

**AMENDED AND RESTATED
OPERATING AGREEMENT
OF
DRY LOT LLC**

AMENDED APRIL 15, 2014

**AMENDED AND RESTATED
OPERATING AGREEMENT
OF
DRY LOT LLC**

This Amended and Restated Operating Agreement of DRY LOT LLC, an Idaho limited liability company organized pursuant to the Idaho Limited Liability Company Act (the “Company”), is entered into and shall be effective as of the Effective Date, by and among the Company, BERNARD I. FRIEDLANDER, JAMES M. LUCKMAN, DARRELL RUBEL, JACK LEVIN, EUGENE CHESTON, JAMES POPPY, GRANT STEVENS, ED SINNOTT, TOM FRITZLEN and STEVE MINER (the “Initial Members”).

RECITALS

A. The Company was formed by filing its Articles of Organization with the Idaho Secretary of State on April 17, 2007.

B. The Initial Members entered into and executed that certain Operating Agreement of Dry Lot, LLC, effective as of April 17, 2007, and First Amendment to Operating Agreement of and Admission of New Members to Dry Lot, LLC, effective November 26, 2007 (collectively the “Initial Agreement”).

C. The Company is prepared to close on the purchase of certain water rights (the “River Water Rights”) all or a portion of which shall be used directly or as part of a mitigation plan for the irrigation of portions of lots within The Valley Club PUD owned by Members of the Company (the “Lots”). Such irrigation is subject to the approval by the Idaho Department of Water Resources (“IDWR”) of certain pending applications to IDWR by the Company. The Company will become the owner of the River Water Rights and any other water rights issued by IDWR for such irrigation pursuant to the pending applications (collectively the “Irrigation Water Rights”). Upon approval of such applications the Company will provide for the delivery of water to the Lots pursuant to the terms and conditions of the Irrigation Water Rights.

D. The Initial Members desire to amend and fully restate the Agreement to provide for the ownership of the Irrigation Water Rights and the delivery system for the delivery of water for irrigation of the Lots pursuant to the Irrigation Water Rights (the “Delivery System”) as set forth below and for the ownership or sale of the Excess Water Rights as defined below..

NOW, THEREFORE, the Company and Initial Members covenant and agree as follows:

1. DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- 1.1. **“Act”** means the Idaho Limited Liability Company Act and all amendments thereto.
- 1.2. **“Affiliate”** means, with respect to any Person: (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting interests of such Person, (iii) any officer, director, or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee, or holder of ten percent (10%) or more of the voting interests of any Person described in clauses (i) through (iii) of this sentence. For purposes of this definition, the term "controls," "is controlled by," or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- 1.3. **“Agreement”** means this Amended and Restated Operating Agreement, as amended from time to time.
- 1.4. **“Articles”** means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State.
- 1.5. **“Available Cash Flow”** means, with respect to the applicable period of measurement, the excess, if any, of the gross cash receipts of the Company for such period from all sources whatsoever, including, without limitation, the following:
- (a) (i) all revenues, income and proceeds derived by the Company from its operations; (ii) all proceeds and revenues received on account of any sales of Company Property or any financing or refinancing of any Company Property; (iii) all Capital Contributions received by the Company from its Members; and (iv) the proceeds of liquidation of the Company Property in accordance with this Agreement, over the sum of:
 - (b) (i) all operating costs and expenses of the Company and capital expenditures made during such period (without deduction, however, for any capital expenditures, charges for depreciation or other expenses not paid in cash or expenditures from reserves described in clause (v) below); (ii) all costs and expenses expended or payable during such period in connection with the sale or other disposition or financing or refinancing of Company Property; (iii) all fees provided for under this Agreement; (iv) all debt service, including principal and interest, paid during such period on all indebtedness of the Company; and (v) any reserves reasonably determined by the Managers for working capital, payments of periodic expenditures, debt service or other purposes.
- 1.6. **“Capital Account”** as of any given date shall mean the Capital Account of each Member as described in Article 7 and maintained to such date in accordance with this Agreement.
- 1.7. **“Capital Contribution”** shall mean any contribution to the capital of the Company

in cash or property by a Member whenever made. **“Initial Capital Contribution”** shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

- 1.8. **“Class A Majority Interest”** means those Class A Members holding a majority of the Class A Units.
- 1.9. **“Class A Member”** means a Member who has been admitted as a Class A Member of the Company and made a Capital Contribution to the Company on or prior to March 31, 2009, or on such terms and conditions as shall be otherwise determined by a majority of the Managers.
- 1.10. **“Class A Member Sharing Ratio”** shall mean the percentage determined by dividing the number of Units owned by such Class A Member by the total number of Units then owned by all Class A Members, multiplied by 100%.
- 1.11. **“Class A Unit”** means a Unit designated as reserved for use by a Class A Member.
- 1.12. **“Class B Member”** means a Member who has been admitted as a Class B Member of the Company and made a capital contribution to the Company after April 1, 2009.
- 1.13. **“Class B Unit”** means a Unit designated as reserved for use by a Class B Member.
- 1.14. **“Code”** means the Internal Revenue Code of 1986 as amended from time to time.
- 1.15. **“Company”** means the limited liability company formed pursuant to this Agreement under the laws of Idaho, and any successor limited liability company.
- 1.16. **“Company Property”** means all assets (real or personal, tangible or intangible, including cash) of the Company.
- 1.17. **“Distributable Cash”** shall mean all cash, whether revenues or other funds received by the Company, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; and (iii) Reserves.
- 1.18. **“Distribution”** shall mean any Transfer of Company Property from the Company to or for the benefit of a Member by reason of such Member's ownership of an Economic Interest.
- 1.19. **“Economic Interest”** shall mean a Member's share of one or more of the Profits, Losses and Distributions pursuant to this Agreement and the Act but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members.

- 1.20. **“Effective Date”** means the date described in Section 2.4 hereof.
- 1.21. **“Entity”** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association, or any foreign trust or foreign business organization.
- 1.22. **“Excess Water Rights”** shall mean the portion of the Irrigation Water Rights which is not delivered directly to the Lots for irrigation or dedicated as mitigation for a new ground water irrigation water right or otherwise required for the Plan of Delivery
- 1.23. **“Fiscal Year”** shall mean the taxable year of the Company as determined under the Code.
- 1.24. **“Gift”** shall mean a gift, bequest, or other transfer for no consideration, whether or not by operation of law, except in the case of bankruptcy.
- 1.25. **“Gifting Member”** shall mean any Member who gifts all or any part of its Membership Interest.
- 1.26. **“Immediate Family”** means a Member's immediate family including the Member's spouse, children (including natural, adopted and stepchildren), grandchildren and parents.
- 1.27. **“Managers”** shall mean one or more managers designated as provided in Section 6.2.
- 1.28. **“Majority Interest”** shall mean those Members owning more than 50% of the Units.
- 1.29. **“Member”** shall mean each of the parties who execute this Agreement as a Member (an "Initial Member") and each of the parties who may hereafter become a Member.
- 1.30. **“Membership Interest”** shall mean a Member's entire interest in the Company, including such Member's Economic Interest and such other rights and privileges that the Member may enjoy by being a Member.
- 1.31. **“Member Sharing Ratio”** shall mean the percentage determined by dividing the number of Units owned by a Member by the total number of Units then owned by all Members, multiplied by 100%.
- 1.32. **“Non-Irrigation Water Rights”** shall mean those water rights owned by the Company and not allocable to any Unit which are required to assure the access and availability by a holder of a Unit to the water allocable to such Unit in accordance with the Plan of Distribution.

- 1.33. **“Person”** means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.
- 1.34. **“Plan of Delivery”** shall be the plan by which the Irrigation Water Rights are delivered to the Lots pursuant to the terms and conditions imposed by IDWR on the use of the Irrigation Water Rights.
- 1.35. **“Profits and Losses”** shall mean for each Fiscal Year of the Company the net profits and losses determined in accordance with generally accepted accounting principles under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on tax returns of the Company filed for federal income tax purposes but shall not include profits and losses, if any, on a sale or Reorganization of the Company which are attributable and allocable to a sale of the Delivery System (“Delivery System Profits”)
- 1.36. **“Regulations”** means, except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.
- 1.37. **“Reorganization”** shall mean the merger or conversion of the Company, or a sale or other disposition of assets of the Company, or sale or other disposition of Membership Interests, or other transaction pursuant to which a Person or Persons acquire all or substantially all of the assets of, or Membership Interests in, the Company in a single or series of related transactions, including without limitation, a merger or conversion of the Company into a corporation or other entity, whether or not such corporation or other entity has the same owners as the Company and whether or not additional capital is contributed to such corporation or other entity; provided, however, that a Reorganization shall not include the merger or conversion of the Company into a general partnership which is not a limited liability partnership.
- 1.38. **“Reserves”** shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Managers for working capital and for payment of taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.
- 1.39. **“Sale or Sell”** shall mean a sale, assignment, exchange, or other transfer for consideration, pledge, hypothecation, or grant of a security interest, or change in ownership by reason of the merger, conversion or other transformation in the identity or form of business organization of the owner, regardless of whether such change or transformation is characterized by state law as not changing the identity of the owner.

- 1.40. **“Selling Member”** shall mean any Member which sells, assigns, or otherwise transfers for consideration all or any portion of its Membership Interest.
- 1.41. **“Transfer”** shall mean any Sale or Gift.
- 1.42. **“Transferring Member”** shall mean a Selling Member and a Gifting Member.
- 1.43. **“Voting Interest”** shall mean, (i) with respect to all issues upon which Class A Members alone can vote pursuant to this Agreement, the Class A Member’s Sharing Ratio; and (ii) for all other purposes the Member’s Sharing Ratio.
- 1.44. **“Unit”** shall mean the right of a Member to use the appropriate portion of the Irrigation Water Rights to irrigate one-half (½) acre of land within a Lot.

2. **FORMATION**

- 2.1. **Organization.** The Initial Members heretofore organized and formed the Company as an Idaho limited liability company pursuant to the provisions of the Act and the Initial Agreement. The Members hereby agree to continue the Company as a limited liability company under and pursuant to the provisions of the Act and agree that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein.
- 2.2. **Intention.** It is the express intention of the Members that the Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of the Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, the Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of the Agreement is prohibited or ineffective under the Act, the Agreement shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of the Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.
- 2.3. **Name.** The name of the Company is DRY LOT LLC and all business of the Company shall be conducted under that name or such other name as the Members shall determine, but in any case, only to the extent permitted by applicable law.
- 2.4. **Effective Date.** The Agreement shall become effective upon the date of execution of the Agreement by the Initial Members.
- 2.5. **Term.** The Company shall continue in existence until it terminates in accordance with the provisions of this Agreement or the Act.

- 2.6. Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed in the office of the Secretary of State. The Members may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State. If the Members shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address through appropriate filings with the Secretary of State.
- 2.7. Principal Office.** The principal office of the Company shall be located at Ketchum, Idaho or such other location as the Members shall determine from time to time.
- 2.8. Reservation of Other Business Opportunities.** No business opportunities other than those actually exploited by the Company shall be deemed Company Property, and any Member may engage in or possess an interest in any other business venture, independently or with others, of any nature or description; and neither any other Member nor the Company shall have any rights by virtue hereof in and to such other business ventures, or to the income or profits derived therefrom. The provisions of this Section 2.8 shall be subject to, and not in any way affect the enforceability of, any separate agreement by a Member or Affiliate thereof restricting or prohibiting certain business activities of such Member or any Affiliate thereof.

3. NATURE OF BUSINESS

The specific purposes of the Company are (a) to purchase the River Water Rights and own the Irrigation Water Rights for the irrigation of the Lots and other areas within The Valley Club PUD Subdivision in Blaine County, Idaho (the "Subdivision") and such other areas as the Managers shall determine, (b) to construct, own, lease, use, operate, maintain, repair and replace such diversion, delivery, mitigation and other works and facilities required to deliver the Irrigation Water Rights to the Lots and any other areas irrigated thereby, (c) to purchase, lease or otherwise acquire additional irrigation water rights as the Managers may determine to be necessary or appropriate for such irrigation, and (d) to own, use, lease or sell the Excess Water Rights. The Company may engage in any and all activities related to these specific purposes but no other activities unless approved by the affirmative vote of Class A Members holding at least a Class A Majority Interest. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its business as described in this paragraph 3.

4. INFORMATION ON EQUITY OWNERS

The Managers shall maintain at the Principal Office current records of the names and addresses of and the number and Class of Units owned by the Initial Members and any new Members.

5. MEMBER RIGHTS AND OBLIGATIONS

- 5.1. No Personal Liability.** To the fullest extent permitted under the Act, or any other applicable law as currently or hereafter in effect, no Member shall have any personal liability whatsoever, whether to the Company or to the creditors of the Company for the debts, obligations, expenses or liabilities of the Company or any of its losses, beyond the Member's Capital Contribution, provided, however, that each Member shall enter into an agreement with the Company to pay such Member's allocable share of annual expenses incurred by the Company and shall secure such obligation by (among such other measures as the Managers may, from time to time, determine as in the best interests of the Company) pledging his Membership Interest to the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.
- 5.2. Members Have No Agency Authority.** Except as expressly provided in this Agreement, the Members (in their capacity as Members) shall have no agency authority on behalf of the Company.
- 5.3. Priority and Return of Capital.** Except as may be expressly provided in Article 8, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or Distributions; provided, however, that this Section 5.5 shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.
- 5.4. Member Time Commitments.** No Member shall be required to devote any particular amount of time to the affairs of the Company by virtue of that Member's status as a Member.
- 5.5. Loans from Members or Affiliates.** In lieu of or in addition to any Third Party Financing, a Member or an Affiliate of a Member may make a loan to the Company on such terms and conditions as the Managers (excluding the interested Member if he is also a Manager) determine to be fair and reasonable. Any Member or Affiliate of a Member who makes a loan to the Company shall (except as may be provided otherwise by the terms and conditions of such loan) have the same rights and obligations with respect to such loan as a person who is not a Member or Affiliate of a Member. The amount of any such loan made to the Company, or guaranteed or otherwise arranged, by a Member shall not be considered an increase in such Member's Capital Contribution or otherwise constitute a contribution to the Company nor shall the making of such loan entitle such Member to an increased share of the profits, losses, or Distributions to be made pursuant to the provisions of this Operating Agreement. Except as otherwise provided in this Operating Agreement, loans made to the Company shall be on such terms as the Managers may agree.

5.6. Compensation of Member; Expenses. No Member shall be entitled to any compensation for performance of services required by virtue of a Member's status as a Member. Any Member and any Affiliate of any Member may receive reasonable compensation from the Company directly or indirectly, for services rendered or to be rendered, goods or property furnished or to be furnished, or other consideration to the Company. Any Member and any Affiliate of any Member shall be entitled to prompt reimbursement for all direct expenses borne, incurred, or advanced on behalf of the Company, including, without limitation, the organization expenses of the Company and any out-of-pocket expenses incurred in authorized management of the Company.

6. MANAGERS

6.1. Management. The business and affairs of the Company shall be managed by its Managers. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts and activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act or unless a majority of the Managers determine in a writing provided to the remaining Manager(s) prior to such Manager(s) taking a specified action that the approval of more than one of the Managers is required in order to take such action. Unless authorized to do so by this Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. Notwithstanding the foregoing, the incurring of any expense or obligation or liability of the Company in excess of \$50,000 shall be approved in advance by at least two (2) Managers.

6.2. Number, Tenure and Qualifications. As of the Effective Date, the Company shall have four (4) Managers who shall be Bernard I. Friedlander, James M. Luckman, Jack Levin and Darrell Rubel. The number of Managers shall be fixed from time to time by an affirmative vote of a majority of the Class A Members representing at least 51% of the Class A Units in the Company, but in no instance shall there be less than one Manager. Each Manager shall hold office until such Manager resigns pursuant to Section 6.9 or is removed pursuant to Section 6.10. Managers shall be appointed by the affirmative vote of Class A Members holding at least a Class A Majority Interest. Managers need not be residents of the State but must be Members or the owner of the controlling ownership interest in an entity which is a Member.

6.3. Certain Powers of Managers. Without limiting the generality of Section 6.1 but subject to the limitations of Section 6.4, the Managers shall have power and authority, on

behalf of the Company:

- (a) To acquire the River Water Rights;
- (b) To borrow money for the Company to pursue the purposes of the Company from banks, other lending institutions, the Managers, or Affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in Company Property to secure repayment of the borrowed sums;
- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold and own and sell any Company real and/or personal properties in the name of the Company, including, without limitation Excess Water Rights (provided that such sale shall be subject to the affirmative vote of a majority of the Class A Members representing at least 51% of the Class A Units in the Company);
- (e) To invest Company funds with interest-bearing time deposits, short-term governmental obligations, or similar secure or insured investments (it is not intended that the funds would be used for speculative investments);
- (f) To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of Company Property; assignments; bills of sale; leases; partnership agreements; operating (or limited liability company) agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the conduct of the business of the Company;
- (g) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;
- (h) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve;
- (i) To execute and file such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the Company;
- (j) To cause the Company to be a party to a Reorganization; and to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

6.4. Limitations on Authority. Notwithstanding any other provision of this Agreement, the Managers shall not cause or commit the Company to do any of the following without the express written consent of Class A Members holding a Majority Interest:

(a) Sell or otherwise dispose of all or substantially all of the Company Property or any Company Property other than in the ordinary course of business; provided, however that with respect to the sale of Excess Water Rights, the Managers shall only require the affirmative vote of a majority of Class A Members representing at least 51% of the outstanding Class A Units;

(b) Mortgage, pledge, or grant a security interest (collectively, "pledge") in any Company Property to the extent that the secured indebtedness from such pledge would exceed \$100,000;

(c) Incur or refinance any indebtedness for money borrowed by the Company, whether secured or unsecured and including any indebtedness for money borrowed from a Member if, after such financing, the aggregate indebtedness of the Company would exceed \$100,000;

(d) Except for the purchase of the River Water Rights and the legal, engineering, accounting and other expenses related thereto, incur any liability or make any single expenditure or series of related expenditures in an amount exceeding \$100,000;

(e) Except for the construction of all of the facilities required to implement the Plan of Delivery of the Irrigation Water Rights to the Lots, construct any capital improvements, repairs, alterations or changes involving an amount in excess of \$50,000;

(f) Lend money to or guaranty or become surety for the obligations of any Person;

(g) Compromise or settle any claim against or inuring to the benefit of the Company involving an amount in controversy in excess of \$50,000; or

(h) Cause the Company to commence a voluntary case as debtor under the United States Bankruptcy Code.

6.4. Liability for Certain Acts.

(a) The Managers do not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company.

(b) The Managers shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member (or successor thereto), except to the extent, if any, that the loss or damage shall have been the result of gross negligence,

fraud, deceit, willful misconduct, or intentional breach of this Agreement.

6.5. Managers and Members Have No Exclusive Duty to Company. The Managers and Members shall have no exclusive duty to act on behalf of the Company. Each Manager and Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Manager shall have any right, by virtue of this Agreement, to share or participate in any other investments or activities of any other Manager or Member. Neither any Manager nor any Member shall incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture.

6.6. Bank Accounts. The Managers may from time to time open bank accounts in the name of the Company, and the Managers shall be the sole signatory thereon, unless the Managers determine otherwise.

6.7. Indemnity of Managers, Employees and Other Agents.

(a) The Company shall indemnify each Manager and make advances for expenses to the maximum extent permitted under the Act, except to the extent the claim for which indemnification is sought results from an act or omission for which the Manager may be held liable to the Company or a Member under Section 6.5(b). The Company shall indemnify its employees and other agents who are not Managers to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by Class A Members owning a Class A Majority Interest.

(b) Expenses (including legal fees and expenses) incurred by a Manager in defending any claim, demand, action, suit or proceeding subject to subsection (a) above shall be paid by the Company as such may become due and payable by the Manager and in advance of the final disposition of such claim, demand, action, suit or proceeding upon receipt of an undertaking (which need not be secured) by or on behalf of the Manager to repay such amount if it shall ultimately be finally determined by a court of competent jurisdiction and not subject to appeal, that the Manager is not entitled to be indemnified by the Company as authorized hereunder.

6.8. Resignation. Any Manager may resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

6.9. Removal. At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time with or without cause by the affirmative vote of Class A Members holding a Class A Majority Interest determined without regard to any Voting Interest held by the Manager or an Affiliate of the Manager, unless the removal is

without cause in which case the Manager to be removed or an Affiliate of that Manager may vote. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

6.10. Vacancies. Any vacancy occurring for any reason in the number of Managers shall be filled by the affirmative vote of Class A Members holding a Majority Interest (determined without regard to any Voting Interest owned by a Manager who was removed pursuant to Section 6.10 during the preceding 24-month period). Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by the affirmative vote of a Majority Interest.

6.11. Compensation, Reimbursement, Organization Expenses.

(a) The compensation of the Managers shall be fixed from time to time by an affirmative vote of Members holding at least a Majority Interest, and no Manager shall be prevented from receiving such compensation by reason of the fact that he is also a Member. No Member shall be entitled to compensation from the Company for services rendered to the Company as such. Upon the submission of appropriate documentation each Member shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred on behalf, or at the request, of the Company.

(b) The Company shall reimburse the Managers for the legal expenses reasonably incurred by them in connection with the formation, organization and capitalization of the Company, including the legal fees incurred in connection with negotiating and drafting this Agreement and negotiating and drafting any agreement to purchase water rights.

(c) The Managers shall cause the Company to make an appropriate election to treat the expenses incurred by the Company in connection with the formation and organization of the Company to be amortized under the 60-month period beginning with the month in which the Company begins business to the extent that such expenses constitute "organizational expenses" of the Company within the meaning of Code Section 709(b)(2).

6.12. Right to Rely on the Managers.

(a) Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

(i) The identity of any Manager or Member;

(ii) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by any Manager or which are in any other manner germane to the affairs of the Company;

(iii) The Persons who are authorized to execute and deliver any instrument

or document of the Company; or

(b) Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

7. CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

7.1. Members' Capital Contributions. Upon admission to membership in the Company, each Member shall make a capital contribution to the Company in such amount per Unit as shall be determined from time to time by the Managers, which capital contribution shall be recorded in the books and records of the Company.

7.2. Additional Contributions. Except as set forth in Section 7.1, no Member shall be required to make any Capital Contributions. To the extent approved by Class A Members holding a Class A Members Majority Interest, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Class A Members determine by the affirmative vote of Class A Members holding a majority of the outstanding Class A Units that such additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business. In such event, the Members shall have the opportunity (but not the obligation) to participate in such additional Capital Contributions proportionate to their respective Member Sharing Ratios. In the event that any Member shall decline to make an Additional Capital Contribution, which is approved by an affirmative vote of the Class A Members holding a majority of the issued and outstanding Class A Units, the additional contributions made by contributing members will be treated as a loan as set forth in Paragraph 7.3, below.

7.3. Loan in Lieu of Capital Contributions. If any Member chooses not to contribute additional capital as may be approved by the Class A Members as set forth in Paragraph 7.2., above, those Members who wish to make such contributions shall have their respective contributions treated as a loan to the Company. Such loan shall bear interest at the rate of three percent (3%) per annum over the prime rate quoted in the Money Rates section of the *Wall Street Journal* on the effective date the loan is made, but in no event less than twelve percent (12%) per annum. Such loan shall be documented in the form of a promissory note from the Company.

7.4. Capital Accounts.

(a) A separate Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by: (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Member of Profits; (4) any items in the nature of income and gain which are specially allocated to the Member; and (5) allocations to such Member of income

described in Section 705(a)(1)(B) of the Code. Each Member's Capital Account shall be decreased by: (1) the amount of money Distributed to such Member by the Company; (2) the fair market value of property Distributed to such Member by the Company (net of liabilities secured by such Distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Member of expenditures described in Section 705(a)(2)(B) of the Code; (4) any items in the nature of deduction and loss that are specially allocated to the Member; and (5) allocations to such Member of Losses.

(b) Without limiting the other rights and duties of a transferee of a Membership Interest pursuant to this Operating Agreement, in the event of a permitted sale or exchange of a Membership Interest in the Company: (1) the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Regulations; and (2) the transferee shall be treated as the transferor for purposes of allocations and distributions pursuant to Article 8 to the extent that such allocations and distributions relate to the transferred Membership Interest.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 7.4 is intended to comply with the requirements of Section 704(b) of the Code and the Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 7.4 should be modified in order to comply with Section 704(b) of the Code and the Regulations thereunder, then, notwithstanding anything to the contrary contained in the preceding provisions of this Section 7.4, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Equity Owners.

(d) Upon liquidation of the Company, liquidating Distributions shall be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds shall be paid in accordance with Section 12.311.3. The Company may offset damages for breach of this Agreement by any Member whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise Distributable to such Member. Subject to Sections 7.1 and 7.2, no Member shall have any obligation to restore all or any portion of a deficit balance in such Member's Capital Account.

7.5. Return of or Interest on Contributions to Capital.

(a) Except as otherwise provided in this Agreement, no Member shall demand or receive a return of his or her Capital Contributions from the Company without the consent of all of the Class A Members. Under circumstances requiring a return of any Capital

Contributions, no Member shall have the right to receive Property other than cash except as may be specifically provided herein.

(b) No Member shall receive any interest, salary or drawing with respect to his or her Capital Contributions or his or her Capital Account or for services rendered on behalf of the Company or otherwise in his or her capacity as a Member, except as otherwise provided in this Agreement or with the consent of all of the Class A Members. Notwithstanding the foregoing, upon the closing of the acquisition of River Water Rights, the Initial Members shall be entitled to a payment of interest on their Capital Contribution at the annual rate of 12%, payable from April 17, 2007 to the Effective Date out of the assets of the Company.

8. ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

8.1. Allocations of Profits and Losses from Operations. Except for any special allocations to a Member, the Profits and Losses for each Fiscal Year shall be allocated as follows:

(a) Losses shall be allocated among all Members in accordance with their respective Member Sharing Ratio.

(b) Profits shall be allocated as follows:

(i) First, to each Class A Member which previously has been allocated Losses pursuant to this Section 8.1 which have not been fully offset by allocations of income pursuant to this Section 8.1 ("Unrecovered Losses"), until the total amount of Profits allocated to each such Class A Member pursuant to this Section 8.1 is equal to the total amount of Losses which have been allocated to such Class A Member pursuant to this Section 8.1. Profits allocated pursuant to this Section 8.1 shall be allocated to the Class A Members in proportion to their respective Unrecovered Losses;

(ii) Second, to the Class A Members in accordance with their respective Class A Member Sharing Ratio.

8.2 Allocation of Profits and Losses upon a Sale of the Company or Reorganization. Except for any special allocations to a Member, the Profits and Losses upon a Sale of the Company or Reorganization shall be allocated as follows:

(a) Losses shall be allocated among all Members in accordance with their respective Member Sharing Ratio.

(b) Profits shall be allocated as follows:

(i) First, to each Class A Member which previously has been allocated Unrecovered Losses, until the total amount of Profits allocated to

each such Class A Member pursuant to Section 8.1(b)(i) and this Section 8.2(b)(i) is equal to the total amount of Unrecovered Losses remaining. Profits allocated pursuant to this Section 8.2(b)(i) shall be allocated to the Class A Members in proportion to their respective Unrecovered Losses;

(ii) Second, to the Class A Members in accordance with their respective Class A Member Sharing Ratio.

(c) Delivery System Profits shall be allocated as follows:

(i) First, to each Class A Member to the extent of any Unrecovered Losses remaining in the capital account of such Class A Members, until the total amount of Delivery System Profits allocated to each such Class A Member pursuant to this Section is equal to the total amount of Unrecovered Losses remaining. Delivery System Profits allocated pursuant to this Section shall be allocated to the Class A Members in proportion to their respective Unrecovered Losses;

(ii) Second, to each Class B Member to the extent of any Unrecovered Losses remaining in the Capital Account of each such Class B Member, until the total amount of Delivery System Profits allocated to each such Class B Member pursuant to this Section is equal to the total amount of Unrecovered Losses remaining. Delivery System Profits allocated pursuant to this Section shall be allocated to the Class B Members in proportion to their respective Unrecovered Losses.

(iii) Third to each Member in accordance with their respective Member Sharing Ratio.

8.2. Special Allocations to Capital Accounts. Notwithstanding Section 8.1 hereof:

(a) In the event that any Member unexpectedly receives any adjustments, allocations or Distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then 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 and, if necessary, for subsequent years) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 8.2(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

(b) The Losses allocated pursuant to Section 8.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have a

Deficit Capital Account at the end of any Fiscal Year. In the event that some, but not all, of the Members would have Deficit Capital Accounts as a consequence of an allocation of Losses pursuant to Section 8.1 hereof, the limitation set forth in the preceding sentence shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation set forth in this Section 8.2(b) shall be allocated to the Members in proportion to their respective positive Capital Account balances, if any, and thereafter to the Members in accordance with their interests in the Company as determined by the Managers in their reasonable discretion. In the event that any Member would have a Deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of any amount, if any, that such Member is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Regulations and such Member's share of Company Minimum Gain as defined in Section 1.704-2(g)(1) of the Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Regulations), the Capital Account of such Member shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 8.2, if there is a net decrease in the Company Minimum Gain as during a Fiscal Year, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such Fiscal Year (and if necessary for subsequent Fiscal Years) equal to that Member's share of the net decrease in Company Minimum Gain. This Section 8.2(c) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Regulations and shall be interpreted consistently therewith. If in any Fiscal Year that the Company has a net decrease in the Company Minimum Gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Managers may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Section 1.704-2(f)(4) of the Regulations.

(d) Notwithstanding any other provision of this Section 8.2 except Section 8.2(c), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Minimum Gain as of the beginning of the Fiscal Year shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt. A Member's share of the net decrease in Member Minimum Gain shall be determined in accordance with Section 1.704-2(i)(4) of the Regulations; provided, however, that a Member shall not be subject to this provision to the extent that an exception is provided by Section 1.704-2(i)(4) of the Regulations and any Revenue Rulings issued with respect thereto. Any Member Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Member Nonrecourse Debt, and, second, if necessary, a pro rata portion of the

Company's other items of income or gain (including gross income) for that Fiscal Year. This Section 8.2(d) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) of the Code which are attributable to any nonrecourse debt of the Company and are characterized as partner nonrecourse deductions under Section 1.704-2(i) of the Regulations shall be allocated to the Member's Capital Accounts in accordance with said Section 1.704-2(i) of the Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations), such deductions shall be allocated to the Members in the same manner as Loss is allocated for such period.

(g) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts as the result of a Distribution to a Member in complete liquidation of its Ownership Interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Regulations applies, or to the Member to whom such Distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations applies.

(h) Any income, gain, loss or deduction realized by the Company as a direct or indirect result of the issuance of an interest in the Company by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

8.3. Credit or Charge to Capital Accounts. Any credit or charge to the Capital Accounts of the Members pursuant to Sections 8.2(a), 8.2(b), 8.2(c), 8.2(d), 8.2(e), 8.2(f) and 8.2(g) ("Regulatory Allocations") hereof shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to Section 8.1, so that the net amount of any items charged or credited to Capital Accounts pursuant to Section 8.1 and the Regulatory Allocations hereof and this Section 8.3 shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of this Article 8 if the special allocations required by the Regulatory Allocations hereof had not occurred.

8.4. Distributions. Except as provided in Sections 7.4(d) (with respect to liquidating

Distributions) and 8.5 (with respect to limitations on Distributions), the Managers shall Distribute Distributable Cash to the Class A Members not less frequently than annually in accordance with their Class A Member's Sharing Ratios. All Distributions which, when made, exceed the recipient Class A Member's basis in that Class A Member's Membership Interest shall be considered advances or drawings against the Class A Member's Distributive Share of taxable income or gain. To the extent it is determined at the end of the Fiscal Year that the recipient Class A Member has not been allocated taxable income or gain that equals or exceeds the total of such advances or drawings for such Fiscal Year, such Member shall be obligated to recontribute any such advances or drawings to the Company. Notwithstanding the foregoing sentence, a Class A Member will not be required to recontribute such advances or drawings to the extent that, on the last day of the Fiscal Year, such Class A Member's basis in its Membership Interest in the Company has increased from the time of such advance or drawing

8.5. Limitation Upon Distributions. No Distribution shall be made if such Distribution would violate the Act.

8.6. Tax Matters Member. Any Manager selected by a vote of the Managers, so long as the Manager so selected is also a Member, is hereby designated the "Tax Matters Partner" ("TMP") as defined in Section 6231(a)(7) of the Code. The TMP and the other Members shall use their reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including any Regulations promulgated thereunder), and in doing so shall incur no liability to any other Member.

8.7. Method of Accounting. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the cash method of accounting, unless the Company is required to use a different method of accounting for federal income tax purposes, in which case that method of accounting shall be the Company's method of accounting.

8.8. Books and Records to be Maintained. The Company shall maintain the books and records required by the nonwaivable provisions of the Act at its Principal Office.

8.9. Accounting Period. The Company's accounting period shall be the Fiscal Year.

8.10. Returns and Other Elections. The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion; provided, however, that the Managers shall make any tax election requested by Members owning a Majority Interest.

8.11. Certain Allocations for Income Tax (But Not Book Capital Account) Purposes.

(a) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)(iv) of the Regulations, if a Member contributes property with an initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution pursuant to the traditional method under Section 1.704-3(b) of the Regulations.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is Distributed by the Company other than to the contributing Member within seven years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Member shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the Distribution.

(c) In the case of any Distribution by the Company to a Member, such Member shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the Distribution over (B) the adjusted basis of such Member's Membership Interest immediately before the Distribution reduced (but not below zero) by the amount of money received in the Distribution; or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Member. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Member under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within seven years of the Distribution, and (B) is held by the Company immediately before the Distribution, had been Distributed by the Company to another Member. If any portion of the property Distributed consists of property which had been contributed by the distributee Member to the Company, then such property shall not be taken into account under this Section 8.13(c) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property Distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(d) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Members to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Equity Owner is allocated any

gain from the sale or other disposition of such property.

9. ASSESSMENTS

- 9.1. Covenant to pay Assessments.** Each Member hereby covenants and agrees to pay when due all Regular, and Special Assessments or charges made by the Company. Such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge and continuing lien upon the Unit(s) against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Member at the time the Assessment fell due.
- 9.2. Annual Dues.** There shall be assessed against each Unit and its respective Member Annual Dues per Unit as determined by the Managers. Not less than thirty (30) nor more than sixty (60) days prior to the beginning of each calendar year, the Managers shall estimate the total amount of funds necessary to defray the expenses of the Company and shall bill the Members in December of each year for the following year the amount of such dues. The Annual Dues shall include an amount allocated to an adequate reserve fund which is to be established for maintenance, repairs and replacement of the irrigation water delivery system.
- 9.3. Supplemental Dues.** In the event that the Managers shall determine that the Annual Dues for a given calendar year will be inadequate to meet the expenses of the Company for any reason, including but not limited to, costs of maintenance of and unexpected repairs to the Delivery System, the Managers shall determine the approximate amount necessary to defray such expenses and shall issue Supplemental Dues to all Members. All Supplement Dues shall be levied upon the same basis as that prescribed for the levying of the Annual Dues.
- 9.4. Notice and Payment Date for All Dues.** Not less than fifteen (15) days prior written notice of Annual and Supplemental Dues shall be sent to every Member. The due dates for Annual Dues and Supplemental Dues shall be established by the Managers. Each installment of Dues shall become delinquent if not paid within thirty (30) days after the due date thereof. There shall accrue with each delinquent installment, a late charge of Fifty Dollars (\$50.00), together with interest at the maximum rate permitted by law calculated from the date of delinquency to and including the date full payment is received by the Company. Each Member is personally liable for said Dues and each Member hereby pledges the value of their Membership Unit as collateral for any unpaid Dues.
- 9.5. Right to Enforce and Terminate Delivery of Water.** The right to collect and enforce the Dues made by the Company is vested in the Company. In the event an attorney or attorneys are employed for the collection of any Dues, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Agreement, each Member agrees to pay reasonable attorney's fees or any

other relief or remedy obtained against said Member. The Managers may enforce the obligations of the Members to pay the Dues by commencement and maintenance of a suit at law or in equity. A suit to recover a money judgment for any unpaid Dues shall be maintainable without foreclosing or waiving the lien hereinafter provided for. The Company shall also have the right, upon not less than thirty (30) days prior written notice, to cease the delivery of water to the delinquent Member's Lot until all outstanding and unpaid Dues against that Member are paid in full.

9.6. Creation of Dues Liens. There is hereby created a claim of lien with power of sale on each and every Unit to secure payment of any and all Dues levied against any and all Units, together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Company making the Dues in connection therewith, including reasonable attorney's fees. Upon default of any Member in the payment of any Annual or Supplemental Dues required hereunder, the Company may foreclose its lien by appropriate action in court or by a non-judicial sale by the Company, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of Idaho Code applicable to the exercise of powers of sale permitted by law.

9.7. Required Notice. No action may be brought to foreclose the lien created by recording of the notice of delinquency and claim, whether judicially by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the owner of the Unit(s) described in such notice of delinquency and claim of lien.

10. TRANSFER OF UNITS AND MEMBERSHIP INTERESTS

10.1. General.

(a) Except as otherwise specifically provided herein, no Member shall have the right to Transfer any of the Units owned by the Member.

(b) Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of the Units imposed by this Agreement in view of the Company purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable.

(c) Subject to Section 10.2, a Member may Transfer a Unit, but not less than one (1) Unit, (and in connection therewith the Membership Interest or portion thereof attributable to the number of Units being transferred) at any time to any person who or entity which is the owner of a lot or such other area as shall be permissible under the appropriate requirements of IDWR, provided, however, that no such Transfer shall obligate the Company to deliver water to any location outside of The Valley Club PUD and provided

further, however, that any such Transfer shall not, as determined in the reasonable discretion of the Managers, increase ongoing costs to the Company or decrease the ability of the Company to make and collect Assessments to cover the proportionate share of expenses of the Company from the successor in interest .

(d) Upon the Transfer of a Lot owned by a Member, such conveyance may include all or any lesser number of whole Units which, at the time of such Transfer, provide for delivery of water to irrigate the Lot unless such Units have been previously transferred pursuant to paragraph 10.1(c), above.

(e) In addition to the value as may be agreed upon between the Transferring Member and the Transferee, the Transferring Member shall be obligated to pay an amount equal to the actual costs incurred by the Company for legal, accounting, or professional fees related to any action which is necessary to be taken by the Company in order to effectuate the transfer of such Membership Unit.

(f) To the extent that the Member wishes to transfer the underlying water to a property owner who is outside the Valley Club PUD who is not otherwise eligible to be a Member of this Company, and to the extent that such transfer is permitted and approved by the IDWR, the Transferring Member shall be responsible for paying all costs incurred by the Company with regard to such transfer, including but not limited to, legal, accounting, engineering, filing or other transfer fees, as well as a ten percent (10%) surcharge to transfer the right to use the water outside of the Valley Club PUD.

10.2. Conditions on Transfers of Units.

(a) If a Transferring Member Transfers a Unit to a Person who is not already a Member, the Transfer shall not be valid or effective unless and until the Transferring Member and the proposed successor-in-interest execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Managers may deem necessary or desirable to accomplish any one or more of the following:

(1) constitute such successor-in-interest as a Member and set forth the Membership Interest of the successor in Interest;

(2) confirm that the proposed successor-in-interest as a Member, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of this Agreement, as the same may have been further amended ;

(3) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is

qualified, organized or does business;

(4) maintain the status of the Company as a partnership for federal tax purposes;

(5) assure compliance with any applicable state and federal laws, including securities laws and regulations; and

(6) confirm that the Transferring Member is current in the payment of all obligations to the Company.

(b) Any Transfer of a Unit and admission of a Member in compliance with this Article 10 shall be deemed effective as of the last day of the calendar month in which the successor in interest complies with Section 10.2(a). The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article.

(c) Upon any Transfer of a Unit and Membership Interest as provided herein, the Capital Account of the Transferring Member shall be reduced by a fraction equal to the number of Units being transferred by the Transferring Member divided by the total number of Units held by the Transferring Member prior to the transfer and a Capital Account shall be created in the name and on behalf of the successor in interest equal to the amount of the reduction in the Capital Account of the Transferring Member.

10.3. Gifts of Ownership Interests. A Gifting Member may gift, either outright or in trust, all or any portion of its Membership Interest; provided, however, that the successor-in-interest ("donee") complies with Section 10.2(a) and further provided that the donee is either the Gifting Member's spouse, former spouse, or lineal descendant (including adopted children), or trustee of a trust wherein one or more of such permissible donees are beneficiaries.

10.4. Restrictions on Transfers. Notwithstanding any language to the contrary contained herein, no Member shall be permitted to transfer any Unit separately from the transfer of the Member's lot to which the Unit is originally assigned until Dry Lot, LLC has transferred all Excess Water Rights.

10.5. Sale of Units after April 15, 2014. Any transfer of a Unit after April 15, 2014 by a Class A Membership shall cause the transferee to become a Class B Member.

11. ISSUANCE OF MEMBERSHIP INTERESTS

11.1. Issuance of Additional Membership Interests to New Members. From the date of

the formation of the Company, any Person may become a Member in the Company by the issuance by the Company of Membership Interests for such consideration as the Managers by their majority vote shall determine, subject to the terms and conditions of this Agreement; and provided that no Member shall have a Membership Interest of less than one (1) Unit..

11.2. Issuance of Additional Membership Interests to Existing Members. From the date of the formation of the Company, the Company may issue additional Membership Interests to one or more existing Members for such consideration as the Managers by their majority vote shall determine, subject to the terms and conditions of this Agreement and provided that no Member shall increase his Membership Interest by less than one (1) Unit.

11.3. Part Year Allocations With Respect to New Members. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. In accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder, the Managers, may, at their option, at the time a Member is admitted, close the Company books (as though the Company's Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's Fiscal Year in which a new Member became a Member.

12. DISSOLUTION AND WINDING UP

12.1. Dissolution. The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events (which, unless the Members unanimously agree to continue the business, shall constitute Dissolution Events):

- i) the unanimous written consent of all of the Members;
- ii) the entry of a decree of judicial dissolution.

Notwithstanding anything to the contrary in the Act, the Company shall not be dissolved upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member

12.2. Effect of Dissolution. Upon dissolution, the Company shall cease carrying on business (as distinguished from the winding up of the Company business). The Company is not terminated on dissolution, but continues until the winding up of the affairs of the Company is completed and a certificate of dissolution has been issued by the Secretary of State.

12.3. Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and

operations, from the date of the last previous accounting until the date of dissolution. The Members shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Members shall:

(1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent that the Members may determine to Distribute in kind any assets to the Members);

(2) Allocate any Profit or Loss resulting from such sales to the Member's Capital Accounts in accordance with Article 8 hereof;

(3) Discharge all liabilities of the Company, including liabilities to Members who are also creditors, to the extent otherwise permitted by law, other than liabilities to Members for Distributions and the return of capital, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such Reserves shall be deemed to be an expense of the Company);

(4) Distribute the remaining assets to each Member as follows: To the extent that the excess water rights are to be distributed to the Members, the Class A Members shall receive the excess water rights based on a fraction, the numerator of which is the total number of Class A units owned by the Member and the denominator of which is the total number of Class A Membership Units issued and outstanding. If the water rights are to be sold and the funds distributed, the value received by each Class A Member shall be determined by the same fraction when applied against the net proceeds from the sale of excess water rights. With regard to the remaining water rights, the Company shall transfer to each Member the right to irrigate one-half (1/2) acre of water for each unit owned by each Class A and/or Class B Member, or to the extent that the value of such units are to be distributed to the Members, such value will be distributed based on a fraction, the numerator of which will be the number of units owned by each Member and the denominator of which will be the total number of Class A and Class B units issued and outstanding. ;

(5) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of Article 8 and Section 7.4 of this Agreement to reflect such deemed sale; and

(6) The positive balance (if any) of each Member's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's Fiscal Year during which the liquidation occurs) shall be Distributed to the Members, either in cash or in kind, as determined by the Members, with any assets Distributed in kind being valued for this purpose at their fair market value. Any such Distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, Distributions, allocations and other Capital Account adjustments for all Fiscal Years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and Distribution of the assets, the Company shall be deemed terminated.

(e) The Members shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final Distribution of its assets.

12.4. Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, Articles of Dissolution shall be delivered to the Secretary of State for filing. The Articles of Dissolution shall set forth the information required by the Act.

12.5. Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Members shall have no recourse against any other Member.

13. AMENDMENT

The Agreement may be amended, modified or repealed only by a written instrument

adopted by the affirmative vote of the Class A Members holding a majority of the issued and outstanding Class A Units, provided, however, that any Amendment which (a) changes the definition of a Unit, Class B Unit, or otherwise reduces the amount of water available to a Class B Member, or (b) disproportionately reduces a Class B Member's interest in the Delivery System, shall require the affirmative vote of Class B Members holding a majority of Class B Units.

14. MISCELLANEOUS PROVISIONS

- 14.1. No Partnership Intended for Nontax Purposes.** The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Idaho Uniform Partnership Act nor the Idaho Uniform Limited Partnership Act. The Members do not intend to be partners one to another, partners as to any third party, or joint venturers. To the extent any Member, by work or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.
- 14.2. Rights of Creditors and Third Parties under Agreement.** The Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under the Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.
- 14.3. Applicable Law.** This Agreement and the obligations of the Members hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Idaho.
- 14.4. Waiver of Action for Partition.** Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to Company Property.
- 14.5. Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.
- 14.6. Effect of Inconsistencies with the Act.** It is the express intention of the Members and the Company that this Agreement shall be the sole source of agreement among them, and, except to the extent that a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. In

the event that the Act is subsequently amended or interpreted in such a way to make valid any provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members and the Company hereby agree that the duties and obligations imposed on the Members as such shall be those set forth in this Agreement, which is intended to govern the relationship among the Company and the Members, notwithstanding any provision of the Act or common law to the contrary.

- 14.7. Nonwaiver.** No consent or waiver, express or implied, by any Member hereto of any breach or default by another Member in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other Member of the same or any other obligations hereunder. Failure on the part of any Member to complain of any act or failure to act of another Member or to declare a default, irrespective of how long such failure continues, shall not constitute a waiver by such Member of its rights hereunder.
- 14.8. Binding Effect.** Subject to the restrictions on transfers and encumbrances set forth herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective heirs, executors, legal representatives, successors and assigns.
- 14.9. Counterparts.** This Agreement may be signed in one or more counterparts, which, taken together, shall constitute the original.
- 14.10. Invalidity.** If any provision of this Agreement shall be held unlawful, invalid or unenforceable, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.
- 14.11. Notices.** All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person; or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the Member at his or her current address maintained in the records of the Company; or (iii) sent by facsimile to the Member's facsimile number maintained in the records of the Company with the original to follow by mail in the manner described above. Any Member may change its respective address or facsimile number for purposes of receipt of any such notice or communication by giving written notice of such change to the Company in the manner provided above, such change to be effective upon receipt by the Company. All notices sent pursuant to the terms of this Section shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.
- 14.12. Gender.** This Agreement shall be read with all changes in number and gender required by the context.

- 14.13. Attorneys' Fees.** In the event of litigation among the Members arising out of this Agreement, the losing party shall pay to the prevailing party such sum as the court may adjudge reasonable for costs and attorneys' fees incurred in connection therewith, including those incurred in any appeals.
- 14.14. Specific Performance.** Except as otherwise specifically provided herein, all of the obligations of the Members shall be enforceable by an action for specific performance.
- 14.15. Complete Agreement.** This Agreement contains the entire agreement of the Members relative to the formation of the Company. No variations, modifications, or changes herein or hereof shall be binding upon any Member unless set forth in a document duly executed by or on behalf of such Member.
- 14.16. Consent of Spouses.** It is expressly understood and agreed that, to the extent any Ownership Interest is held by an Member as community property under the laws of the State of Idaho or any other jurisdiction, either both spouses shall execute this Agreement as the Member or the spouse of such Member shall execute a consent that he or she and his or her community property interest in such Ownership Interest shall be bound by all of the terms and conditions of this Agreement.
- 14.17. Power of Attorney.** Each Member hereby irrevocably makes, constitutes and appoints the Managers, with full power of substitution, so long as such Managers are acting in such a capacity (and any successor Manager thereof so long as such Manager is acting in such capacity), its true and lawful attorney, in such Member's name, place and stead (it is expressly understood and intended that the grant of such power of attorney is coupled with an interest) to make, execute, sign, acknowledge, swear and file with respect to the Company:
- (a) all amendments of this Agreement adopted in accordance with the terms hereof;
 - (b) all documents which the Managers deem necessary or desirable to effect the dissolution and termination of the Company;
 - (c) all such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the Company; and
 - (d) all instruments, documents and certificates which the Managers deem necessary or desirable in connection with a Reorganization which has been authorized in accordance with the terms of this Agreement.

This power of attorney shall not be affected by and shall survive the bankruptcy, insolvency, death, incompetency, or dissolution of a Member and shall survive the delivery of any assignment by the Member of the whole or any portion of its Ownership Interest. Each Member hereby releases each Manager from any liability or claim in connection with the exercise of the authority granted pursuant to this power of attorney, and in connection with any other action taken by such Manager pursuant to which such Manager purports to act as the attorney-in-fact for one or more Members, if the Manager believed in good faith that such action taken was consistent with the authority granted to it pursuant to this Section 13.17.