

WATER RESOURCE IMPROVEMENT TRUST LLC

OPERATING AGREEMENT

TABLE OF CONTENTS

- 1. **Definitions**..... 1
- 2. **Agreement**..... 1
- 3. **Organization**..... 1
- 4. **General Purpose**..... 1
- 5. **Capital**..... 2
 - a. Initial Capital Contributions. 2
 - b. Additional Contributions. 2
 - c. Company Indebtedness. 3
- 6. **Additional Members**..... 3
- 7. **Capital Accounts**..... 3
- 8. **Distributions**..... 4
 - a. Current Tax Distributions. 4
 - b. Additional Tax Distributions. 4
 - c. Other Distributions. 4
 - d. Liquidating Distribution. 4
- 9. **Allocation of Profits and Losses**..... 5
 - a. Profits and Losses. 5
 - b. Tax Allocations..... 5
 - i. **Imputed Interest**. 5
 - ii. **Capital Contributions**..... 5
 - iii. **Elections**..... 6
 - iv. **Tax Reporting/Consequences**. 6
- 10. **Books and Records**..... 6
 - a. Record System. 6
 - b. Inspection of Books and Records. 6
 - c. Company Funds. 6
 - d. Reports. 6

11.	Managers.	7
	a. Management.....	7
	b. Duties	7
	c. Authority	8
	d. Certificate of Authority.....	9
	e. No Other Representatives.	9
	f. Absolution Restrictions on Authority.....	9
	g. Actions Requiring Unanimous Vote of Managers.....	10
	h. Limit on Liability/Indemnification.	10
12.	Actions By Members.	11
	a. Approval Procedures.....	11
	b. Voting.	11
	c. Meetings.....	12
	d. Emergency Actions.....	12
	e. Records of Meetings.	12
13.	Restriction on Conveyance.	12
	a. Consent Required.....	12
	b. Absolute Restriction.	12
	c. Non-Complying Conveyances Not Effective.	13
14.	Permitted Voluntary Conveyance/Withdrawal.	13
15.	Death or Permanent Disability.	14
16.	Involuntary Conveyance.	15
	a. Notice and Offer.	15
	b. Non-Acceptance of Offer.....	15
17.	Conditions to Membership.	16
18.	Calculation of Purchase Price.	16
	a. Seller ' s Net Equity.....	16
	b. Adjustments to Purchase Price.	16
19.	Payment Terms.	17
20.	Events of Dissociation.	17
21.	Dissolution.	18
22.	Winding Up.	18
23.	Amendment.	19

24. **Entire Agreement.**.....19

25. **Rights of Creditors.**.....19

26. **Captions.**19

27. **Number and Gender.**.....20

28. **Governing Law.**.....20

29. **Attorney.**20

30. **No Tax Advice.**20

31. **Specific Performance.**.....20

32. **Confidentiality.**.....20

33. **Costs.**21

34. **Notices.**.....21

35. **Counterparts.**22

36. **Facsimile Signatures.**.....22

37. **Binding Effect.**.....22

Signature Page.....22

Exhibit A - Definitions

Exhibit B - Promissory Note

WATER RESOURCE IMPROVEMENT TRUST LLC

OPERATING AGREEMENT

THIS AGREEMENT is made to become effective as of the ___ day of ___, 2006 by and between [ENTITY 1], an [State of Incorporation] Limited Liability Corporation, and [ENTITY 2], an [STATE OF INCORPORATION] Corporation, (collectively the Initial Members) and Water Resource Improvement Trust LLC (the Company), an [STATE OF INCORPORATION] limited liability company.

1. **Definitions.** Capitalized terms used in this Agreement shall be defined as set forth in attached Exhibit A consisting of five (5) pages which are incorporated herein by reference.

2. **Agreement.** For and in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Initial Member, the Initial Members hereby agree that the Company shall be operated and managed in accordance with the terms and conditions of this Agreement, as it may from time to time be amended as set forth below. It is the express intention of the Initial Members that this Agreement shall be the sole agreement between the parties and the terms of this Agreement shall govern except where expressly prohibited by law, statute or regulation. In the event a term or condition of this Agreement is prohibited by law, statute or regulation, this Agreement shall be considered to be amended to the smallest degree possible as necessary to make this Agreement effective and/or enforceable.

3. **Organization.** The Initial Members acknowledge that they have authorized and directed the Managers to execute such documents and take such actions as may be necessary to properly organize the Company under [STATE OF INCORPORATION] law. The initial Registered Agent for the service of process shall be [NAME OF PERSON] and the initial Registered Office of the Company shall be [ADDRESS]. The Company may change the Registered Agent and/or Registered Office at any time by the filing of appropriate documents with the [STATE OF INCORPORATION] Secretary of State.

4. **General Purpose.** The Company's general purpose shall be to conduct business for any lawful purpose including, but not limited to, ownership, lease, sale and/or development of real property for wetland and/ or stream mitigation and wetland and/ or stream mitigation banking. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as provided herein.

It is anticipated that the Company will engage in the business of constructing, maintaining and monitoring wetlands banks, wetlands mitigation projects and other similar projects in Michigan and Indiana.

5. **Capital.**

- a. **Initial Capital Contributions.** As the initial capital contributions to the Company, each [ENTITY 1] shall contribute to the Company \$x,000 and [ENTITY 2] shall contribute to the Company \$x,000 on or about the effective date of this Agreement.

In exchange for the contribution of each Initial Member's Initial Capital Contribution, each Initial Member shall receive the number of Membership Units set forth below:

[ENTITY 1]: [# units proportional to the amount contributed]

[ENTITY 2]: [# units proportional to the amount contributed]

The aggregate Initial Capital Contributions of the Initial Members shall constitute the total Membership Units issued by the Company as of the effective date of this Agreement.

For purposes of this Agreement, any reference to a Member's Membership Units in the Company shall include all interest in the Company now owned or hereafter acquired by the spouse of a Member or the transferee of a Member as a result of community or marital property during marriage, a property division or other award or conveyance upon dissolution of marriage, community or marital property, deferred marital property or an augmented marital property estate or any allowance or assignment of property under provisions of any applicable community or marital property law. The creation of an interest in the Company by operation of any applicable community or marital property law shall not be deemed to be a Conveyance as defined in this Agreement so long as the Member's Membership Units in the Company which are subject to said marital or community property interest are registered in the name of said Member and are controlled by said Member.

- b. **Additional Contributions.** If the Company's revenues do not exceed its debts and liabilities as such come due at any time, Members may make additional contributions as necessary to conduct the Company's business. If no Member is willing or able to make additional contributions to meet the Company's debts and liabilities as such come due, the Company shall be dissolved and liquidated pursuant to Sections 20 and 21 below. In the event one or more Members refuse or are unable to make an additional contribution while one or more other Members make a contribution for said purpose, the contributing Member(s) may advance the necessary funds as a loan and the amount of said advance by the contributing Member(s) shall bear interest annually at the Prime Rate published in the Money Rates Section of the Wall Street Journal on the first business day following the advance by the

contributing Member(s), said interest to continue to accrue until distributions are made to the contributing Member(s) as necessary to reimburse said contributing Member(s) for the amounts so advanced, plus interest thereon.

- c. **Company Indebtedness.** To the extent any Member is personally liable or obligated on any Company Indebtedness (if said personal liability or obligation has arisen in compliance with Section 11 below), each Member shall be severally liable for his or her pro-rata share of any such Company Indebtedness based upon each Member's Membership Units. If any Member is compelled individually to make a payment on any such Company Indebtedness in excess of said Member's pro rata share or is unable to collect the entire amount owed to the Member by the Company arising from any such Company Indebtedness, the other Members shall reimburse the paying Member upon demand for the amount so paid by said Member (but excluding said paying Member's pro rata share of said Company Indebtedness) based upon the respective pro rata Membership Units of said other Members. The provisions of this Section 5.c may be enforced only by the Member entitled to reimbursement hereunder and such shall not be enforceable by or serve for the benefit of any creditor or other third party.

6. **Additional Members.** No Additional Members shall be admitted as a Member of the Company without an Affirmative Vote of the Membership Units held by Members in the Company. In the event an Additional Member is admitted, said Additional Member shall have all rights and obligations of Members under this Agreement, subject to the restrictions on Involuntary Transferees pursuant to Section 16 below.

7. **Capital Accounts.** A separate capital account shall be maintained and established by the Company for each Member. The capital account of each Member shall be administered as follows:

- a. The capital account of each Member shall be increased by:
 - i. The amount of cash contributed by said Member to the Company as a capital contribution;
 - ii. The fair market value of property contributed by said Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to);
 - iii. Allocations to said Member of Company income and gain, including such as may be exempt from tax;

- b. The capital account of each Member shall be decreased by:
 - i. Distributions to said Member by the Company;
 - ii. Fair market value of property distributions to said Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to);
 - iii. Allocations to said Member of expenditures of the Company; and
 - iv. Allocations to said Member of Company losses and deductions as computed according to applicable regulations.

The capital account of each Member shall further be adjusted as required by and in accordance with applicable laws and regulations and/or in the event of an adjustment to the tax basis of assets of the Company in the manner allowed for federal income tax purposes.

8. **Distributions.**

- a. Current Tax Distributions. To the extent permitted by law and consistent with the Company's obligations to its creditors as determined by the Managers, and unless otherwise determined by an Affirmative Vote, the Company shall make Tax Distributions at least once each calendar year (or more frequently if the Managers deem appropriate) as necessary to pay each Member's pro-rata share of the Estimated Taxable Income. The aggregate amount of each such Tax Distribution shall be distributed to the Members in proportion to their Membership Units.
- b. Additional Tax Distributions. In the event any income tax return of the Company, as a result of an audit, reflects items of income, gain, loss or deduction that are different from the Estimated Taxable Income and such results in additional income or gain of the Company being allocated to the Members, an additional Tax Distribution shall be made as necessary to cover the actual income tax incurred by each Member calculated in the same manner as the calculation for Estimated Taxable Income.
- c. Other Distributions. At such time and in such form as determined by an Affirmative Vote, other distributions shall be made to the Members in proportion to their Membership Units.
- d. Liquidating Distribution. In the event the Company is dissolved pursuant to Section 21 below, the assets to be distributed to the Members upon liquidation shall be distributed to the Members in accordance with Section 22 below.

9. **Allocation of Profits and Losses.**

- a. **Profits and Losses.** Except as provided below in this Section, items of income, gain, loss or deduction of the Company shall be allocated among the Members as follows:
- i. Until such time as the Company has generated revenues on a project in an amount equal to the Initial Site Restoration Costs, profits and losses shall be allocated among the Members equally;
 - ii. Profits in excess of the Initial Site Restoration Costs shall be allocated [units entity 1]% to [ENTITY 1] and [units entity 2]% to [ENTITY 2]; and
 - iii. Costs in excess of the Initial Site Restoration Costs and extraordinary expenses not reasonably anticipated upon commencement of a particular project shall be allocated among the Members in accordance with the allocation percentage applicable pursuant to Section 9.a.i or 9.a.ii above when any such excess costs or extraordinary expenses are incurred.

The above allocation shall be and remain in effect unless, by written agreement signed by all Members, a different allocation is agreed upon for a specific project. The items of income, gain, loss or deduction as provided above shall be determined on a daily, monthly or other basis as determined by the Managers using any permissible method under ' 706 of the Code and applicable regulations.

- b. **Tax Allocations.** The following special allocations shall be made in the following order:
- i. **Imputed Interest.** To the extent the Company has interest income or deductions with respect to any obligation of or to a Member pursuant to ' 483, ' 1271-1288 or ' 7872 of the Code, such interest income or deductions shall be specially allocated to the Member to whom the obligation relates.
 - ii. **Capital Contributions.** In accordance with ' 704(c) of the Code and applicable regulations, income, gain, loss or deduction with respect to any capital contribution shall, solely for tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of the property to the Company for federal income tax purposes and its value.

- iii. **Elections.** Any elections or other decisions relating to such allocations shall be made by the Managers, with the advice and assistance of the Company's accountants, in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations pursuant to this Section are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing any capital account, share of income, gain, loss or deduction or distribution pursuant to any provision of this Agreement.
- iv. **Tax Reporting/Consequences.** The Members are aware of the income tax consequences of the allocations made pursuant to this Section 9 and agree to be bound by this Section 9 in reporting their shares of income and loss for income tax purposes.

10. **Books and Records.**

- a. **Record System.** The Company shall maintain a system of books and records which is adequate for the financial and tax reporting needs and requirements of the Company's business.
- b. **Inspection of Books and Records.** The Company's books and records shall be maintained at the Company's principal office or at any other place designated by the Managers and shall be available for examination by any Member or his/her duly authorized representative(s) at any reasonable time. Each Member shall have the right to obtain from the Company from time to time on reasonable demand, at the Member's cost and expense, copies of any such books and records.
- c. **Company Funds.** The Company's funds may be deposited in such banking institutions as the Managers may determine, and withdrawals shall be made only in the regular course of the Company's business on such signature or signatures as the Managers may determine by Affirmative Vote, subject to the restrictions on authority set forth herein. If the Managers so determine, deposits and other funds not needed in the operation of the Company's business may be invested in interest-bearing accounts or similar investments.
- d. **Reports.** Upon completion of tax returns and other financial reports by the Company's accountant, a copy of such information shall be provided to each Member. No Member shall have the right to restrict or prevent any other Member from receipt of any such financial information and the Company's accountant is authorized to release such information to a Member upon said Member's request.

11. **Managers.**

- a. **Management.** The business and affairs of the Company shall be managed by its Managers who shall act by Affirmative Vote. There shall be two Managers of the Company, one appointed by each Initial Member. Each Initial Member shall have the right to change the Manager appointed by said Initial Member at any time and from time to time by written notice to the other Initial Member.

- b. **Duties.** The Manager appointed by [ENTITY 1] shall be responsible for supervision of all construction activities including, but not limited to, earthwork, clearing and drainage work, erosion control during construction and site work finishing, negotiation and sale of credits on any project undertaken by the Company, together with the reporting of any such sales to the COE or other appropriate regulatory agency. The Manager appointed by [ENTITY 2] will be responsible for supervision of all construction activities including, but not limited to, site work finishing and for preparation of planting, and for supervising all seeding and planting activities together with all maintenance, monitoring and reporting as may be necessary for a particular project and/or required by the applicable regulatory agencies. The Managers shall be jointly responsible for identifying and negotiating for appropriate sites to be developed by the Company, together with the design, engineering and permitting for projects to be undertaken by the Company.

It is acknowledged that each Initial Member currently has their own wetland banks and wetland projects and therefore will continue to operate independently on numerous projects and that each Initial Manager is currently employed by the Initial Member who appointed said Manager hereunder. Each Initial Member and the Company hereby acknowledge and agree that no provision of this Agreement or any other duty or obligation which may otherwise arise by virtue of the association of the Initial Members as contemplated herein shall be construed to limit the ability of each Initial Member from carrying on its independent business activities and, further, that such shall not be construed or in any way interpreted to prohibit or restrict any Initial Manager from carrying on his duties as an officer, director and/or employee of the Initial Member for whom said Initial Manager is employed.

By execution of this Agreement, the Initial Members hereby appoint the following individuals to serve as the Initial Managers of the Company:

Initial Member
[ENTITY 2]
[ENTITY 1]

Manager
[NAME]
[NAME]

Each of the above individuals shall serve as a Manager of the Company until such time as a Manager's appointment is revoked in writing by the Member making said appointment.

- c. Authority. Except in circumstances in which unanimous consent of the Managers is required under this Agreement or unanimous consent of the Members is required under applicable law, a Manager upon an Affirmative Vote of the Managers is authorized to do for, in the name of, on behalf of and at the expense of the Company all things that the Managers in their judgment deem necessary, proper or desirable to carry out the Company's business in its ordinary course including, but not limited to, the right to:
- i. Establish reserves and thereafter maintain those reserves in such amounts as the Managers deem appropriate;
 - ii. Insure the Company's activities and property;
 - iii. Pay out of the Company's funds all fees and expenses incurred in the organization and/or operation of the Company;
 - iv. Enter into and execute all documents, instruments and agreements reasonably deemed by the Managers to be necessary, appropriate or needed for the performance of their duties and exercise of their powers under this Agreement;
 - v. Retain attorneys, accountants and other professionals in the course of the performance of the Manager's duties and exercise of their powers under this Agreement;
 - vi. Deposit funds of the Company in the Company name in such bank account(s) as shall be designated by the Managers from time to time and make withdrawals therefrom upon the signature of such person or persons as the Managers may designate;
 - vii. Enter into such agreements with persons or firms as Managers deem reasonable and necessary to carry out the business of the Company and pay any such persons or firms from the Company's funds;
 - viii. After giving notice thereof to the Members, bring, defend, settle, compromise or otherwise participate in any actions, proceedings or investigations in any court or before any governmental authority or agency, whether such is brought against the Company or the Members and whether arising at law or in equity, to the extent that such arises out of, is connected with or relates to the Company's business and affairs or the enforcement or protection of the interests in or of the Company;

- ix. Change the Registered Agent or Registered Office of the Company;
and
 - x. Perform all other acts or activities customary or incident to the ownership and/or use of Company assets and/or the operation of the Company ' s business.
- d. Certificate of Authority. Any person dealing with the Company or the Managers may rely upon a certificate signed by one or more of the Managers as to:
- i. The identity of the Members and Managers of the Company;
 - ii. The existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Managers or any other matter germane to the Company ' s affairs;
 - iii. The persons who are authorized to execute and deliver any instrument or document on the Company ' s behalf;
 - iv. Any act or failure to act by the Company or the Members; and
 - v. Any other matter whatsoever involving the Company or any Member.
- e. No Other Representatives. Only the Managers have the right, power and authority to execute documents on behalf of and in the name of the Company and no person shall be obligated to inquire into the Managers ' authority to bind the company.
- f. Absolution Restrictions on Authority. No Manager shall have the authority to:
- i. Do any act that is in contravention of applicable law or this Agreement or that would make it impossible to carry on the ordinary business of the Company;
 - ii. Possess Company property or assign rights in specific Company property for other than a Company purpose; or
 - iii. Perform any act that would subject the Members to personal liability in any jurisdiction for claims, debts, liabilities, taxes, assessments, fines, penalties, costs, expenses and/or other obligations pertaining directly or indirectly to the operation of the Company ' s business and/or the ownership of the Company ' s assets.

- g Actions Requiring Unanimous Vote of Managers. The Managers, upon the Unanimous Vote of the Managers, shall have the authority to:
- i Sell or otherwise dispose of all or any material portion of the Company ' s assets;
 - ii Make a distribution of all or any portion of the Company ' s assets;
 - iii Borrow money and procure temporary, permanent, conventional or other financing on such terms and conditions, at such rates of interest, and from such parties as are approved and, if collateral or security is required for any such financing, to mortgage or subject to another security interest any material portion of the Company ' s assets;
 - iv Purchase real estate or other assets on behalf of the Company;
 - v Enter into contracts or agreements with third parties not in the Company ' s ordinary course of business;
 - vi Make capital improvements to or otherwise remodel or rehabilitate any Company assets;
 - vii Pay and/or approve bonuses or any other compensation to any Member or Manager or relative of a Member or Manager or any individual or entity relating thereto;
 - viii Issue additional Membership Units;
 - ix Confess a judgment against the Company; or
 - x Make any changes or amendments to the Company ' s Articles of Organization.
- h Limit on Liability/Indemnification. No Manager shall be liable to the Company for any loss or damage suffered by the Company on account of any action taken or omitted to be taken by said Manager, that said Manager in good faith believed to be in or not opposed to the Company ' s best interests and, with respect to any criminal action or proceeding, that said Manager had no reasonable cause to believe was unlawful. In addition, no Manager shall be liable to the Company for any loss or damage suffered by the Company on account of any action taken or omitted to be taken in reliance upon information furnished by third parties that the Manager had reasonable grounds to believe to be true. The provisions of this Section 11.g shall not be exclusive of other rights and defenses to which a Manager may be entitled as a matter of law. The Company shall indemnify each Manager to the extent said Manager has been successful on the merits or otherwise in the defense of

a claim, action, dispute or issue such that said Manager has no liability for expenses incurred in connection with the claim, action, dispute or issue. Nothing contained in this Section 11.g shall require the Company to indemnify a Manager for any of the following:

- i Fraud, dishonesty or willful misconduct of said Manager with respect to the affairs of the Company;
- ii Willful misconduct or nonfeasance of duty in connection with the performance of said Manager ' s duties as a Manager of the Company;
- iii Conviction of any crime involving moral turpitude or any felony or other act which may be detrimental to the goodwill and ongoing operation of the Company ' s business (except to the extent said Manager had no reasonable cause to believe such was unlawful); or
- iv A transaction from which said Manager derived an improper personal profit.

Upon request by a Manager, the Company shall pay or reimburse said Manager ' s reasonable expenses incurred as a party to a claim, action, dispute or issue based upon the written affirmation of said Manager that said Manager has not breached or failed to perform said Manager ' s duties to the Company and a written undertaking executed personally or on said Manager ' s behalf to repay the allowance without interest to the extent that it is ultimately determined that indemnification is prohibited pursuant to this Section 11.g.

12 **Actions By Members.**

- a **Approval Procedures.** Any actions and decisions required by law to be taken or made by the Members may be authorized or made either by Affirmative Vote of the Members taken at a meeting of the Members or by unanimous written consent of the Members without a meeting. Any acts so approved by the Members shall be implemented by the person or persons so authorized. No person other than a Member may challenge an act taken by the Company based on the failure to obtain the requisite Affirmative Vote of Members and any act taken by the Company with respect to a third party having no actual knowledge of such failure shall be binding against the Company.
- b **Voting.** Each Member attending a meeting shall vote said Member ' s entire Membership Units or abstain as to any given issue. Notwithstanding the foregoing, any Member abstaining from voting on a given issue will be deemed to have voted said Member ' s Membership Units in the same manner and in the same proportions as the Members not abstaining on the issue. Any Member having a personal stake, other than the economic stake inuring to the

Member solely as a result of holding said Member's Membership Units, in the outcome of an issue, including, but not limited to, a personal stake as a Transferor, shall abstain from voting on the issue unless all Members have such a personal stake.

- c Meetings. Any Member may call a meeting to consider approval of an action or decision under any provision of this Agreement by delivering to each other Member notice of the time and purpose of the meeting at least seven (7) days before the meeting. A Member may waive the requirement of notice of a meeting either by attending the meeting or by executing a written waiver before or after the meeting. Any Member, if said Member so elects, may participate in the meeting by telephone. Unless otherwise agreed by the Members, meetings will be held at the Company's principal place of business.
- d Emergency Actions. Notwithstanding the other provisions of this Section 12, if the Members reasonably determine that a business emergency exists which requires immediate action, those Members shall make reasonable efforts under the circumstances to contact and consult all other Members concerning the action or decision and attempt to fully explain the reason why the action or decision must be made without observing the procedures set forth in this Agreement. After such reasonable efforts are made, those Members may authorize any action or decision they deem reasonably necessary to protect the Company from significant loss or damage; provided, however, that nothing contained in this Section 12.d shall be construed to eliminate the need to obtain an Affirmative Vote of the Members in circumstances in which such is required under this Agreement.
- e Records of Meetings. The Company shall keep written minutes of all actions taken and votes made by the Members, which require an Affirmative Vote of Members.

13 **Restriction on Conveyance.**

- a Consent Required. No Member shall Convey all or any portion of said Member's Membership Units without the prior written consent of all other Members. Any Conveyance in violation of this provision shall be void and have no force or effect. A Conveyance and/or attempt to Convey an interest or portion of an interest in the Company by a Member without proper notice to the other Members and full compliance with the terms of this Agreement shall constitute a breach of this Agreement.
- b Absolute Restriction. Notwithstanding any other provision in this Agreement to the contrary, no Conveyance of all or any portion of a Member's Membership Units in the Company may be made if, in the opinion of the

Company's tax advisor, the Conveyance will result in the Company being treated as an association for federal income tax purposes or will violate any applicable local, state or federal securities laws or other laws. If any Member believes there to be a material risk that a proposed Conveyance will cause a change in the Company's tax status or violate any law, said Member shall so advise the Company and the Company shall obtain an opinion from the Company's tax advisor on the issue presented and all costs arising therefrom shall be the responsibility of the Member proposing to Convey his or her interest in the Company.

- c Non-Complying Conveyances Not Effective. No Conveyance, whether involuntary or otherwise, shall be effective and no proposed Transferee, whether involuntary or otherwise, shall be considered a Member of the Company except in accordance with the terms of this Section 13 and Sections 14 through 18 below, as applicable. No Conveyance shall be effective and no proposed Transferee shall become a Member of the Company without the prior written consent of all other Members. Until a Conveyance is effective and the proposed Transferee is accepted as a Member, the proposed Transferee shall have no management and/or control rights in the Company and, upon any such acceptance, said Transferee shall be subject to the provisions of this Agreement.

14 **Permitted Voluntary Conveyance/Withdrawal.** Any Transferring Member who proposes to voluntarily Convey all or any portion of said Member ' s Membership Units or withdraw as a Member of the Company shall deliver a Notice of Conveyance or Notice of Withdrawal, as appropriate, to the Company and all other Members prior to the proposed Voluntary Conveyance or Voluntary Withdrawal.

In the event of a proposed Voluntary Conveyance, on or before expiration of the Consent Time Period, the Company and/or each Remaining Member receiving the Notice of Conveyance may give written notice to the Transferring Member that the Company and/or the Remaining Member consent to the proposed Voluntary Conveyance. If no such notice is sent to the Transferring Member, the Company and all other Remaining Members will be conclusively deemed to have refused to consent to the proposed Voluntary Conveyance.

In the event of a proposed Voluntary Withdrawal, the Withdrawing Member and the Remaining Members shall negotiate the terms of said withdrawal during the Consent Time Period. If no agreement is reached prior to expiration of the Consent Time Period, the Remaining Members and the Company shall have the option to purchase the Withdrawing Member ' s Membership Units in the order and manner set forth below.

If the Company and/or any Remaining Member gives written notice to the Transferring Member of a refusal to consent or are deemed to have refused to consent to the proposed Voluntary Conveyance as set forth above or no agreement is reached concerning withdrawal by the Withdrawing Member as set forth above, the Company and/or the Remaining Members shall have the option to purchase the Transferring or Withdrawing Member ' s Membership Units as follows:

- a During the Other Member ' s Option Period, the Remaining Members shall have the option to purchase the Transferring Member ' s Membership Units on a pro rata basis; and
- b During the Company ' s Option Period, the Company shall have the option to purchase the Transferring Member ' s Membership Units.

Any Conveyance to a Transferee described in a Notice of Conveyance shall be at the same price, on the same terms and at the same time as specified in the Notice of Conveyance. Any purchase of a Withdrawing Member ' s Membership Units under the foregoing options shall be on the terms and conditions set forth in Sections 18 and 19 below. In lieu of purchase of Transferring Member ' s Membership Units under this Section 14, the Remaining Members may elect to dissolve and liquidate the Company in accordance with the provisions of 21 and 22 below.

If neither the Remaining Members nor the Company exercises its option to purchase as provided herein, (i) the Transferring Member may complete the proposed Conveyance as described in the Notice of Conveyance, subject to the provisions of Section 17 below or (ii) the Withdrawing Member may arrange for Conveyance of said Member ' s Membership Units to any third party, subject to the provisions of Section 17 below. Notice of the exercise of any option contained herein shall be given to the Transferring Member within the application option period. If neither the Remaining Members nor the Company exercises its respective option to purchase and the proposed Voluntary Conveyance fails to close within the time specified in the Notice of Conveyance, the Membership Units or interest therein described in the Notice of Conveyance shall again be subject to the restrictions and procedures set forth in this Agreement and, in particular, Section 13 above and this Section 14.

15 **Death or Permanent Disability.** Upon the death or Permanent Disability of a Member or a Member ' s Principal Owner, the Remaining Members and the Company shall have the option to purchase all of the Deceased Member ' s or Disabled Member ' s Membership Units in the order and in accordance with the provisions of Section 14 above. In the event neither the Remaining Members nor the Company exercises the option to purchase the Deceased Member ' s Membership Units as contemplated herein, the heirs of the Deceased Member shall assume ownership of the Deceased Member ' s Membership Units, subject to the provisions of Section 17 below. In lieu of purchase of a Deceased Member ' s Membership Units under this Section 15, the Remaining Members may elect to dissolve and liquidate the Company in accordance with the provisions of Sections 20 and 21 below. Notice of the election to purchase a Deceased Member ' s Membership Units shall be given to the personal representative of the Deceased Member ' s estate or, if no such personal representative has been appointed, to the surviving spouse or any other principal heir of the Deceased Member known by the Remaining Members.

In the event neither the Remaining Members nor the Company exercises the option to purchase a Disabled Member ' s Membership Units as contemplated herein, the Disabled Member may remain as a Member of the Company, with an appropriate adjustment in the allocation of profits and losses set forth in Section 9 above. In lieu of the purchase of a Disabled Member ' s Membership Units under this Section 15, the Remaining Members may elect to dissolve and

liquidate the Company in accordance with the provisions of Sections 20 and 21 below. Notice of the election to purchase a Disabled Member's Membership Units shall be given to the Disabled Member (if said Disabled Member is competent) or to the Disabled Member's spouse or other duly authorized representative of the Disabled Member (including a court appointed guardian). Any Member and/or any Member's Principal Owner, on his/her own initiative or upon an Affirmative Vote of the other Members, shall promptly submit to a medical evaluation to determine if said Member or Member's Principal Owner suffers from a Permanent Disability.

16 **Involuntary Conveyance.**

- a Notice and Offer. No Involuntary Conveyance shall be effective until the provisions of this Section 16 have been complied with. In the event of a proposed Involuntary Conveyance, the Transferring Member and the Involuntary Transferee shall immediately deliver a Notice of Involuntary Conveyance to the Company and all Remaining Members. This Notice of Involuntary Conveyance shall constitute an offer to sell the Transferring Member's Membership Units in the Company on the terms set forth in Section 18 and 19 below. Within ninety (90) days after receipt of the Notice of Involuntary Conveyance, the Remaining Members shall have the option to accept said offer (or the Company shall have said option if the Remaining Members elect not to exercise their option) by written notice to the Involuntary Transferee prior to expiration of said ninety (90) day period. As a complete alternative to acceptance or rejection of the offer and notwithstanding any provision of this Agreement to the contrary, the Remaining Members in their sole discretion and at their exclusive direction may elect to dissolve and liquidate the Company pursuant to Sections 20 and 21 below.
- b Non-Acceptance of Offer. If neither the Company nor the Remaining Members accepts the Offer to close the Involuntary Conveyance as provided in Section 16.a above, the Involuntary Conveyance shall become effective within 120 days after the date of the Notice of Involuntary Conveyance, subject to the provisions of Section 17 below. The Involuntary Transferee shall have the benefit of all non-management provisions of this Agreement including, but not limited to, the right to receive the Transferring Member's share of all profits and losses and distributions of the Company. The Transferring Member shall have the right to take any actions that said Member would be entitled to take with regard to the interest of said Transferring Member in the Company then held by the Involuntary Transferee including, but not limited to, all votes, consents, offers, sales, purchases, options or other actions taken pursuant to this Agreement and this provision shall constitute an irrevocable and absolute proxy and power of attorney (the proxy and power being coupled with an interest) granted by each Involuntary Transferee to the Transferring Member to take such actions on behalf of the Involuntary Transferee without any further act or deed than the taking of any such action by the Transferring Member and to sign any

document or instrument evidencing such action for or on behalf of the Involuntary Transferee.

17 **Conditions to Membership.** Under any circumstances in which an individual or entity becomes a Member of the Company, said individual or entity shall be subject to the following conditions:

- a. The Transferee shall acknowledge and agree in writing to all terms of this Agreement prior to the Conveyance;
- b. The Transferee must, prior to the Conveyance, take all actions and execute all documents required by the Company in order for the Conveyance to comply with the terms of this Agreement and any applicable federal or state laws and regulations relating to the Conveyance; and
- c. The spouse, if any, of the Transferee must, prior to the Conveyance, execute a spousal consent and acknowledgment in form satisfactory to the Company.

18 **Calculation of Purchase Price.**

- a. **Seller's Net Equity.** The purchase of Membership Units pursuant to Sections 14 through 16 above shall be governed by this Section 18. Within thirty (30) days of the Trigger Date, the Managers shall direct the Company's accountant to calculate the Company's Net Equity including, if appropriate, the direction that an appraisal be prepared by an Appraiser selected by the Company to determine the Fair Market Value of the assets of the Company. Upon completion of said calculation and any such appraisal, the Purchaser may elect to purchase the Membership Units by written notice to the Seller within the applicable option period. The closing shall occur at the Company's office or other mutually agreeable location within thirty (30) days after the date of Purchaser's notice; provided, however, that the closing date shall be extended if necessary to complete the calculation or the appraisal, as appropriate, and give the Purchaser the entire time period specified herein to make a decision as to whether Purchaser will exercise Purchaser's option to purchase as specified in this Agreement.
- b. **Adjustments to Purchase Price.** The Purchase Price payable to the Seller by the Purchaser shall be as follows:
 - i. If the purchase results from a Voluntary Conveyance or Voluntary Withdrawal permitted under Section 14 above, the Purchase Price for the Transferring Member's Membership Units shall be seventy-five percent (75%) of the Seller's Net Equity;
 - ii. If the purchase results from the death or Permanent Disability of a Member or a Member's Principal Owner pursuant to Section 15

above, the Purchase Price for the Deceased Member's Membership Units shall be one hundred percent (100%) of the Seller's Net Equity; and

- iii If the purchase results from an Involuntary Transfer as set forth in Section 16 above, the Purchase Price for the Transferring Member's Membership Units shall be seventy-five percent (75%) of the Seller's Net Equity.

The Purchase Price of the Seller's Membership Units in the Company as calculated above shall be payable in accordance with the provisions of Section 19 below.

The above adjustments in the Purchase Price for a Seller's Net Equity under Sections 19.b.i and 19.b.iii above are intended to reflect the anticipated disruption and adverse economic effects on the Company and the Remaining Members due to the departure of a Member and/or a Member's Principal Owner in each circumstance as well as limitations on marketability and value due to the transfer of a minority interest in the Company. In addition, a major factor in the determination of each adjustment is the burden on the Remaining Members, potential unavailability of sufficient management expertise to carry on the business of the Company and the additional resources which will be needed to replace management personnel upon the departure of a Member and/or Member's Principal Owner. In the future, the Company may obtain insurance coverage to address the financial impact of the loss of an individual Member or a Member's Principal Owner through death or Permanent Disability.

19 **Payment Terms.** At the closing of the purchase by the Purchaser of the Seller's Membership Units in the Company calculated pursuant to Section 18 above, the Purchaser shall pay the Purchase Price by execution and delivery of a Promissory Note in form and substance of the Promissory Note attached as Exhibit B and incorporated herein by reference.

20 **Events of Dissociation.** A Member shall cease to be a Member (hereinafter "Dissociate") upon the occurrence of any of the following events:

- a Member files a voluntary petition in bankruptcy, becomes the subject of an order for relief under federal bankruptcy laws, makes a general assignment of the Member's interest in the Company for the benefit of creditors, or files a petition or answer (or fails to contest any such petition or answer) for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any state or federal law or regulation;
- b The Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the Member's assets;

- c. If the Member is an individual, the Member's death or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;
- d. If the Member is a trust or is acting as a Member by virtue of being a trustee of a trust, the termination of any such trust;
- e. If the Member is a corporation, partnership or separate limited liability company, the dissolution and commencement of winding up of the Member;
- f. A Conveyance by a Member of the Member's Membership Units in the Company pursuant to the terms of this Agreement; or
- g. Written consent of all Members.

Dissociation of a Member shall implement Sections 14 through 19 of this Agreement, as appropriate, and any Conveyance of a Member's Membership Units in the Company upon the dissociation of said Member shall be subject to all restrictions set forth in this Agreement.

21 **Dissolution.** The Company shall be dissolved upon the occurrence of any of the following events:

- a. The sale or other disposition of all or substantially all of the Company's assets;
- b. The unanimous vote by all of the Members to dissolve the Company or, if the vote for dissolution arises under Section 14, 15 or 16 above, by all Remaining Members; or
- c. Dissociation of any Member unless, within ninety (90) days of the date on which the Company receives written notice of the dissociation, by Affirmative Vote of the Remaining Members, said Remaining Members elect to continue the Company.

22 **Winding Up.** Notwithstanding dissolution of the Company, the business affairs of the Company shall continue to be governed by this Agreement. Upon dissolution, the winding up of the affairs of the Company shall be subject to all rights of Members under this Agreement. The Managers upon dissolution shall appoint a liquidator of the assets of the Company and said liquidator may be a Member or a Manager. If the Managers cannot agree upon a liquidator, each Manager shall nominate a representative with knowledge and experience in the sale and marketing of assets of the type owned by the Company and the representatives so appointed shall select a liquidator to liquidate the assets of the Company. The liquidator so appointed shall have the exclusive authority to perform the winding up of the affairs of the Company and shall be entitled to reasonable compensation for services rendered. Subject to the provisions of [STATE OF INCORPORATION] law, the liquidator shall proceed with the winding up of the affairs of the Company and the liquidation of the Company's assets as follows:

- a A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of debts and liabilities owed by the Company to creditors in order to minimize any losses resulting from liquidation;
- b Assets of the Company (including proceeds from the sale of the Company's assets) shall first be applied to the expenses of liquidation and, thereafter, to the debts, liabilities and claims on which the Company is obligated (other than any loans or advances that may have been made to the Company by a Member);
- c Remaining assets shall then be applied to repayment of any loans (but not capital contributions) made by a Member to the Company;
- d Any remaining assets shall be distributed to Members in accordance with their respective capital account balances, as adjusted if necessary pursuant to Section 7 above;
- e Prior to making any distribution, the liquidator may retain such amounts as the liquidator in his or her reasonable discretion deems necessary as a reserve for any contingent liabilities or obligations of the Company until such time as said contingent liabilities or obligations are satisfied and/or the Company is no longer obligated therefor.

The liquidator shall be authorized to execute and file on behalf of the Company Articles of Dissolution and such other documents as may be necessary or appropriate upon termination of the Company's existence. The liquidator is further authorized to publish notices and otherwise notify claimants and/or creditors of the Company of the dissolution of the Company in the manner provided by law.

23 **Amendment.** This Agreement may be amended or modified only by a written agreement signed by all Members.

24 **Entire Agreement.** This Agreement constitutes the entire agreement between and among the Members and the Company and supersedes all prior agreements and understandings regarding the subject matter hereof, whether oral or written.

25 **Rights of Creditors.** The provisions of this Agreement are not intended to be for the benefit of any creditor (other than a Member) to whom any debts, liabilities or obligations are owed by, or who otherwise have a claim against, the Company or any Member, and, except upon strict compliance with Section 16 above pertaining to Involuntary Transferees, no such creditor shall have any rights under such provisions, nor may by reason of such provisions make any claim in respect of any of the debts, liabilities or obligations or otherwise against the Company or any Member.

26 **Captions.** The captions of the Sections in this Agreement are only for convenience or reference and do not define, limit, extend or describe the scope or intent of this Agreement.

27 **Number and Gender.** Whenever required by the context, the singular number shall include the plural and any gender shall include all genders.

28 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE OF INCORPORATION]. If any provision of this Agreement shall be contrary to the laws of [STATE OF INCORPORATION] or any other applicable law, such provision shall be deemed null and void and such shall not affect the legality of the remaining provisions of this Agreement. This Agreement shall be deemed to be modified and amended so as to comply with applicable law and this Agreement shall then be construed in such a way as will best serve the intention of the parties at the time of execution of this Agreement.

29 **Attorney.** Each Member acknowledges and understands that (a) this Agreement has been drafted by Attorney [NAME OF ATTORNEY] of [NAME OF LAW FIRM]; (b) said law firm has represented and continues to represent [ENTITY 1] and its Principal Owner; (c) [ENTITY 2] is hereby advised of its right to seek advice of independent counsel to represent its individual rights and interests in connection with this Agreement; and (d) each Initial Member has directed and authorized said attorney and said law firm to draft this Agreement with full disclosure of the prior and continuing representation of [ENTITY 1].

30 **No Tax Advice.** All parties to this Agreement have been advised by [NAME OF ATTORNEY] of [NAME OF LAW FIRM] that this Agreement and/or related transactions between the Members and/or the Company on or about the date hereof may have material income tax consequences for the Company and/or each Member, but that said attorney and said law firm have not rendered tax advice to the Company and/or any individual party hereto. It is understood and acknowledged that any such tax advice has been or will be obtained by the Company and/or the individual parties hereto from other professionals retained for said purposes.

31 **Specific Performance.** The parties declare that it may be impossible to measure in money the damages that will accrue to any party by reason of a failure to perform any obligation or covenant under this Agreement and, as a result, the parties agree that the provisions of this Agreement shall be specifically enforced. If any Member or proposed Transferee institutes any action or proceeding to enforce the provisions of this Agreement, any person including the Company, against whom the action or proceeding is brought waives the claim or defense that the party has or may have an adequate remedy at law. No person shall urge or allege in any such action or proceeding the claim or defense that a remedy at law exists, and the person shall consent to the remedy of specific performance of this Agreement. Notwithstanding the foregoing, no party may specifically enforce an obligation that a Member not be allowed to voluntarily withdraw as a Member of the Company so long as said withdrawal is carried out in accordance with the terms of this Agreement.

32 **Confidentiality.** This Agreement, the Company's business and affairs, the Company's books and records, and any information relating to the foregoing are confidential and private. Each Member holding Membership Units in the Company agrees to maintain the confidentiality and privacy of any such information and, further, not to disclose any such information to any third party without the prior written consent of the other Members.

33 **Costs.** If any proceeding is instituted by any person with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceedings shall be entitled to recover the costs of the proceedings and reasonable attorneys fees from the other party; provided, however, that the Company may offset any amounts owed by it to another party by reason of this provision against any funds or other property in the Company's possession that is owed by the Company to, or owned by, that other party.

34 **Notices.** Any notice, demand or other document required or permitted to be given shall be (i) delivered personally, (ii) sent by United States certified mail, return receipt requested, postage prepaid, (iii) delivered by a nationally-recognized overnight express courier, postage prepaid or (iv) transmitted by facsimile. Any such notice shall be effective upon the date of personal delivery, three (3) business days after the date of proper mailing, one (1) business day after proper delivery to a nationally-recognized overnight express courier and on the first business day after proper facsimile transmission. The address to which any such notices, demands or other documents are to be delivered or sent to a party hereto shall be as follows:

If to [ENTITY 1]: [NAME OF ENTITY 1]
Attn:
[ADDRESS]
Phone:
Fax:

With a copy to (which shall not constitute notice):
Attorney

Phone:
Fax:

If to [ENTITY 2]: [NAME OF ENTITY 2]
Attention:
[ADDRESS]
Phone:
Fax:

With a copy to (which shall not constitute notice):
Attorney

Phone:
Fax:

A Member may designate an address or representative to which notices should be sent to said Member by written notice to the Company and all other Members in the manner herein provided.

35 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

36 **Facsimile Signatures.** Signature of any party hereto may be made by facsimile and any such signature shall be legally binding and have the same legal force and effect as a duly executed original document. Upon request by any party, the party signing by facsimile shall execute and deliver an executed original of this Agreement.

37 **Binding Effect.** Except as provided to the contrary herein, the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of all Members and their respective personal representatives, heirs, successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement to become effective on the day and year set forth above.

WATER RESOURCE IMPROVEMENT
TRUST LLC

INITIAL MEMBERS:

[NAME OF ENTITY 1]

By: _____

By: _____

[NAME OF ENTITY 2]

By: _____

By: _____
