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December 2, 2008

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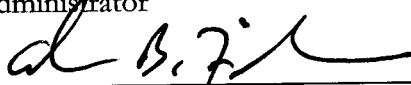
Dear Sir or Madam:

Pursuant to the Department of Labor Regulations, 29 C.F.R. §2520.104-23, under Section 110 of Title I of the Employee Retirement Income Security Act of 1974, the undersigned employer provides the following information in compliance with the alternative method of reporting and disclosure for unfunded plans maintained for a select group of management or highly compensated employees.

- 1. Name and address of employer: Affiance Financial, LLC
600 Highway 169 So., Suite 1950
St. Louis Park, MN 55426
- 2. Employer Identification Number: 41-1991971
- 3. Affiance financial, LLC maintains this plan primarily to provide deferred compensation benefits for a select group of management or highly compensated employees.
- 4. Number of such Plans and number of Participants in each Plan reported herein:

<u>PLAN</u>	<u>PARTICIPANTS</u>
Amended and Restated Member Control Agreement	2

AFFIANCE FINANCIAL, LLC
Plan Administrator

By: 

Its: vice President

Securities And Advisory Services Offered Through Financial Network Investment Corporation, Full Service Broker Dealer, Member SIPC

Advisory Services Also Offered Through Affiance Financial. A Registered Investment Advisor

Financial Network and Affiance Financial are not affiliated.

**AMENDED AND RESTATED
MEMBER CONTROL AGREEMENT
OF
AFFIANCE FINANCIAL, LLC**

This **AMENDED AND RESTATED MEMBER CONTROL AGREEMENT**, dated as of the 1 day of December, 2008, by and among **Affiance Financial, LLC**, a Minnesota limited liability company (the "**Company**"), **Affiance Financial, Inc.**, a Minnesota corporation ("**Affiance**") and Andrew B. Fishman ("**Fishman**") who are collectively all of the current Members of the Company.

RECITALS:

- A. Affiance is engaged in the business of providing financial planning, wealth management, investment advisory, insurance and related services to its clients (the "**Business**").
- B. Section 322B.37 of the Minnesota Limited Liability Company Act (the "**Act**") authorizes all of the members of a Minnesota limited liability company together with each person who has signed a contribution agreement with respect to such limited liability company to enter into a "member control agreement" relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution and termination or the relations among its members and/or persons who have signed contribution agreements.
- C. The Members and the Company entered into such a member control agreement with respect to the Company effective January 1, 2001. The Members and the Company desire to enter into this Amended and Restated Member Control Agreement with respect to the Company in order to revise and supersede the prior Member Control Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises hereinafter contained, the Members and the Company do hereby agree as follows:

ARTICLE I. DEFINITIONS

1.01 **Definitions.** Unless the context otherwise requires, when used in this Agreement, the terms listed in this Section shall have the following meanings:

"**Act**" means the Minnesota Limited Liability Company Act contained in Minnesota Statutes Chapter 322B.

“*Affiance Book of Business*” means the business and customer accounts which Steven M. Lear originated (i.e. for which Steven M. Lear is the first representative listed on the client account).

“*Agreement*” means this Amended and Restated Member Control Agreement as hereinafter amended from time to time, including any schedules and exhibits hereto.

To “*Assign*” or “*Assignment*” means to sell, assign, make a gift of, pledge or otherwise transfer or encumber, whether voluntarily or involuntarily, by operation of law or otherwise.

“*Board*” or “*Board of Governors*” means the board of governors of the Company.

“*Book of Business*” means, collectively, the Affiance Book of Business, Fishman Book of Business and the business and customer accounts of each additional Member subsequently admitted to the Company for which such Member is the first representative listed on the client account.

“*Capital Account*” means the account of a Member owning Financial Rights or of an assignee of the Financial Rights of a Member which is established and maintained in accordance with the provisions of this Agreement and the Code.

“*Cash of The Company Available For Distribution*” shall mean the cash received by the Company from all sources less cash disbursements of every kind, and less such reserves for accrued expenses and working capital requirements as the Board of Governors in its sole discretion may from time to time set aside.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, or corresponding provisions of subsequent laws.

“*Company*” means Affiance Financial, LLC, a Minnesota limited liability company.

“*Company Accountants*” means such firm of accountants as may be selected by the Board of Governors to prepare and/or audit the books of account of the Company. Schechter Dokken Kanter shall be the Company Accountants until such time as a replacement is designated by the Board of Governors.

“*Financial Rights*” means a Member’s Capital Account and a Member’s right to share in allocations of income, gain, loss, deduction and credit, liquidating distributions and distributions of the Cash of the Company Available for Distribution pursuant to the provisions of this Agreement. Financial Rights may not be assigned separately from the Governance Rights to which they relate.

“*Fishman Book of Business*” means the business and customer accounts which Fishman originated (i.e. for which Fishman is the first representative listed on the client account).

“*Governance Rights*” means all of a Member’s rights as a Member in the Company other than Financial Rights. Governance Rights may not be assigned separately from the Financial Rights to which they relate.

“*Governor*” means a natural person serving on the Board of Governors of the Company.

“*Income Allocation Percentage*” has the meaning defined in Section 4.01 of this Agreement.

“*Manager*” means a person elected, appointed or otherwise designated as a Manager by the Board of Governors of the Company and any other person considered elected as a Manager pursuant to the Act and this Agreement.

“*Member*” means a person reflected in the required records of the Company as the owner of some Governance Rights of a Membership Interest of the Company.

“*Member’s Book of Business*” means the Affiance Book of Business, the Fishman Book of Business or the business and customer accounts that a subsequently admitted Member originated (i.e. for which the Member is the first representative listed on the client account).

“*Membership Interest*” means a Member’s interest in the Company consisting of a Member’s Financial Rights and a Member’s Governance Rights.

“*Tax Matters Partner*” means Affiance.

ARTICLE II. CAPITAL; VOTING; OPERATIONS

2.01 ***Capital Contributions of Fishman.*** In accordance with the provisions of the Contribution Agreement in the form attached hereto as ***Exhibit A***, Fishman was required to contribute (i) an aggregate amount of Thirty-five Thousand and No/100 Dollars (\$35,000.00), payable in accordance with the provisions of that certain Promissory Note dated January 1, 2001 in the face amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00); and (ii) his entire interest in the Fishman Book of Business, as the same existed as of January 1, 2001. The fair market value of the foregoing assets was deemed to be Thirty-five Thousand and No/100 Dollars (\$35,000.00).

2.02 ***Capital Contributions of Affiance Financial, Inc.*** Affiance was required to contribute its entire interest in its tangible and intangible personal property, all as more fully described in the Affiance Contribution Agreement, subject to the assumption by the Company of all of its liabilities and obligations. The net fair market value of the foregoing assets and liabilities was deemed to be Two Hundred Sixty-five Thousand and No/100 Dollars (\$265,000.00).

2.03 ***Allocation for Income Tax Purposes.*** The Members understand that for income tax purposes, the Company’s adjusted basis for the interest in the assets contributed to the capital of the Company pursuant to Section 2.01 or 2.02 hereof may differ from the value at which the

interest was accepted by the Company at the time of its contribution. Nevertheless, the Members intend that allocations shall be governed by Section 704(b) of the Code, to the extent permitted by Section 704(c) of the Code and the regulations thereunder as hereinafter set forth in Section 2.07 hereof.

2.04 **No Interest on Capital Contribution.** No interest shall be paid on the capital contributions of the Members and assignees of Financial Rights or upon any undrawn profits of any Member or assignee of Financial Rights which are credited to his, her or its Capital Account.

2.05 **Withdrawal of Capital Contributions.** A Member or an assignee of Financial Rights shall not be entitled to withdraw any part of his, her or its capital contribution, to receive repayment of his, her or its capital contribution, or to receive any distribution from the Company except as specifically provided herein. The foregoing notwithstanding, Affiance will be entitled to the return of \$95,000 of its capital contribution in the event that payments come due pursuant to its deferred compensation agreement with Fishman, which amount will be returned to Affiance pro rata as said deferred compensation payments become due.

2.06 **Additional Capital Contributions.** No Member shall at any time have any obligation to make any capital contributions to the Company in addition to those provided for in Sections 2.01 and 2.02 hereof except upon the affirmative vote of a majority of the Members.

2.07 **Capital Accounts.** The initial Capital Accounts of the Members, based on the Contribution described in Sections 2.01 and 2.02 of this Agreement are as follows:

MEMBER	CAPITAL ACCOUNT
Affiance	\$265,000.00
Fishman	\$35,000.00

Capital Accounts shall be established and maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv).

2.08 **Loans to the Company.** The Members, including the Governors and Managers who are also Members, may make loans to the Company from time to time, as authorized by the Board of Governors, and no such loan shall be treated as a contribution to the capital of the Company for any purposes hereunder, nor entitle such Member to any increase in his, her or its share of the net income and loss of the Company and/or any cash distributions from the Company. The Company shall be obligated to such Member for the amount of any such loans together with interest at such rate as such Member and the Board shall reasonably agree. Except as otherwise agreed by the Member(s) making such loan(s) to the Company, the principal and interest on any loans to the Company pursuant to this Section shall be repaid before any cash distributions are made to the Members and assignees of Financial Rights. No Member, including any Governor or Manager, shall have any obligation to make any such loan or to otherwise advance funds to the Company.

2.09 **Additional Members.** Additional Members may be admitted to the Company upon such terms and conditions as may be established and approved by the affirmative vote of a

majority of the Members. In connection with the admission of a new Member pursuant to this Section 2.09: (i) the Board shall restate the value of all old contributions to the capital of the Company in accordance with the requirements of Section 322B.41 of the Act; and (ii) the Member's shall designate the rights of the newly admitted Member to vote, in accordance with the provisions of Section 2.10 and to participate in the designation and election of Governors in accordance with the provisions of Section 2.11. Nothing in this Section 2.09 shall be construed to limit the effect of Article V with respect to the Assignment of Membership Interests and/or Financial Rights.

2.10 ***Voting by Members.*** Notwithstanding any provision of this Agreement to the contrary, at each annual meeting of the Members of the Company and at each special meeting of the Members of the Company and at any time at which the Members of the Company shall have the right to vote or upon which the action of the Member is requested or required, each Member shall have one (1) vote. Except where a larger percentage or requirement is set forth in this Agreement or required by the Act, all matters voted upon by the Members shall be decided by the affirmative vote of a majority of the Members.

2.11 ***Board of Governors – Election; Voting.***

(a) ***Designation, Size and Election.*** At each annual meeting of the Members of the Company and at each special meeting of the Members of the Company called for the purpose of electing Governors and at any time at which the Members shall have the right to and shall vote for Governors of the Company, each Member shall have the right to elect one (1) Governor of its/his/her choice, which individual shall serve as a Governor of the Company until his or her respective successor is duly elected in that same manner. No Governor may be removed except upon the affirmative vote of the member which elected said Governor.

(b) ***Voting by Governors.*** At each meeting of the Board of Governors and in each instance in which action is taken by the Board of Governors in writing in lieu of holding a meeting and in all other matters upon which the Board of Governors shall be entitled to or may be required to act, each Governor shall have one (1) vote.

(c) ***Quorum for Meetings of Members and Governors.*** A majority of the governors holding office shall be a quorum for the transaction of business, provided that those governors were appointed by members holding a majority of the Income Allocation Percentages of the Company. In the event of a vacancy on the Board of Governors whereby the number of Governors elected constitute less than a quorum, the Member who is not represented on the Board of Governors by a Governor elected by such Member shall elect a director to fill such vacancy in order to permit the Board of Governors to convene with a quorum.

2.12 ***Exclusivity of Business Operations.*** During such time as a Member remains a Member in the Company, the Member shall sell, conduct and engage in Business exclusively through the Company. Each Member (or in the case of Affiance, Steven M. Lear) shall devote his full time, energy, skill and attention to the Company's Business, except during customary vacation periods and periods of disability resulting from injury or illness and except as otherwise

may be expressly permitted by the Board of Governors of the Company. All commissions, fees and other remuneration paid to the Member by brokers, insurance companies or other sources, directly or indirectly, shall be the property of the Company and each Member shall be obligated to contribute to the Company an amount equal thereto upon request.

ARTICLE III. ACCOUNTING, RECORDS AND REPORTS

3.01 ***Fiscal Year.*** The Company's fiscal year for financial reporting and for federal income tax purposes shall be the calendar year.

3.02 ***Records and Accounting.*** At all times during the existence of the Company, the Board of Governors or Managers acting under the direction of the Board shall keep or cause to be kept books and records of accounts utilizing the method of accounting selected by the Board which shall be adequate and appropriate for the Company's business, and in which each transaction of the Company shall be entered fully and accurately.

3.03 ***Bank Accounts.*** The Board of Governors or Managers acting under the direction of the Board shall maintain one or more bank accounts in the name of the Company and all monies of the Company received by the Company shall be deposited in said bank account(s) and may be withdrawn by check signed by any one of the Managers.

3.04 ***Right of Inspection; Lists of Members.*** One copy of the books of account described in Section 3.02 hereof, together with a copy of this Agreement and other relevant agreements and any amendments thereto, and one copy of every document relating to the ownership of, and condition of title to, Company properties shall at all times be maintained at the principal place of business of the Company, and each Member and assignee of Financial Rights or his, her or its duly authorized representatives shall have access to and the right to inspect and copy them during normal business hours.

3.05 Reports to Members.

(a) ***Annual Reports.*** The Board of Governors shall send or cause to be sent to each Member as expeditiously as possible following the close of each fiscal year a report containing an unaudited operating statement reflecting income and disbursements and an unaudited balance sheet.

(b) ***Monthly Reports.*** The Board of Governors shall send or cause to be sent to each Member and assignee of Financial Rights a reasonable period of time following the end of each month (except the 12th month which shall be included in said annual statements) a report containing the unaudited and unadjusted information set forth in Section 3.05(a) above.

3.06 ***Accounting Decisions.*** The Members acknowledge that the Company will be treated as a partnership for tax purposes. All decisions as to accounting matters, including but not limited to the determination of net profits and net losses of the Company, except as specifically provided to the contrary herein, shall be made by the Board of Governors in its sole discretion and all such decisions shall be binding upon all Members and assignees of Financial

Rights. The Board of Governors may rely upon the advice of the Company Accountants in making such decisions.

3.07 **Tax Returns.** The Board of Governors shall prepare or cause to be prepared and shall file on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Company. The Board of Governors shall cause the Company to pay any taxes payable by the Company. The Board of Governors shall also furnish or cause to be furnished to each Member within ninety (90) days after the end of each fiscal year, adequate information concerning such Member's share of the Company's income, gains, losses, deductions and credits for use in the preparation of such Member's tax returns for such fiscal year.

3.08 **Section 754 Election.** Upon receipt of the written request of a Member, the successor in interest of a Member, or of the executors, administrators or other legal representatives of a Member either deceased or under legal disability, the Board of Governors may, in its sole discretion, file on behalf of the Company an election under Section 754 of the Code permitting an adjustment to basis of the Company's property under Sections 734 and 743 of the Code. Nothing herein shall require the Board of Governors to make an election under Section 754 of the Code.

3.09 **Designation of Tax Matters Partner.** Affiance is hereby designated as the Company's "Tax Matters Partner," as defined in Section 6231(a)(7) of the Code, and in such capacity is hereby authorized and empowered to act for and represent the Company and each Member and assignee of Financial Rights before the Internal Revenue Service in any audit or examination of any tax return of the Company and before any court selected by Affiance for judicial review of any adjustment assessed by the Internal Revenue Service. Affiance hereby accepts such designation. Each of the Members by execution of this Agreement consents and agrees to become bound by all actions of Affiance as "Tax Matters Partner," including any contest, settlement or other action or position which he deems proper under the circumstances. The legal, accounting and related costs incurred by Affiance in his capacity as "Tax Matters Partner" shall be borne by the Company.

ARTICLE IV. ALLOCATIONS AND DISTRIBUTIONS

4.01 **Allocation of Taxable Income and Loss for Each Fiscal Year.** The taxable income or loss of the Company for each fiscal year, including each class or item of income, gain, loss, deduction and credit required to be stated separately by Section 702(a) of the Code, shall be allocated among the Members based on the Income Allocation Percentage of each Member. The Income Allocation Percentage for the Members shall be as follows:

MEMBER	INCOME ALLOCATION PERCENTAGE
Affiance	75%
Fishman	25%

4.02 ***Distributions of Cash.*** The Cash of The Company Available For Distribution shall be distributed at such times, as the Board of Governors in its sole discretion may deem appropriate, to all Members, in the same ratio as such Members' Income Allocation Percentages. Notwithstanding the foregoing, to the extent it may lawfully do so under applicable law and to the extent not inconsistent with any loan or other agreement to which the Company may be bound, the Board of Governors shall make an annual distribution of the Cash of the Company Available for Distribution to the Members based upon their respective Income Allocation Percentages in the amount necessary to permit the Member or assignee who is in the highest income tax bracket to pay all state and federal taxes on the net income of the Company allocated to such Member, all in accordance with the computations made by the Company Accountants. Notwithstanding the foregoing, liquidating distributions upon dissolution and termination of the Company shall be made in accordance with Section 6.02 hereof.

4.03 ***Minimum Gain Chargeback.***

(a) If there is a net decrease in the Company's minimum gain (as defined in Treasury Regulations Section 1.704-2(b)(2)) for any fiscal year, each Member and assignee of Financial Rights shall be allocated items of income and gain for the fiscal year (and, if necessary, subsequent years) in accordance with Treasury Regulation Section 1.704-2(f) and its requirements for a "minimum gain chargeback."

(b) If there is a net decrease in the minimum gain attributable to a "partner nonrecourse debt" (as described in Treasury Regulation Section 1.704-2(i)(4)) of the Company during a fiscal year, then each Member and assignee of Financial Rights with a share of minimum gain attributable to a "partner nonrecourse debt" at the beginning of such taxable year shall be allocated income or gain for the fiscal year (and, if necessary, subsequent years) in accordance with Treasury Regulation Section 1.704-2(i) and its requirements. The allocation required by this Section 4.03(b) shall be made after the allocation required by Section 4.03(a), but prior to any other allocation for the year.

4.04 ***Qualified Income Offset.*** Notwithstanding any provision of this Article IV to the contrary, if any Member or assignee of Financial Rights unexpectedly receives any adjustments, allocations or distributions described in Sections (4), (5) or (6) of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) that results in a deficit balance in such Member's or assignee's Capital Account, or increases a deficit balance (to the extent that such deficit or increase in deficit is in excess of the sum of the amount, if any, that the Member or assignee is obligated to restore and the amount of the Member's or assignee's share of minimum gain), such Member or assignee will be allocated corresponding items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) in an amount and manner sufficient to eliminate such deficit or such increase in deficit in such Member's or assignee's Capital Account as quickly as possible. This Section 4.04 is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

4.05 ***Mandatory Allocations.*** Notwithstanding any of the foregoing provisions of this Article IV to the contrary:

(a) in the event Code Section 704(c) or Code Section 704(c) principles applicable under Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3) require allocations of income or loss of the Company in a manner different than that set forth above, the provisions of Section 704(c) and the regulations thereunder shall control such allocations among the Members and assignees of Financial Rights and it is the intention of the Members that Sections 2.07 and 4.01 hereof comply with Code Section 704(c) and related Treasury Regulations; and

(b) all deductions of the Company which are attributable to any nonrecourse debt of the Company for which any Member or assignee of Financial Rights bears the economic risk of loss (for example, (i) any loan to the Company which is guaranteed by a Member or assignee of Financial Rights or (ii) any loan made to the Company by a Member or assignee of Financial Rights (or which are treated as such by Treasury Regulations, such as Treasury Regulation Section 1.752-3)) shall be allocated solely to such Member or assignee if so required by Treasury Regulation Section 1.704-2(i).

4.06 *Effect of Allocations.* It is the express intention of the Members that all allocations of income, gain, loss, deduction and credit shall be treated as having substantial economic effect under Section 704(b) of the Code and that each Member's and assignee's share of Company items shall be determined and allocated in accordance with this Article IV to the fullest extent permitted by Section 704(b) of the Code. Therefore, if the Company is advised that the allocations in this Article IV are unlikely to be respected for federal income tax purposes, the Board of Governors is hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to effect the plan of allocations and distributions provided in this Agreement.

4.07 *Allocation for Imputed Interest.* Notwithstanding the provisions of Section 4.01 hereof to the contrary, any interest income which may be imputed to the Company under the Code because the deferred portion of the Members' capital contributions hereof do not bear interest during the installment payment period, shall be specially allocated to the respective Members on whose deferred capital contributions the interest income was so imputed.

4.08 *Member Salaries.* The Board of Governors shall establish the salaries of each Member not less than annually. Salaries shall take into account the revenue generated by each Member, management duties, and such other factors as the Board deems appropriate. Payments shall be made not less than monthly, or in such other uniform and consistent intervals as the Board of Governors may establish.

ARTICLE V. ASSIGNMENT OF MEMBERSHIP INTERESTS; DEFERRED COMPENSATION; RESTRICTIVE COVENANTS

5.01 *Assignments.* Members may make an Assignment of all or any part of their Membership Interests or of Financial Rights or of Governance Rights only in accordance with the provisions of this Article V. No purported Assignment of a Membership Interest or of Financial Rights or of Governance Rights in violation of this Article V shall be valid or effective, and the Company may refuse to recognize any such purported Assignment for any purpose. No purported Assignment of a Member's Governance Rights shall be effective unless it is made in

connection with an Assignment of the Member's Financial Rights relating thereto and vice versa. Except as otherwise expressly provided herein, each Member agrees that without the prior consent of the Board of Governors, he, she or it will not make an Assignment of all or any part of his, her or its Membership Interest, whether voluntarily or involuntarily, by operation of law or otherwise, without first complying with the requirements of this Article V.

5.02 *Events of Redemption; Mandatory and Permissive Redemption Events.*

(a) *Definitions.* For the purposes of this Article V, the following terms shall have the following meanings:

(1) *Voluntary Assignment.* The proposed voluntary sale, assignment, gift, pledge or other transfer or encumbrance of all or any part of the Membership Interest and/or Financial Rights of the Seller, as hereinafter defined, as the case may be ("Voluntary Assignment");

(2) *Involuntary Assignment.* Each of the following events is hereinafter referred to as an event of "Involuntary Assignment":

(A) The entry of a judgment or decree in any divorce or separation proceedings requiring the transfer of all or any part of the Seller's Membership Interest and/or Financial Rights, as the case may be;

(B) The appointment by a court of competent jurisdiction of a receiver, trustee, guardian or assignee for the Seller or his, her or its property, if the appointment is not dismissed within sixty (60) days;

(C) The Seller has become insolvent, made an assignment for the benefit of creditors or voluntarily initiated or had involuntarily initiated against him, her or it any act, process or proceeding under any insolvency, bankruptcy or similar law providing for relief of debtors (provided that the filing of an involuntary petition in bankruptcy against the Seller shall not give the Company and remaining Members options to purchase all or any part of the Seller's Membership Interest and/or Financial Rights, as the case may be, if the petition is dismissed within sixty (60) days of filing);

(D) The institution of an attachment or other proceeding involving all or any part of the Seller's Membership Interest and/or Financial Rights, as the case may be, if not dismissed within sixty (60) days; and

(E) The Seller has failed to timely pay the deferred portion of his, her or its capital contribution or shall fail to timely make any additional capital contribution pursuant to Section 2.06 hereof.

(3) *Termination of Employment.* The voluntary termination of employment by the Member (or, in the case of Affiance, the voluntary termination of employment by Steven M. Lear); or, the termination of the Member's

employment, (or in the case of Affiance, Steven M. Lear's employment) by the Company, whether with or without Cause, as hereinafter described. For purposes of this Agreement "Cause" shall be limited to: (i) the employee's conviction of a felony; (ii) theft of Company or client property; (iii) repeat appearance at work under the influence of alcohol or drugs after the employee is given a reasonable opportunity to seek rehabilitation; (iv) gross mismanagement or consistently incompetent handling of Company or client affairs, financial matters or funds; or (v) the material breach by the Seller of any of the terms and conditions of this Agreement.

(4) *Disability.* The disability of the Seller or, in the case the Seller is Affiance, Steven M. Lear. For purposes of this Agreement, "Disability" is defined as in § 409A(a)(2)(c) of the Code and Treas. Reg. § 1.409A-3(g)(4).

(5) *Death.* The death of the Seller, or, in the case of Affiance, Steven M. Lear.

(b) *Notice.* Upon the occurrence of any Voluntary Assignment, Involuntary Assignment, termination of employment, Disability or death (referred to hereinafter as "Events of Purchase"), the affected Member or assignee of Financial Rights or his, her or its legal representative(s), as the case may be (the "Seller"), shall provide the Company with a written notice specifying the price and all of the material terms and conditions of the Event of Purchase as well as the name and address of any proposed purchaser(s), assignee(s), donee(s), pledgee(s) or other transferee(s) ("Notice").

(c) *Voluntary Assignment or Involuntary Assignment.* In the event of the proposed Voluntary Assignment or Involuntary Assignment of all or part of a Member's Membership Interest, the Company shall have the option, for 90 days following its receipt of written Notice of such event, to purchase the entire Membership Interest of such Member at the price and on the terms set forth in Sections 5.03 and 5.04 hereof.

(d) *Death, Disability, Termination.* In the event of the death, Disability or termination of employment of a Member (or, in the case the Member is Affiance, Steven M. Lear), the Member (or his or its representative) shall sell and the Company shall redeem the entire Membership Interest of such Member at the price and on the terms set forth in Section 5.03 and 5.04 hereof, subject to the limitations set forth in Minn. Stat. §§322B.54.

5.03 *Purchase Price.*

(a) In the event of a Voluntary Assignment, the price and terms of the Company's option to purchase the Sellers entire Membership Interest shall be, at the Company's option, either (i) the price and terms set forth in the Notice of the Event of Purchase (or, if the offer is for less than the entire Membership Interest, the price offered divided by the percentage of the Membership Interest subject to the proposal) or, at the Company's option, (ii) the price set forth in (b) below.

(b) In the event of the Involuntary Assignment or Disability or termination of employment of a Member (or, in the case the Member is Affiance, Steven M. Lear), or, if the Company so elects, in the event of a proposed Voluntary Assignment, the price of the Seller's entire Membership Interest in the Company shall be equal to the balance of the Seller's Capital Account, determined as of the date of the occurrence of the Event of Purchase. The value of Seller's Capital Account shall be equal to its book value, as determined by the Company Accountants. For purposes of determining Purchase Price, Capital Accounts shall not be revalued and are not intended to reflect the value of goodwill or the value of the Member's Book of Business, which may or may not be retained.

(c) In the event of the death of Steven M. Lear or any individual member, the price of the Seller's entire Membership Interest in the Company shall be one-half (1/2) of the value of the Member's Book of Business, which value shall equal the average annual revenue of the Member's Book of Business over the preceding 24 months, plus the positive balance of the Seller's Capital Account, determined as of the date of the occurrence of the Event of Purchase. The value of Seller's Capital Account shall be equal to its book value, as determined by the Company Accountants. For purposes of determining Purchase Price, Capital Accounts shall not be revalued and are not intended to reflect the value of goodwill or the value of the Member's Book of Business, which may or may not be retained.

5.04 *Payment of Purchase Price.* Except as set forth in 5.03(a)(i), upon the occurrence of an Event of Purchase, the Company shall pay the Purchase Price in the following manner:

(a) The Company shall offset against the Purchase Price any amount due from the Seller, including the amount of any damages suffered by the Company as a result of any breach of this Agreement by the Seller.

(b) In the event the purchase is made pursuant to Section 5.02(d), any life insurance proceeds received by the Company as a result of the death of the Seller (or Steven M. Lear, as the case may be) shall be applied toward the payment of the Purchase Price to the extent of the remaining balance owed to the Seller; provided, however, that any insurance proceeds in excess of the total purchase price shall be and remain the separate property of the Company.

(c) The remaining balance of the Purchase Price, if any, shall be evidenced by the Promissory Note of the Company bearing interest at the applicable federal rate

determined in accordance with the provisions of Section 1274(d) of the Code, per annum, on the unpaid balance. The unpaid principal balance of the Promissory Note and accrued interest thereon shall be payable in twenty (20) equal quarterly installments, the first installment to be paid on the first day of the month following the closing and each installment due every third month thereafter until fully-paid; *provided, however*, if the event of redemption occurs due to the Disability or termination without cause of the Member (or, in the case of Affiance, Steven M. Lear), the unpaid principal balance of the Promissory Note and accrued interest thereon shall be payable in eight (8) equal quarterly installments. Said Promissory Note shall provide for prepayment without penalty and shall also contain a clause providing for the acceleration of the payment of the unpaid balance of the Promissory Note at the option of the holder in the event a default in the payment of principal and interest is not cured within thirty (30) days of the maker's receipt of notice of default.

(d) In the event of a default by the Company in the payment of any principal or interest on any Promissory Note issued pursuant to Section 5.04(d) hereof, which default is not cured within thirty (30) days of such default, or of the transfer of all or substantially all of the assets of the Company or of all or substantially all of the Membership Interests of the Company by sale, exchange, merger, consolidation or any other disposition before the obligations of the Company under the Promissory Note shall have been fully discharged, the unpaid principal balance plus accrued interest on any such Promissory Note issued by the Company hereunder shall become immediately due and payable, without further notice to or demand upon the Company. This provision shall be included in any such Promissory Note.

The Company's purchase of the Membership Interest pursuant to the above terms shall take place at a closing to be held at the office of the Company. Such closing shall be held thirty (30) days after (i) the date on which the Company notifies the Seller of its election to purchase all of the Membership Interest pursuant to 5.02(c), or (ii) the date of the event giving rise to the purchase pursuant to 5.02(d). At the closing, the Seller shall execute all instruments requested by the Company for the purpose of confirming or evidencing the redemption of the Membership Interest.

5.05 Voting Rights. Any decision by the Company regarding whether or not to exercise any option to purchase all or any part of a Seller's Membership Interest pursuant to the terms of this Agreement or to waive any of its rights hereunder shall be made by the Members other than the Seller; provided, however, that if this provision is contrary to the Articles of Organization or Bylaws of the Company, the Seller shall vote his/her or its entire Membership Interest in the same manner that a majority of the voting power of the Membership Interests of the other Members is voted with regard to any of the above described decisions.

5.06 Post-Termination Guaranteed Payments to Members. Following the occurrence of an Event of Purchase which results in the termination of the Member's entire Membership Interest, the Company shall pay to each Member (or his estate, in the case of death) continuing guaranteed payments to the extent the Company retains and realizes revenue from the disassociated Member's Book of Business ("Retained Book"), provided, that the Company shall not make guaranteed payments if it purchased the Member's Membership Interest for the price set forth in Section 5.03(a)(i), upon a termination of employment that does not constitute a

“separation from service” under Treas. Reg. § 1.409A-1(h), or upon an Involuntary Assignment. The amount payable pursuant to this Section 5.06, and the timing of payment shall be determined in accordance with the following provisions:

(a) *Payment Amount.* The Company shall pay to the disassociated Member (or his estate, in the case of death), each calendar quarter during the twenty (20) quarter period commencing with the month following the month in which the Event of Purchase occurred (or, if the Event of Purchase is a Voluntary Assignment, commencing with the month following the month in which the Seller, or Steven M. Lear in the case of Alliance, experiences a separation from service as defined in Treas. Reg. § 1.409A-1(h), experiences a Disability, or dies), an amount equal to twenty percent (20%) of the total revenue generated by the Retained Book (the “Quarterly Payment Amount”); *provided, however,* if the Event of Purchase is the termination for Cause of the disassociated Member’s employment (or, in the case of Affiance, the termination of Steven M. Lear’s employment for Cause) or the death of the Member (or, in the case of Affiance, the death of Steven M. Lear), then the Quarterly Payment Amount foregoing percentage shall be reduced to ten percent (10%).

(b) *Timing of Payments.* The Company shall make such payments on or before the twentieth (20th) business day following the end of each quarter during the payment period.

(c) *Audit Rights.* For purposes of verifying the Quarterly Payment Amount payable hereunder, the Company shall maintain accurate written records in sufficient detail to permit the disassociated Member (or his estate, in the case of death) to verify the amounts payable hereunder without undue difficulty. In the event that the disassociated Member (or his estate, in the case of death) believes, in good faith, that any payment by the Company is in error in any material respect, the disassociated Member (or his estate, in the case of death), or its/his designated professional advisors, may review such records maintained by the Company relating to the calculation thereof solely for the purpose of verifying the accuracy of such payment; *provided, however,* to the extent such records do not relate exclusively to the Retained Book, the Company shall be entitled to redact such information which, in its reasonable discretion, is necessary to omit or protect its confidential or proprietary information, which information may include, but is not limited to information pertaining to customers, expirations, personnel, commissions, fees and underwriters. The disassociated Member (or his estate, in the case of death) shall have a period of thirty (30) days following receipt of payment to challenge the Company’s calculation of the amount payable pursuant to this Section 5.06. If the review by the disassociated Member (or his estate, in the case of death) establishes that the Company underpaid the disassociated Member (or his estate, in the case of death), then the Company if it concurs with such calculation, shall immediately pay the amount of the deficiency identified as a result of such review to the disassociated Member (or his estate, in the case of death). In the event the Company objects to the disassociated Member’s (or his estate’s, in the case of death) determination of a deficiency, the parties shall negotiate in good faith for a period of twenty (20) days following delivery by the Company of its notice of objection to the disassociated Member (or his estate, in the case of death). If the parties are unable to resolve such dispute within said twenty (20) day

period, either party may submit the matter for resolution by arbitration in the manner contemplated by this Agreement for such resolution.

(d) *Adjustments.* Each disassociated Member (or his estate, in the case of death) shall be responsible for returning to the Company any unearned compensation distributed following the termination of employment due to cancelled policies, policy audits, premium adjustments or provisions of contractual arrangements or agreements between the Company and the customers and clients comprising the Retained Book. Adjustments may be taken into account by the Company during the term in which payments are to be made hereunder as a set-off against the amounts payable by the Company hereunder.

5.07 *Tag-Along Rights.* If a Member determines to sell or transfer all or any of the Membership Interest held by the Member to a non-Member, the Member shall give notice of the proposed transaction (including price and other material terms and conditions) to each other Member. If requested by any of the remaining Members in writing within twenty (20) days of receiving said notice, the selling Member shall, as a condition of the sale of said Membership Interest, also obtain from the non-Member an additional offer to purchase all of the Membership Interest of the requesting remaining Member for the same purchase price/consideration per Percentage Interest and on the same terms and conditions as available to the Member. Failure of any of the remaining Members to notify the selling Member within such twenty (20) day period shall be deemed to be an election not to sell such remaining Member's Membership Interest. The right set forth in this Section 5.07 shall not apply to any bona fide gift without consideration or transfer upon death of a Member's Membership Interest, or any Involuntary Transfer.

5.08 *Restrictions on Assignment to a Third Person.* In the event that the Board of Governors consents to the assignment of a Member's Membership Interest, the Company will recognize the assignee as the holder of such Membership Interest if and only if:

(a) the Seller and assignee execute, acknowledge and deliver to the Board of Governors instruments of assignment in form and substance satisfactory to the Board and legal counsel for the Company;

(b) the Seller provides the Company, at the Seller's expense, with an opinion of counsel, satisfactory in form and substance to the Board and to legal counsel for the Company, to the effect that such Assignment will not result in the termination of the Company within the meaning of Section 708(b) of the Code or in a change in its tax status as a partnership under the Code or other applicable law;

(c) the Seller and/or the assignee pay(s) the Company a transfer fee in an amount sufficient to cover all reasonable expenses incurred by the Company in connection with such Assignment; and

(d) the Seller provides the Board of Governors with such assurances as it may deem appropriate, including, at the Seller's expense, an opinion of counsel satisfactory in form and substance to the Board and to legal counsel for the Company to the effect that such Assignment complies with any applicable state and federal securities laws and regulations.

5.09 ***Effective Date of Assignment.*** An Assignment of a Membership Interest shall become effective as to and become binding on the Company upon compliance with the requirements of Section 5.08 hereof and only after the assignee's name, address and the nature and extent of the assignment have been reflected in the required records of the Company.

5.10 ***Effect of Assignment of Membership Interest.*** If an Assignment of a Membership Interest has become effective as provided in Section 5.09 hereof, the assignee shall be entitled, as though he, she or it were a Member, to receive distributions of cash and be credited or debited with allocations of items of income, gain loss, deduction and credit in the manner provided in Articles IV and VI and to receive reports as provided in Article III. However, the assignee shall not become a Member and shall have no Governance Rights or other rights by virtue of such Assignment unless substituted as a Member pursuant to Section 5.11 hereof. Notwithstanding any provision of this Agreement to the contrary, the Company shall be entitled to treat the assignor of a Membership Interest as the absolute owner thereof (including all Financial Rights appurtenant thereto) and shall incur no liability by reason of distributions of cash or other property made in good faith to such assignor prior to the effective date of the Assignment under Section 5.09 hereof.

5.11 ***Substitution of Members.*** An assignee of a Membership Interest shall have the right to be substituted as a Member if and only if:

- (a) he, she or it delivers to the Board of Governors a written notice, executed and acknowledged by him, her or it and by his, her or its Seller, requesting that he, she or it be substituted as a Member;
- (b) the Board of Governors' consents in writing to such substitution, which consent may be granted or withheld in the Board's sole discretion;
- (c) the assignee executes, acknowledges and delivers to the Board of Governors an instrument in form and substance satisfactory to the Board accepting and adopting the terms, provisions, appointments and agreements set forth in this Agreement;
- (d) the instruments, assurances and opinions referred to in Sections 5.08(a), (b) and (d) are furnished to the Board;
- (e) the Seller and/or the Assignee pay(s) the fee identified in Section 5.08(c) hereof; and
- (f) the substitution of the assignee as a Member of the Company is approved in writing by all of the Members other than the Seller.

A person substituted as a Member shall have all the rights of a Member.

5.12 ***Restrictive Covenants of Members.***

- (a) ***Covenant Not to Compete.*** Each Member, for itself, its successors and assigns, hereby covenants and agrees during such period of time as such Member remains a Member of the Company, and during the period in which payments are to be made pursuant to Section 5.06 of this Agreement, he/it shall not, on his/its behalf or on behalf

of any other person, firm, partnership, corporation, or other organization, directly or indirectly, solicit, accept or in any manner attempt to sell products or services which are competitive with products or services sold by the Company to any person, firm, partnership, corporation or organization which is a customer or client of the Company or of another disassociated Member of the Company as reflected in the Book of Business of the Company as of the date the Member is disassociated with the Company; ***provided, however, that the disassociated Member may solicit the customers which comprise such disassociated Member's Book of Business as of the date of disassociation.***

(b) *Remedies for Violation.* Each party acknowledges that in the event of a violation of the restrictive covenants set forth in Section 5.12(a), the person intended to be protected by such covenant may suffer irreparable harm and that such damaged person shall have the right to enforce such provisions by specific remedies which shall include, but not be limited to, temporary restraining orders and temporary and permanent injunctions. In the event of any breach of the provisions of Section 5.12(a), the duration of the restrictions applicable to the party who is responsible for or related to the violation shall be extended for an additional period equal to the duration of period of such breach. If any party fails to strictly enforce the foregoing provisions, such failure shall not deprive the party intended to be protected by such covenant of the right to require strict compliance with such covenant thereafter. If the provisions of these covenants are found to be legally invalid because they are unreasonably broad, then these restrictions shall be relaxed or reduced only to the extent necessary to make these restrictions enforceable, all as determined by appropriate judicial authorities. To the extent that any portion of any provision or provisions of the restrictive covenants set forth in this Agreement shall be finally determined to be invalid or unenforceable, such provision shall be deleted from this Agreement, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected. In furtherance of and not in limitation of the foregoing, it is expressly agreed that should the duration or geographical extent of, or business activities covered by, the restrictive covenants set forth in this Agreement be in excess of that which is valid or enforceable under applicable law, such provision shall be construed to cover only that duration, extent or activities which may validly or enforceably be covered. The parties acknowledge the uncertainty of the law in this respect and expressly stipulate that the restrictive covenants of the parties set forth herein shall be construed in a manner which renders such provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law.

ARTICLE VI. DISSOLUTION AND LIQUIDATION

6.01 *Dissolution.* The Company shall be dissolved upon the occurrence of any of the events specified in Section 322B.80, subdivision 1, clauses (1) - (4) and (6), of the Act unless the dissolution is revoked pursuant to Section 322B.823 of the Act or is discontinued under Section 322B.85 of the Act. The Company shall not be dissolved upon the occurrence of any event that terminates the continued membership of a Member of the Company, including any of the events listed in Section 322B.306, subdivision 1 of the Act. If the Company is dissolved and (a) the dissolution is not revoked or discontinued as provided in the Act and/or this Agreement, and (b) its business is being liquidated in accordance with Section 322B.873, subdivision 1, of the Act, the Company shall cease to carry on its business except to the extent necessary for the winding

up of the business of the Company. The Company shall thereafter be wound up and terminated as provided by the Act.

6.02 **Liquidation.** Upon the dissolution of the Company, if the dissolution is not revoked or discontinued as provided in the Act and/or this Agreement, the Board of Governors or the Managers acting under the direction of the Board shall reduce the assets of the Company to cash. The Members and assignees of Financial Rights shall continue to share net income or losses during liquidation in accordance with Section 4.01 hereof. Proceeds shall, except as provided in Section 6.03 hereof, be applied in the following order of priority, after taking into account all adjustments to the Capital Accounts for the Company's taxable year during which such liquidation occurs:

- (a) to the payment of liabilities and obligations of the Company (excluding liabilities and other obligations to the Members) and the expenses of liquidation;
- (b) to the establishment of such reserves as the Board of Governors or the Managers acting under the direction of the Board may reasonably deem necessary for any contingent liabilities and obligations of the Company for such period as the Board of Governors or the Managers acting under the direction of the Board shall deem advisable for the purpose of disbursing such reserves in payment of such liabilities or obligations and, at the expiration of such period, the balance of such reserves, if any, shall be distributed as hereinafter provided;
- (c) to the repayment of any loans or advances that may have been made by any of the Members or any affiliates thereof to the Company;
- (d) to the Members, pro rata, to the extent of the positive balances in their Capital Accounts (less any offsets due the Company from such Members); and
- (e) the balance of such proceeds, if any, shall be distributed to the Members pro rata in accordance with their respective Income Allocation Percentages, provided that distribution pursuant to this Section 6.02(e) shall be made only to those Members who execute noncompetition agreements in favor of a purchaser(s) or transferee(s) of the Book of Business of the Company without retaining the right to compete for their own Book of Business.

6.03 **Distribution in Kind.** A Member shall not be entitled to demand and receive any distribution from the Company in any form other than cash. However, if, in the opinion of the Board of Governors, it does not appear to be in the best interest of the Members that certain Company assets be converted into cash, and if an equitable pro rata distribution can be made, Company assets may be distributed in kind. Assets contributed by a Member shall be distributed to the Member who contributed such assets, at such Member's Option, valued in the same manner as when such assets were contributed to the Company.

6.04 **Distribution in Event of Dissolution.** The Company shall have the right to offset against the amount otherwise payable to a Member under Section 6.02 hereof any amount owed to the Company by that Member and the amount of any damages suffered by the Company as a result of that Member's breach of any provision of this Agreement.

ARTICLE VII. AMENDMENT

7.01 *Amendment.* This Agreement may be amended only upon the unanimous consent of all of the Members of the Company.

ARTICLE VIII. DISPUTE RESOLUTION

8.01 *Guaranteed Payments Claim Procedure.*

(a) *Filing Claims.* Any Member or other individual (hereinafter "Claimant") claiming to be entitled to benefits under Section 5.06 of this Agreement will file a claim with the Company if the Company does not make the payments voluntarily. The Company will, upon written request of a Claimant, make available copies of any claim forms or instructions or advise the Claimant where such forms or instructions may be obtained.

(b) *Notification to Claimant.* If a claim request is wholly or partially denied, the Company will furnish to the Claimant a notice of the decision within forty-five (45) days written in a manner calculated to be understood by the Claimant, which notice will contain the following information:

- (1) The specific reason or reasons for the denial;
- (2) Specific reference to pertinent provisions of the Agreement upon which denial is based;
- (3) A description of any additional material or information necessary for the Claimant to effect the claim and an explanation of why such material or information is necessary; and
- (4) An explanation of the claim review procedure under the Agreement describing the steps to be taken by a Claimant who wishes to submit a claim for review.
- (5) A citation to and description of any internal rule, guideline, protocol or other similar criterion relied upon or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon and that a copy of such will be provided free of charge to the claimant upon request.

The Company may extend the time in which to furnish notice for up to thirty (30) days, provided that the Company notifies the Claimant, prior to the expiration of the initial forty-five (45) day period, of the circumstances requiring extension and the date as of which the Company expects to render a decision. The Company may take a second thirty (30) day extension, if notice is provided prior to expiration of the first extension. Any notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed

to resolve those issues. The Claimant shall be afforded at least forty-five (45) days in which to provide the specified information.

(c) *Review Procedure.* A Claimant or an authorized representative may with respect to any denied claim:

- (1) Request a review upon written application filed within one hundred eighty (180) days after receipt by the Claimant of written notice of the denial of the claim;
- (2) Review pertinent documents; and
- (3) Submit written comments, documents, records and other information relating to the claim.

Any request or submission will be in writing and will be directed to the Company or its designee. The Company or its designee will have sole responsibility for the review of any denied claim and will take all steps appropriate in light of its findings.

(d) *Decision on Review.* Within forty-five (45) days, the Company or its designee will render a decision upon review, taking into account all submissions by the Claimant. The decision upon review will not afford deference to the initial determination and shall be made by a person who is neither the initial decision maker nor the subordinate thereof. If the determination is based in whole or in part on a medical judgment, the decision maker shall consult with an appropriate medical professional (who was not involved in the initial determination nor is a subordinate of anyone so involved), who shall be identified in the notification of the decision. If special circumstances (such as the need to hold a hearing on any matter pertaining to the denied claim) warrant additional time, the decision will be rendered as soon as possible, but not later than ninety (90) days after receipt of the request for review. Written notice of any such extension will be furnished to the Claimant prior to commencement of the extension. The decision on review will be in writing and will include specific reasons for the decision, written in a manner calculated to be understood by the Claimant, as well as specific references to the pertinent provisions of the Agreement on which the decision is based. The decision will include a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claim. If the decision on the review is not furnished to the Claimant within the time limit described above, the claim will be deemed denied on review.

8.02 *Arbitration.* The parties agree that any claim, controversy or dispute between the parties, including all claims, disputes, and controversies arising out of or relating to this Agreement or the termination of this Agreement shall be submitted to binding arbitration for resolution to the Commercial Arbitration Section of the American Arbitration Association,

except that the procedure set forth in Section 8.01 shall be exhausted first for any claims for payments pursuant to Section 5.06. The Commercial Arbitration Rules shall govern the proceeding, except for the selection of the arbitrators which shall be governed by the procedure set forth in this Article IX.

8.03 ***Selection of Arbitrators.*** A panel of three (3) arbitrators shall arbitrate and decide the dispute. Within ten (10) days after the responding party receives notice initiating arbitration, each party shall designate in writing one (1) arbitrator who shall be an independent of the parties. If any party fails to inform the other in writing of its/his designation within the ten (10) day period referenced above, then the remaining arbitrator may proceed to act alone in accordance with this paragraph. If both parties have designated arbitrators, then within ten (10) days after the designation, the two (2) arbitrators shall select a neutral third arbitrator from the public at large. If the arbitrators are unable to agree on the selection of the third arbitrator, then the American Arbitration Association shall appoint a neutral third arbitrator.

8.04 ***Arbitration Proceeding.*** The arbitration proceeding shall proceed by and be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the dispute. The arbitration proceeding shall take place in Minneapolis, Minnesota. The law applicable to the subject matter of the dispute shall be the laws of the State of Minnesota.

8.05 ***Decision of Arbitrators.*** The parties agree that the award of the decision of the arbitrators shall be the sole exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented to or pled to the arbitrators. Either party may apply to the District Court of Hennepin County, State of Minnesota or the United States District Court for the District of Minnesota to enforce any decision or award of the arbitration panel.

8.06 ***Injunctive Relief.*** Notwithstanding the parties' intention that all claims, disputes and controversies between them shall be submitted to arbitration, nothing shall prevent either party from applying for and obtaining from any state or federal court appropriate injunctive relief prohibiting the violation of the restrictive covenants set forth in Section 5.12(a) of this Agreement, and the parties may do so pending arbitration and a decision of an arbitration panel. The parties further agree that the remedy of damages at law for a violation by a Member or assignee of Financial Rights of any of the terms or conditions of this Agreement is an inadequate remedy. In recognition of the irreparable harm that such a violation would cause the Company and its Members, the Members further agree that in addition to any other remedies or relief afforded by law, the Company and/or one or more of its Members may obtain an injunction against an actual or threatened violation or may obtain an order compelling the Member to specifically perform any provision of this Agreement, it being the understanding of the parties that both damages and an injunction or order of specific performance shall be proper modes of relief and are not to be considered alternative remedies.

ARTICLE IX. MISCELLANEOUS

9.01 ***Binding Effect.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

9.02 **Severability.** In the event of any conflict between a provision of this Agreement and any provision of the Act not subject to variation by this Agreement, the provisions of the Act shall govern. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such provision shall be fully severable, this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision had never comprised a part of this Agreement and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired. Furthermore, in lieu of such invalid, illegal or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and still be valid, legal and enforceable.

9.03 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute a single Agreement, or by the execution of a separate agreement under the terms of which the person executing such separate agreement specifically undertakes to be bound by the terms and conditions of this Agreement.

9.04 **Applicable Law.** All questions relating to the validity, performance, enforcement and interpretation of this Agreement and the rights of Members and assignees of Financial Rights hereunder shall be governed by the laws of the State of Minnesota.

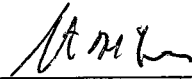
9.05 **Notices.** All notices provided for herein shall be in writing and shall be sent by first class prepaid registered or certified mail to the Company at the Company's principal office and to the Members at their respective addresses set forth in the Company's required records. Any Member or the Company may, at any time by giving five (5) days' prior written notice to the other Members and the Company, designate any other address in substitution of the foregoing address to which such notice will be given. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is considered received when given.

9.06 **Fiduciary and Plan Administrator.** The Company will be the fiduciary and administrator for the benefits provided in Section 5.06 of this Agreement. The Company's Board of Governors may authorize a person or group of persons to fulfill the responsibilities of the Company as administrator. The fiduciary or the administrator may employ others to render advice with regard to their responsibilities under Section 5.06 and Section 8.01 of this Agreement. The fiduciary may also allocate fiduciary responsibilities to others and may exercise any other powers necessary for the discharge of its duties to the extent they are not in conflict with any applicable provisions of the Employee Retirement Income Security Act of 1974.

9.07 **Representation by Moss & Barnett.** **The parties acknowledge that Moss & Barnett has represented Affiance and Steven M. Lear in connection with the negotiation and drafting of this Agreement. Fishman consents to such representation and acknowledges that he has either sought out separate legal counsel to advise him in connection with this Agreement, or if he has not done so, has been given the opportunity to do so and has voluntarily chosen not to do so.**

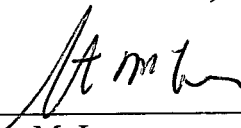
IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Member Control Agreement effective as of the day, month and year first above written.

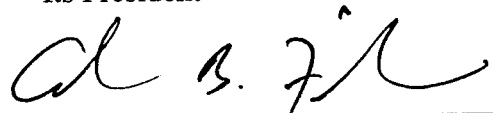
AFFIANCE FINANCIAL, LLC

By 
Its President

MEMBERS:

AFFIANCE FINANCIAL, INC.

By 
Steven M. Lear
Its President


Andrew B. Fishman

