreement, the affirmative vote of Members holding more than fifty percent (50%) of the Percentages then held by Members present at a meeting at which there is a quorum shall be required to approve any matter coming before the Members.
		4. Any change to the Operating Agreement, Power Purchase Agreement, or which affects the list of Members or Percentages in Exhibit A requires a two-thirds (66%) affirmative vote of all Members, not just the members at a meeting.

# SECTION 6 DISSOLUTION AND WINDING UP

## Dissolution Events.

The Company shall be dissolved and its affairs wound up upon the happening of any of the following:

* + 1. the sale or disposition of all or substantially all of the asset of the Company;
		2. the decision by the Members to dissolve;
		3. the occurrence of an event that makes it unlawful for the Company’s business to be continued; or
		4. the entry by a court of competent jurisdiction of a decree of judicial dissolution.

## Winding Up.

Upon dissolution under Section 7.1, no further business shall be conducted by the Company except for the taking of such action as shall be necessary for the winding-up of the affairs of the Company and the distribution of its assets to the Members pursuant to the provisions hereof, and thereupon the Manager(s) shall act as the Liquidator of the Company within the meaning of the Act and immediately proceed to wind up and terminate the business and affairs of the Company.

## Liquidation of Company Assets.

Upon dissolution, the Liquidator shall sell such of the remaining assets of the Company as it deems necessary or appropriate. In lieu of the sale of any such assets, the Liquidator may convey, distribute and assign all or any part of such assets to the Members in such form of ownership as shall be determined by the Liquidator to be applicable to the jurisdiction where the Property is located. A full accounting shall be made of the accounts of the Company and of the Company’s assets, liabilities and income, from the date of the last accounting to the date of such dissolution.

## Distribution of Assets.

Following the liquidation provided for in Section 6.3, the Liquidator shall apply the remaining assets of the Company, in the following order of priority:

* + 1. first, to the payment and discharge of, or the making of reasonable provisions for, all of the Company’s debts and liabilities to Persons other than the Members, including contingent, conditional and un-matured liabilities of the Company, and the expenses of dissolution and winding-up, in the order of priority as provided by law, including the establishment of a reserve fund for contingent, conditional and un-matured claims as deemed necessary and reasonable by the Liquidator;
		2. second, to the payment and discharge of, or the making of reasonable provisions for, all of the Company’s debts and liabilities to the Members; and
		3. third, all remaining assets to the Members.

# SECTION 7 MISCELLANEOUS

## Variation of Terms.

All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require.

## Governing Law.

The laws of the State of Colorado (other than the choice of law provisions thereof) shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder.

## Waiver.

Any of the terms and conditions of this Agreement may be waived in whole or in part, but only by an agreement in writing making specific reference to this Agreement and executed by the party entitled to the benefit thereof.

## Binding Agreement and Successors.

This Agreement shall be binding upon and shall inure to the benefit of the Members and their successors and assigns.

## No Third-Party Beneficiaries.

Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies.

## Section Headings.

Section headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning or interpretation of this Agreement or any of its terms and conditions.

## Securities Laws Restrictions.

The membership interests in the Company has not been registered under the Securities Act of 1933, as amended, or under the securities laws of the State of Colorado or any other jurisdiction. Consequently, these interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of such laws. By executing this Agreement, the Member represents and acknowledges that it is acquiring its interest for investment purposes only and without a view to distribution.

## Counterparts.

This Agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, and all of which together constitute one and the same instrument.

**CERTIFICATE**

The undersigned hereby agree, acknowledge and certify that the foregoing Agreement constitutes the Operating Agreement of SJ Solar, LLC, adopted by the Company and the Members as of the effective date.

**COMPANY:**

**SJ SOLAR, LLC**

**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

name, Manager

**MEMBERS:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Name

**Exhibit A**

**List of Members, Capital and Percentages**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| No. | Name | Address | TaxpayerI.D. Number | Email Address | InitialCash CapitalContribution | % |
| 1 | Name, Managing Member |  |  |  | $9,500.00 | 9.10 |
| 2 | name |  |  |  | $9,500.00 | 9.09 |
| 3 | name |  |  |  | $9,500.00 | 9.09 |
| 4 | name & name as JTWROS |  |  |  | $9,500.00 | 9.09 |
| 5 | name |  |  |  | $9,500.00 | 9.09 |
| 6 | name |  |  |  | $9,500.00 | 9.09 |
| 7 | name |  |  |  | $9,500.00 | 9.09 |
| 8 | name |  |  |  | $9,500.00 | 9.09 |
| 9 | name |  |  |  | $9,500.00 | 9.09 |
| 10 | name |  |  |  | $9,500.00 | 9.09 |
| 11 | name |  |  |  | $9,500.00 | 9.09 |
| Totals | $104,500.00 | 100.00 |

NOTE: JTWROS stands for “Joint Tenants with Right of Survivorship” for those signing as multiple individuals.