

**OPERATING AGREEMENT  
OF  
AGUA SUCIA, LLC**

**THIS OPERATING AGREEMENT** of Agua Sucia, LLC (the "Company") is executed April 4, 2009 by the Company and Denis Schoenhofer and Louis G Edgett (the "Members").

**RECITALS**

**WHEREAS**, Denis Schoenhofer and Louis Edgett join together to enter into this Agreement for the purposes of providing the rights, obligations and restrictions contained in this Agreement and otherwise to govern the operations and management of the Company.

**NOW, THEREFORE**, in consideration of the mutual promises made in this Agreement, the Members hereby agree as follows:

**ARTICLE I  
General Provisions**

**Section 1.1. Name.** The name of the Company is Agua Sucia, LLC

**Section 1.2. Principal Place of Business, Registered Office and Agent.**

**a. Initial Principal and Registered Office and Registered Agent.** The Principal place of business of the Company will be 1009 West Broadway, Hobbs, New Mexico 88241. The Company's registered office shall be 1009 West Broadway, Hobbs, New Mexico 88241, and the Company's registered agent shall be Louis G Edgett; JULIE SCHOENHOFFER

**b. Changes.** The Members, by a Majority Vote shall appoint a new registered Agent and change the registered office, if appropriate, if: (i) the then current registered agent resigns or (ii) they determine to change the registered agent or registered office.

**Section 1.3. Purpose.** The purposes of the Company are to engage in water disposal and to generally engage in and pursue any and all business activities and investment opportunities that the Members may from time to time deem to be in the best interest of the Company. The Company shall have the power to do any and all acts and things necessary, advisable, incidental to or convenient for the furtherance and accomplishment of such purposes and for the protection and benefit of its assets, so long as such activities may be lawfully carried on or performed by a limited liability company under the LLCL. In addition, the Company is

organized for the purposes of conducting any and all lawful activities for which a limited liability company may be formed under the laws of the State of New Mexico.

**Section 1.4. Pledge or Encumber.** No Member or Assignee may, under any circumstances, pledge or otherwise encumber his or her Units unless by a Majority Vote, the Company's Members deem it necessary to borrow money for Company purposes and the lending institution requires the individual Members or Assignees to pledge their Units as a condition of granting the Company said loan.

## **ARTICLE II**

### **Capital Contributions**

**Section 2.1. Initial Contribution and Units.** The Members have made contributions as set forth on Exhibit C attached to this Agreement and incorporated herein by reference as the Members' initial capital contribution, which capital contributions shall initially entitle the Members to the number of Units set forth on Exhibit C.

**Section 2.2. Additional Capital Contributions.** Members shall not be required to make any additional capital contributions or loans to the Company. Members may, however, make additional contributions to the Company, provided that such additional capital contributions are made pro rata by all of the Members or, alternatively, that all Members consent in writing to any non-pro rata contributions. In the event of a non-pro rata contribution, the Units of the Members shall be adjusted accordingly.

**Section 2.3. Return of Capital.** No Member or Assignee is entitled to withdraw or resign from the Company, to receive a return of any part of the Member's capital contribution, to receive any distribution, or to receive a repayment of any balance in the Member's or Assignee's Capital Account, as defined in Section 3.1 below, except as expressly provided in this Agreement. No Member or Assignee will be paid interest on any capital contribution or on the Member's or Assignee's Capital Account.

**Section 2.4. Loans to Company.** In the event the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties, additional capital contributions, or selling its assets in order to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members; provided that said Member(s) or Assignee(s) agree to loan said funds to the Company and that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its assets to secure such borrowing. No Member or Assignee is obligated to loan funds to the Company.

**Section 2.5. Certificates.** The Company may issue certificates evidencing the Units owned by each Member and Assignee. In the event such certificates are issued, they shall bear the following legend:

The LLC ownership Units represented by this certificate have not been registered under any securities laws and the transferability of such Units is restricted. Such

Units may not be sold, assigned or transferred, nor will any Assignee, vendee, Transferee, or endorsee thereof be recognized as having acquired any such Units by the issuer for any purpose, unless (a) a registration statement under the Securities Act of 1933, as amended, with respect to such Units shall then be in effect and such transfer has been qualified under all applicable state securities laws, or (b) the availability of an exemption from such registration and qualification shall be established to the satisfaction of counsel to the Company.

"THIS CERTIFICATE AND THE UNITS REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, VOLUNTARILY OR INVOLUNTARILY PLEDGED, MADE THE SUBJECT OF ANY SECURITY INTEREST OR AGREEMENT, OR IN ANY MANNER DISPOSED OF EXCEPT IN CONFORMITY WITH THE TERMS OF THE MEMBERS' AGREEMENT DATED AS OF THE 4 DAY OF MARCH, 2009, BETWEEN AND AMONG THE COMPANY AND ALL OF ITS THEN MEMBERS, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE COMPANY."

ARZIL  
AS

**Section 2.6. Issuance of Additional Units.** The Company, by a Majority Vote, shall determine when and for what consideration the Company will issue additional Units. No Member or Assignee has the right to obtain additional Units (unless a Member makes additional capital contributions at the Company's request), and each Member and Assignee specifically waives any preemptive rights.

### ARTICLE III Capital Accounts

**Section 3.1. Capital Accounts.** There shall be established and maintained with respect to each Member and Assignee a capital account ("Capital Account") in accordance with the following provisions:

**a. Credits.** Each Member's or Assignee's Capital Account shall be increased by (i) the fair market value of the Member's or Assignee's capital contributions, (ii) the Member's or Assignee's distributive share of profits pursuant to Article IV, below, and (iii) the amount of any debt of the Company that is assumed by the Member or Assignee or that is secured by any property distributed to the Member or Assignee.

**b. Debits.** Each Member's or Assignee's Capital Account shall be decreased by (i) the amount of cash and the fair market value of any property distributed to the Member or Assignee, (ii) the Member's or Assignee's distributive share of losses pursuant to Article V, below, and (iii) the amount of any debt of the Member or Assignee that is assumed by the Company or secured by any property contributed by the Member or Assignee to the Company.

**c. Transfers.** In the event any Member or Assignee assigns all or any part of the Member's or Assignee's Units in accordance with the terms of this Agreement and the Buy-Sell Agreement among the Company and the Members, the Transferee shall succeed to the

Capital Account of the Transferor to the extent the Capital Account relates to the transferred Units.

d. **Non-pro rata Contribution or Distribution.** If any Member or Assignee makes a non-pro rata capital contribution to the Company or the Company makes a non-pro rata distribution to any Member or Assignee, the Capital Account of each Member or Assignee shall be adjusted to reflect the then fair market value of the assets held by the Company immediately after the capital contribution or distribution, as applicable.

**Section 3.2. Interpretation.** The provisions of Section 3.1 above and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with section 1.704-1(b) of the Treasury Regulations, which Regulations are incorporated in this Agreement by reference, and shall be interpreted and applied in a manner consistent with those Regulations.

#### ARTICLE IV Distributions

**Section 4.1. Distributions of Cash.** Except as otherwise expressly provided herein to the contrary, distributions of cash shall be made by the Company to the Members and Assignees in proportion to their respective ownership in the Company, as shown by the number of Units they own from time to time as determined by the Company, and shall cause the Company to distribute its net cash flow (defined below) on this basis to the Members annually. For this purpose, "net cash flow" is the Company's total net income, computed for federal income tax purposes, increased by any depreciation or depletion deductions taken into account in computing taxable income and any nontaxable income or receipts (other than capital contributions and the proceeds of any Company borrowing), less such amounts as the Company, by a Majority Vote, deems appropriate for the following:

- a. the Company's needs in its business and sums necessary to operate its business until income from future operations is available;
- b. the amount of its debts;
- c. the necessity or advisability of paying or reducing its debts;
- d. the necessity or advisability of preserving its capital as a fund to protect its creditors;
- e. the Company's current and future needs for operating capital;
- f. prudent reserves for future operating capital;
- g. current investment opportunities; and

- h. prudent reserves for future investment opportunities.

**Section 4.2. Distributions in Kind.** No Member or Assignee may demand to receive a distribution from the Company in any form other than cash, regardless of the nature of the Member's or Assignee's contribution. Distributions in kind of Company property, in liquidation or otherwise, shall be made only at the direction of the Company by a Majority Vote and only at a value established by the Company by a Majority Vote. Prior to any such distribution in kind, the difference between such established value and the book value of the property to be distributed shall be credited or charged, as is appropriate, to the Members' or Assignee's Capital Accounts in proportion to their Capital Accounts. Upon the distribution of such property, such established value shall be charged to the Capital Accounts of the Members or Assignees receiving such distribution.

**Section 4.3. Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Company or any Member or Assignee shall be treated as amounts distributed to the Members or Assignees pursuant to this Section for all purposes under this Agreement. The Company is authorized to withhold from distributions, or with respect to allocations, to the Members and Assignees and to pay over to any federal, state, or local government any amounts required to be so withheld pursuant to the Code or any provision of any other federal, state, or local law and shall allocate any such amounts to the Members or Assignees with respect to which such amount was withheld.

## ARTICLE V

### Allocation of Profits, Losses, and Tax Items

**Section 5.1. Allocation of Profits, Losses, and Tax Items.** Profits, losses, and distributive share of tax items shall be allocated to the Members and Assignees pro rata in proportion to the number of Units held during the period over which such profits, losses, and items were accrued.

**Section 5.2. Regulatory Allocations.** This Agreement shall be deemed to contain provisions relating to "minimum gain chargeback," "nonrecourse deductions," "qualified income offset," "gross income allocations," and any other provision to be contained in this Agreement pursuant to the Treasury Regulations promulgated under section 704(b) of the Code (the "Regulatory Allocations") other than any requirement that a Member be required to contribute to the Company an amount equal to any deficit in the Member's Capital Account. No allocation of loss shall be made to a Member if the allocation would result in a negative balance in the Member's Capital Account in excess of: (a) the amount the Member has loaned to the Company or (b) the amount of the Company's debt that the Member has guaranteed. In the event there is a negative balance in the Member's Capital Account in excess of the amount(s) set forth above, the Member shall be allocated income and gain in the amount of that excess as quickly as possible. Any loss that cannot be allocated to a Member pursuant to the restrictions contained in this paragraph shall be allocated to the other Members. The Regulatory Allocations are intended to comply with the Treasury Regulations promulgated under section 704(b) of the Code. The other

provisions of this Article notwithstanding, the Regulatory Allocations shall be taken into account in allocating other profits, losses, and items of income, gain, and deduction among the Members so that, to the extent possible, the net amount of the allocations of other profits, losses, and other items and the Regulatory Allocations to each Member shall equal the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

### **Section 5.3. Other Allocation Rules.**

a. **Transfer of Units.** If a Member or Assignee transfers all or any portion of the Member's or Assignee's Units pursuant to this Agreement during any Fiscal Period, the profits (or losses) allocated to the Members and Assignees for each such Fiscal Period shall be allocated among the Members and Assignees in proportion to their respective Units from time to time during the Fiscal Period, in accordance with section 706 of the Code and the Treasury Regulations under that section, using any convention permitted by law and selected by the Company.

b. **Determination of Allocable Amounts.** The profits, losses, or any other items allocable to any Fiscal Period shall be determined on a daily, monthly, or other basis, as determined by the Company, using any permissible method under section 706 of the Code and the Treasury Regulations under that section.

### **Section 5.4. Tax Allocations**

a. **Allocation With Respect to Property.** If, on the formation of the Company, or if at any time during the term of the Company, any Member or Assignee contributes to the Company property with an adjusted basis to the contributing Member or Assignee which is more or less than the agreed fair market value and which is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' or Assignees' respective Capital Accounts) shall be shared among the Members and Assignees so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Internal Revenue Code of 1986, as amended (the "Code").

b. **Elections.** Any elections or other decisions relating to allocations shall be made by the Company in any manner that reasonably reflects the purpose and intent of this Agreement.

c. **Imputed Interest.** To the extent the Company has interest income or deductions with respect to any obligation of or to a Member pursuant to section 483, sections 1271-1288, or section 7872 of the Code, the interest income or deductions shall be specially allocated to the Member to whom the obligation relates.

**ARTICLE VI**  
**Management of the Company**

**Section 6.1. Authority and Powers of the Members.**

a. **Authority and Powers in General.** Except to the extent otherwise provided in this Agreement, the management of the Company shall be vested in the Members in proportion to their Capital Contributions; provided however, no individual Member shall have the power to bind the Company except as provided herein.

b. **Certain Authority and Powers.** Louis G. Edgett shall have the power and authority to perform acts customary to the operation of a business engaged in the water disposal business; handle the day-to-day operations of the Company, authorize the execution of all documents, instruments, and agreements reasonably deemed by Edgett to be needed for the performance of his duties and the exercise of his powers under this Agreement; insure the Company's activities and property; do all other acts as Edgett determines are necessary or advisable to carry out the business of the Company; provided, however, Edgett shall not have the authority to bind the company to any expenditure in excess of ~~\$50,000~~ <sup>\$100,000</sup>. Provided further, that it shall require a vote of Fifty-one Percent (51%) of the Members (a "Majority Vote") to:

i. Establish reserves and thereafter maintain such reserves in such amounts as the Members deem appropriate;

ii. Sell, and lease all or any part of the Company's property, including any water wells or mineral interests or equipment owned by the Company;

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 the Members determine, and, in connection with such loans, if security is required for the loans, mortgage or grant a security interest, in any portion of the Company's real estate or other assets;

iv. Bring, defend, settle, compromise, or otherwise participate in any and all actions, proceedings, or investigations, whether at law, in equity, or before any governmental authority or agency, and whether brought against the Company or the Members, related to the business of the Company or the enforcement or protection of interests in or of the Company;

v. Enter into agreements with Persons to list any property for sale, for property improvement or development requiring expenditures in excess of that authorized to Edgett and all other contracts and agreements that require expenditures in excess of that authorized to Edgett;

- vi. Pay out of the Company's funds all fees and expenses incurred in the operation of the Company in excess of that authorized to Edgett; provided, however, Edgett is authorized to pay up to \$8,500 per month in salaries for employees of the Company;
- vii. Appoint a registered agent or change the registered office pursuant to Section 1.2 above;
- viii. Retain attorneys, accountants, and other professionals;
- ix. Cause this Agreement to be amended or to admit as Members the purchasers of any Units;
- x. Cause the Company to merge, consolidate, or enter into a similar transaction with another Person;
- xi. Determine and distribute Net Profits;
- xii. Amend the Operating Agreement;
- xiii. Do any act that is in contravention of this Agreement or that would make it impossible to carry on the activities of the Company;
- xiv. Enter into a merger transaction involving the Company in which the Members do not hold a majority of the economic and voting interests of the surviving entity; or
- xv. Amend the Articles of Organization.

**Section 6.2. Events Triggering Vacancy in Edgett Position.** Edgett shall cease to exercise the power provided hereunder upon the earliest to occur of any of the following: (i) his voluntary resignation, which shall be effective upon delivery of a written notice from Edgett to the Company unless the notice specifies a later effective date; (ii) Edgett's removal by a Majority Vote; or (iii) Edgett's death, incapacity, or inability to act hereunder for any reason.

**6.3. Actions By the Members.** Any actions of the Members shall be taken in the manner set forth below.

- a. **Manner of Acting.** Unless the Members agree otherwise, and except as set out in Section 6.1 hereof, all actions taken by the Members shall be taken by majority vote.
- b. **Records.** The Company shall keep written records of all actions taken by the Members.

c. **Meetings.** Meetings of the Members may be called by any Member. Meetings not held by electronic means shall be held at the Company's principal place of business or at such other place as may be designated by the Member calling the meeting.

d. **Notice.** No matter shall be voted upon at a meeting of the Members unless at least 24 hours notice of the matter to be voted on is given or such notice is waived by any Member not receiving it. A Member shall be deemed to have waived notice of any matter acted upon at any meeting that the Member attends or in which the Member participates unless at the beginning of the meeting, or promptly upon commencement of the Member's participation in the meeting, the Member objects to the consideration of the matter because of lack of proper notice. Written records kept pursuant to Section 6.3(b) above, of a meeting at which a Member was present, or in which the Member participated, shall be prima facie evidence that the Member was duly notified of the matters voted upon at the meeting or that the Member waived the notice requirement unless the Member's objection as required by this Section 6.3(d) is noted in the records. No prior notice shall be required for any action taken by written consent of the Members.

e. **Quorum.** At any meeting of the Members, Members holding Units equal to or greater than a Majority Vote shall constitute a quorum of the Members.

f. **Voting.** Each Unit shall be entitled to one vote. Each Member holding Units shall vote all of the Units held by that Member in the same manner as to any given matter submitted for a vote.

g. **Proxies.** At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by the Member's duly authorized attorney-in-fact. Proxies shall be filed with the Company before or at the time of the meeting. No proxies shall be valid after six months from the date of execution, unless expressly provided otherwise in the proxy.

h. **Expenses.** All reasonable and customary out-of-pocket expenses incurred by a Member in connection with the Company's business shall be paid by the Company or be reimbursed to the Member by the Company.

i. **Compensation.** No Member shall receive any compensation for services rendered to the Company; provided, however, that Edgett shall receive a salary for his management work, but said salary shall be included in the \$8,500 monthly expenditure referenced above.

**Section 6.4 Officers.** The Members may, from time to time, create one or more officer positions (for example, president, secretary, treasurer) and appoint someone to hold each of the officer positions so created. Any officers so appointed shall have such duties as may be delegated to them by the Members from time to time. Any officers so appointed shall serve for a term as determined by the Members; if no term is specified, they shall hold office until they are removed by the Members or they resign, or until their successor is appointed.

**Section 6.5. Powers of Members.** Except in any situation in which powers are exclusively reserved to the Members in nonwaivable provisions of the LLCL (in the sense that the arrangement may not be changed pursuant to an operating agreement of a limited liability company), or as expressly provided in this Agreement, individual Members shall not have the power to manage or control the affairs of the Company or to bind or obligate the Company in any manner.

**Section 6.6. Other Business Activities.** The Members shall devote to the Company such time as each individual deems necessary for the proper performance of the individual's duties under this Agreement, but they shall not be required to devote full time or any specific amount of time to the performance of those duties. The Members and their respective officers, board of directors, managers, shareholders, partners, and affiliates, may engage independently or with others in other business ventures of every nature and description. Nothing in this Agreement shall be deemed to prohibit any Members or their respective officers, board of directors, managers, shareholders, partners, and affiliates, from dealing or otherwise engaging in business with Persons transacting business with the Company. Neither the Company nor any Member shall have any right by virtue of this Agreement, or the relationship created by this Agreement, in or to such other ventures or activities, or to the income or proceeds derived from such other ventures or activities, and the pursuit of such ventures shall not be deemed wrongful or improper.

**Section 6.7. Indemnification of Members.**

a. **Liability of Members.** No Member 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 the Person serving as a Member, that the Person 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 the Person had no reasonable cause to believe was unlawful. In addition, no Member 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 advice of counsel for the Company or upon statements made or information furnished by any Member or employees of the Company that the Member had reasonable grounds to believe to be true. The foregoing shall not be exclusive of other rights and defenses to which the Member may be entitled as a matter of law.

b. **Successful Defense.** The Company shall indemnify a Person serving as a Member to the extent the Person has been successful on the merits or otherwise in the defense of a claim, action, dispute, or issue such that the Person has no liability for all Expenses incurred in connection with the claim, action, dispute, or issue, if the Person was a party due to the Person's role as a Member. Indemnification under this subsection (b) shall be made within 10 days of receipt by the Company of a written demand for indemnification.

c. **Other Cases.** In cases not included under subsection (b), above, the Company shall indemnify the Member against Liability and Expenses incurred by the Person in connection with a claim, action, dispute, or issue, if the Person was a party due to the Person's role as a Member, unless it shall have been concluded that the Person breached or failed to

perform a duty owed to the Company (using the procedure set out in Section 6.7(d) below), which breach or failure constitutes:

- i. A willful failure to deal fairly with the Company in connection with a matter in which the person has a material conflict of interest;
- ii. A violation of criminal law, unless the Person had reasonable cause to believe the Person's conduct was lawful or no reasonable cause to believe the conduct was unlawful;
- iii. A transaction from which the Person derived an improper personal profit; or
- iv. Willful misconduct.

Indemnification required under this subsection (c) shall be made upon the last to occur of (i) 30 days from the Company's receipt of a written demand for indemnification or (ii) the determination set forth in Section 6.7(d) below.

**d. Means of Determining Whether Indemnification Is Required.** Unless otherwise provided by a written agreement between the Member seeking indemnification and the Company, the right to indemnification under Section 6.7(c) above shall be determined by the Members, excluding the Member seeking indemnification. If the Members determine that a Member seeking indemnification under Section 6.7(c) above is not entitled to indemnification, and the Member does not agree with the determination, the matter shall be determined by arbitration pursuant to Section 11.7 below.

**e. Effect of Termination of Proceeding.** The termination of a claim, action, dispute, or issue by judgment, order, settlement, or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the Member is not required under this Section 6.7.

**f. Request for Indemnification and Assignment of Claims Required.** To seek indemnification, the Member shall make a written request to the Company. As a further precondition to any right to receive indemnification, the writing shall contain a declaration that the Company shall have the right to exercise all rights and remedies available to the Member against any other Person, arising out of, or related to, the claim, action, dispute, or issue that resulted in the Liability and Expenses for which the Member seeks indemnification, and that the Member is deemed to have assigned to the Company all such rights and remedies.

**g. Allowance of Expenses as Incurred.** Upon written request by the Member, the Company shall pay or reimburse the Person's reasonable expenses incurred as a party to a claim, action, dispute, or issue if the Person provides the Company with all of the following:

i. A written affirmation of the Person's good faith belief that the Person has not breached or failed to perform the Person's duties to the Company; and

ii. A written undertaking, executed personally or on the Person's behalf, to repay the allowance without interest to the extent that it is ultimately determined in accordance with Section 6.7(d) above, that indemnification under this Section 6.7 is prohibited.

The undertaking under this subsection (g) shall be accepted without reference to the Person's ability to repay the allowance. The undertaking shall be unsecured.

h. **Insurance.** The Company may purchase and maintain insurance on behalf of any Person who is a Member against any Liability asserted against or incurred by the Person in any such capacity or arising out of the Person's status as such, regardless of whether the Company is required or authorized to indemnify or allow Expenses to the Person under this Section 6.7.

i. **Severability.** If this Section 6.7 or any portion of this Section 6.7 is invalidated on any ground by any court of competent jurisdiction, the Company shall indemnify the Member as to Liabilities and Expenses, paid in settlement with respect to any claim, action, dispute, or issue to the full extent permitted by any applicable portion of this Section 6.7 that is not invalidated or by applicable law.

j. **Continuation of Indemnification.** The indemnification provided by this Section 6.7 shall be the exclusive indemnification available from the Company to its Members, and shall continue as to a Person who has ceased to be a Member, and shall inure to the benefit of the heirs, successors, executors, and administrators of any such Person.

## ARTICLE VII Transfer of Units

**Section 7.1. General Restrictions on Transfers.** Any Transfer, attempted Transfer, or purported Transfer in violation of this Agreement's terms shall be null and void.

**Section 7.2. Permitted Transfers.** At such time as the applicable provisions of this Section 7.2 are complied with, the Person receiving such Units shall be automatically admitted as a Member of the Company.

a. **Signature.** In order for a transfer of Units to a Person under this Section 7.2 to be effective, said Person must agree in writing to be bound by the terms of this Agreement, as amended or restated, to the same extent as if the Person had been an original party to the Agreement as a Member. The form of said agreement shall be determined by the Members. The spouse of the Person receiving such Units must sign a spousal consent and acknowledgment if requested by the Members.

b. **Approval.** The Company must approve of the trustee, if the Transfer is to a trust, in writing before the Transfer.

c. **Document.** The Person receiving such Units must take all actions and execute all instruments required by the Company in order for the Transfer to comply with any applicable federal or state laws and regulations or with this Agreement relating to the Transfer of Units.

**Section 7.3. 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 of the obligations under this Article VII, and the parties agree that this Article VII shall be specifically enforced. Therefore, if any Member or Transferee institutes any action or proceeding to enforce the provisions of this Article VII, 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. The Person shall not urge 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.

#### **ARTICLE VIII Absolute Restrictions on Transfers**

No Transfer of any Units may be made if, in the opinion of the Company's legal counsel, the transfer or assignment will violate any applicable federal or state securities laws. Before making any Transfer of any Units, the Transferor must notify the Company in writing, and the Members shall, if they believe there is a material risk of violating this Article VIII, obtain an opinion from the Company's legal counsel confirming whether the proposed Transfer will cause such a violation of securities laws. Legal fees shall be the Transferor's responsibility.

#### **ARTICLE IX Withdrawal, Dissolution, and Liquidation**

**Section 9.1. Limitation on Certain Withdrawal Rights; Effect of Withdrawal or Resignation.**

a. No Member or Assignee may withdraw from the Company prior to the time for the dissolution and commencement of winding up of the Company without the written consent of the Members owning a majority of the issued and outstanding Units.

b. The resignation or withdrawal of a Member will not entitle a Member to a distribution in redemption of the Member's Units.

**Section 9.2. Events Causing Dissolution.** The Company shall be dissolved: (a) upon the approval of dissolution by a Majority Vote, or (b) upon the entry of a decree of judicial

dissolution pursuant to the LLCL. The Company shall not be dissolved upon the occurrence of any other event, including the resignation or withdrawal of a Member.

**Section 9.3. Filing and Notice.** Upon dissolution of the Company under Section 9.2 above, the Members or the Liquidating Trustee (as set forth in Section 9.5(a) below) shall file Articles of Dissolution in the form described the LLCL. In addition, the Members or the Liquidating Trustee shall publish notice of the Company's dissolution as provided for in the LLCL.

**Section 9.4. Termination.** Dissolution of the Company shall be effective on the date on which the event under Section 9.2 above occurs, but the Company shall not terminate until Articles of Dissolution have been duly filed under the LLCL, the Company's affairs have been wound up, and the Company's assets have been distributed as provided in Section 9.5 below. Notwithstanding the dissolution of the Company, prior to the liquidation and termination of the Company, the business of the Company and the affairs of its Members, as such, shall continue to be governed by this Agreement.

**Section 9.5. Distribution of Assets Upon Termination.**

a. Upon the dissolution of the Company pursuant to Section 9.2 above, the Members or such person approved by the Members as the liquidating trustee of the Company (the "Liquidating Trustee") shall proceed diligently to wind up the Company's affairs and distribute its assets in accordance with the provisions of Section 9.5(d) below.

b. All salable assets of the Company may be sold in connection with any dissolution at public or private sale or at such price and upon such terms as the Members or Liquidating Trustee, as applicable, may deem advisable. A Member, Assignee, or any entity in which a Member or Assignee is in any way interested may purchase assets at the sale. The Members or Liquidating Trustee, as applicable, in that Person's sole and absolute discretion, may in accordance with Section 9.5(d) below, distribute the Company's assets in kind based on their fair market value.

c. The Company's profits and losses shall be determined as of the end of the period of winding up in accordance with the provisions of this Agreement and shall be credited or charged to the Members' and Assignees' respective Capital Accounts.

d. Upon the dissolution and winding up of the Company, the Company's assets shall be distributed in the following order of priority to the extent available:

i. First, to creditors of the Company, including, to the extent permitted by law, Members or former Members who are creditors, in satisfaction of any debts and liabilities of the Company, whether by payment or by the establishment of any reserve that the Members or Liquidating Trustee, as applicable, deems, in that Person's sole discretion, necessary (with the balance remaining in any such reserve, after the expiration of such period of time as the Members or Liquidating Trustee, as applicable, deems advisable, and after payment

of any such liabilities and obligations, to be distributed in the manner set forth in this Section 9.5(d));

ii. Second, to Members in satisfaction of liabilities for distributions under sections 183.0601, 183.0603, and 183.0604 of the LLCL; and

iii. Third, to Members and Assignees in payment of their respective Capital Accounts; and then

iv. Fourth, to the Members and Assignees in proportion to their respective Units in the Company.

All distributions pursuant to this Section 9.5(d) shall be made no later than the latter of (i) the end of the Fiscal Year during which the liquidation of the Company occurs or (ii) 90 days after the date of the liquidation.

**Section 9.6. Limitation on Liability.** Each Member shall look solely to the Company's assets for all distributions from the Company and the return of the Member's Capital Contribution to the Company and shall have no recourse (upon dissolution or otherwise) against any Member, or any of their respective affiliates.

**Section 9.7 Liability for Indebtedness Secured by Assets Distributed in Kind.** If the Company makes distributions in kind of property that secures indebtedness, each Member or Assignee receiving the distribution of property subject to the indebtedness will be severally liable therefor. They will be liable for a share of the indebtedness proportionate to the share of the property distributed to each Member or Assignee. The several liability will be among each Member or Assignee receiving said property but not for the benefit of others. No Member or Assignee will, however, be deemed to have assumed any liability on any indebtedness secured by property distributed to any Member or Assignee for which the Member or Assignee is not liable under the terms of the instrument creating the indebtedness. Additionally, each Member's or Assignee's liability to other Members and Assignees for indebtedness secured by property distributed to the Member or Assignee will be limited to the value of the Member's or Assignee's interest in the property. Indebtedness secured by property distributed to Members or Assignees in kind need not be discharged from the Company's liquidation proceeds.

## ARTICLE X Books and Records

**Section 10.1. 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 Members and shall be available for inspection and copying by any Member or any Member's duly authorized representative(s), at the Member's own expense, during normal business hours.

**Section 10.2. Company Funds.** The Company's funds may be deposited in such banking institutions as the Members determine, and withdrawals shall be made only in the regular course of the Company's business on such signature or signatures as the Members determine. All deposits and other funds not needed in the operation of the business may be invested in certificates of deposit, short-term money market instruments, money market funds, government securities, or similar investments as the Members determine.

**Section 10.3. Availability of Information.** The Company shall keep at its principal office and place of business, and each Member shall have the right to inspect and copy, all of the following: (a) a current list of the full name and last-known home or business address of each Member or former Member set forth in alphabetical order, the date on which each Member or former Member became a Member, and, if applicable, the date on which any former Member ceased to be a Member; (b) a copy of the Articles of Organization and all amendments to the Articles; (c) copies of the Company's federal, state, and local income tax returns and financial statements, if any, for its four most recent years; and (d) copies of this Agreement and any effective written amendments to this Agreement. The Members shall make a good faith effort to update the information contained on Exhibit C hereto so that it accurately identifies the ownership of the Company from time to time.

**Section 10.4. Tax Returns.** The Members shall cause to be prepared and shall file on or before the due date (or any extension of the due date) any federal, state, or local tax returns required to be filed by the Company. The Members shall cause the Company to pay any taxes payable by the Company out of Company funds. Louis G. Edgett, or such other Person as the Members may designate from time to time, shall serve as the Company's "tax matters partner" as defined for purposes of the Code.

**Section 10.5. Reports.** Within 75 days after the end of each Fiscal Year, the Members shall send to each Person who was a Member or Assignee at any time during the Fiscal Year then ended (a) a balance sheet as of the end of the Fiscal Year, (b) statements of income, Members' and Assignees' equity, changes in financial position, and a cash flow statement for the Fiscal Year then ended, and (c) such tax information as is necessary or appropriate for the preparation by the Members and Assignees of their individual federal and state income tax returns.

## **ARTICLE XI**

### **Miscellaneous**

**Section 10.11. Amendments to Agreement.** No amendment or modification of this Agreement shall be valid unless made in writing and approved by a Majority Vote.

**Section 11.2. Integration.** This Agreement constitutes the entire and complete agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or understandings between the parties to this Agreement regarding the subject matter of this Agreement.

**Section 11.4. Binding Provisions.** The agreements and covenants contained in this Agreement inure solely to the benefit of the parties to this Agreement. The agreements and covenants contained in this Agreement shall be binding on the heirs, executors, administrators, personal representatives, successors, and assigns of the respective parties to this Agreement.

**Section 11.5. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without giving effect to the principles of conflicts of laws.

**Section 11.6. Separability of Provisions.** Each provision of this Agreement shall be considered separable, and if for any reason any provision or provisions of this Agreement are determined to be invalid or contrary to any existing or future law, the invalidity shall not affect or impair the operation of those portions of this Agreement that are valid.

**Section 11.7. Dispute Resolution.**

a. **Disputes.** Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach and including a disagreement by the members such that no Majority Vote can be accomplished, shall be settled by arbitration in New Mexico, by a single arbitrator mutually agreed to by the disputing parties pursuant to the then existing rules of the American Arbitration Association. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction.

b. **Costs.** In any proceeding with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceeding shall be entitled to recover the costs of the proceeding and reasonable attorney fees from the other party. If the Company is the prevailing party, the Company may offset any amounts owed by the Company to the Person (including distributions pursuant to Article IX of this Agreement) by amounts that Person owes to the Company by reason of this Section 11.7(b).

**Section 11.8. Notice.** Any notice required or permitted to be given pursuant to this Agreement shall be valid only if in writing and shall be deemed to have been duly given (a) when personally delivered, (b) when transmitted by fax if confirmation of receipt is printed out on the sending fax machine, or (c) three days after being mailed by certified mail, postage prepaid, addressed to the Person receiving notice at the address contained in the Company's records, unless that Person otherwise notifies the Company in accordance with this Section 11.8 of a change of address.

**Section 11.9. Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall constitute the same agreement.

**Section 11.10. Fiduciary Duty.** Nothing contained in this Agreement shall be deemed or construed to reduce or eliminate the fiduciary duty that the Members owe to the Members or

Assignees, and the Members shall be personally liable for any breach of this duty. By way of illustration and not limitation, in determining the timing and amounts of distributions, the Members are constrained by the duty to promote the purposes and best interests of the Company.

Section 11.11. Non-Waiver. Any party's failure to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 11.12. Further Action. The parties will execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve this Agreement's purposes.

Section 11.13. Classes. All Units are of the same class as defined in Section 2701 of the Code, and this Agreement shall be interpreted accordingly. No Units shall have any right to distributions of income or capital of this Company that is preferred or senior to the rights of the holder of any other Units.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE EXECUTED THIS Agreement as of the Date set above.

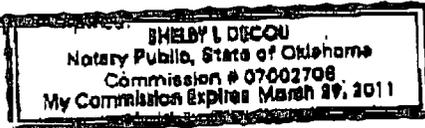
*[Signature]*  
Louis G Edgett, Managing Member

*[Signature]*  
Denis Schoenhofer, Member

STATE OF OKLAHOMA  
COUNTY OF TULSA

BEFORE ME, The undersigned authority, on the \_\_\_ day of April, 2009, personally appeared Denis Schoenhofer, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that this instrument was executed for the purpose and consideration therein expressed.

My Commission Expires:



Notary Public

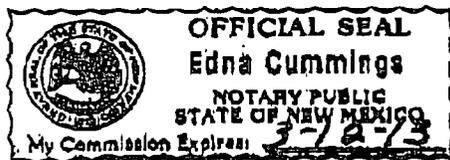
*[Signature]*  
(Name)

STATE OF NEW MEXICO  
COUNTY OF LEA

BEFORE ME, The undersigned authority, on the \_\_\_ day of April, 2009, personally appeared Dena Strickland, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that this instrument was executed for the purpose and consideration therein expressed.

My Commission Expires:

3-12-13



Notary Public

*[Signature]*  
(Name)