STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1333, SUB 5

In the Matter of Application by Currituck Water & Sewer, LLC for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in Currituck County, North Carolina and for Approval of Rates	)	**AFFIDAVIT OF MATTHEW KLEIN**

Affiant, Matthew Klein, who being first duly sworn upon his oath, states as follows:

1. I am over the age of eighteen (18) years, competent to testify, and have personal knowledge of the facts stated in this Affidavit.

2. I am President of Currituck Water & Sewer, LLC ("Currituck"). I have held this role since January 23, 2024.

3. I am the sole authorized officer of Currituck, serving as the President thereof. As President, I have the authority to manage and control the business of Currituck (at the direction of the Currituck Water and Sewer Holdings, LLC ("CWSH") Board of Managers), to bind Currituck to transactions and obligations within the authority provided to me, and to engage appropriate managerial, financial, technical, legal, and other professionals.

4. Currituck is engaged in the business of owning and operating water and wastewater systems and furnishing water and wastewater operation and management services in the state of North Carolina. It holds, or has applied for, all necessary permits, licenses, and approvals to own and operate such systems and provide such services.

5. Upon information and belief, on December 20, 2021, pursuant to a Contribution and Unit Purchase Agreement ("Contribution Agreement"), Currituck Water and Sewer Holdings,

LLC ("CWSH") became the owner of Currituck. *See* **Exhibit 1**. The members of CWSH are Clear Current, LLC ("Clear Current") and Longleaf Utilities, LLC ("Longleaf"). Clear Current held an 80% ownership interest in CWSH until March 27, 2024 when Bernhard Capital Partners ("BCP") made an additional $6 Million equity investment into Currituck for the benefit of Clear Current. Following the investment, Clear Current's ownership interest in CWSH increased to (approximately) 89%, and Longleaf's ownership interest decreased to 11%.

6. Upon information and belief, also on December 20, 2021, CWSH became the sole manager of Currituck, with the full power to conduct Currituck's business, subject to the limitations of Currituck's Operating Agreement and CWSH's own Operating Agreement. *See* **Exhibits 2-3**. In particular, CWSH's Operating Agreement establishes a Board of Managers to manage its affairs (including its management and operation of Currituck). Aside from a few limited matters requiring unanimous consent, any action taken by CWSH that needs approval or consent of the members requires majority approval by the Board of Managers to be effective.

7. Upon information and belief, pursuant to the CWSH Operating Agreement, Longleaf appointed two members to the CWSH Board of Managers – Michael Myers and Kenneth Raber – and Clear Current appointed three members – Jeffrey Yuknis, Thomas Henley, and Julius Bedford. Subsequently, in early 2024, Clear Current replaced Jeffrey Yuknis with Gary Albertson (who now serves as chairman of the CWSH Board of Managers).

8. Upon information and belief, Longleaf and Clear Current share no common owners, officers, or board members, have separate bank accounts, prepare separate financial documents and statements, maintain separate corporate records, and have no rights of control over one another.

9. Upon information and belief, though CWSH is the sole manager of Currituck,

CWSH and Currituck maintain separate and appropriate corporate records, conduct business according to their respective operating agreements, use separate bank accounts, prepare separate financial documents and statements, and have different officers. Further, neither CWSH nor Currituck are undercapitalized, as evidenced in part by the $6 Million equity investment provided by BCP.

10. Upon information and belief, while Currituck entered into an Asset Purchase Agreement for the Carolina Village Water and Wastewater Systems on October 21, 2019, the sale of the Water and Wastewater Assets did not close at the time because numerous prerequisites had to be completed. These included obtaining appropriate approvals from the Commission, obtaining and providing certain easements, executing certain related transaction documents, and obtaining financing. Additionally, upon information and belief, in the purchase documents, Currituck agreed to provide certain plans, designs, and improvements relating to the Carolina Village MHP Water and Wastewater Systems, which took time to develop and which had to be altered in February of 2022 in conjunction with the sale of the Carolina Village MHP to a new owner that had different requirements for the systems.

11. Upon information and belief, Currituck's intent from the outset of the transaction was to refrain from taking ownership of the Carolina Village MHP Water and Wastewater Systems until it had authority, from the Commission, to charge the residents of the Carolina Village MHP for the provision of water and wastewater services. Accordingly, following the execution of the Asset Purchase Agreement on October 21, 2019, Currituck worked diligently to complete all of the requirements necessary for it to seek such approval.

12. Upon information and belief, Currituck was also aware that significant capital improvements to the Carolina Village MHP Water and Wastewater Systems would be needed.

Upon information and belief, it was not, however, the holder of the permit from DEQ and thus was not responsible for repairs, capital investments, or for compliance with DEQ regulations or consent orders applicable to the Carolina Village MHP. Nevertheless, understanding that repairs and improvements were needed, Currituck pursued the financing to fund the improvements.

13. Currituck's efforts included seeking and obtaining financing to purchase the Water and Wastewater Assets and to make necessary repairs and capital improvements. Upon information and belief, Currituck's corporate restructuring in December of 2021, as set forth in the Contribution Agreement, reflected a significant step in that process, as Clear Current brought additional assets and opportunities to Currituck (through CWSH). This included the opportunity to obtain financing for the purchase of the Water and Wastewater Assets via a United States Department of Agriculture ("USDA") Guaranteed Loan through its Business and Industry Program with Stone Bank as the lender (the "Stone Bank Loan").

14. As outlined in more detail in the August 15, 2023 letter filed by Edward Finley in Docket Nos. W-1130, Sub 11 and W-1333, Sub 0, the negotiations concerning the Stone Bank Loan were extensive and complicated, involving multiple parties (as that loan was intended to apply not only to the Water and Wastewater Assets at Carolina Village MHP but also to the purchase and upgrade of facilities at Eagle Creek), substantial efforts to meet USDA lending requirements, and significant efforts to prepare and provide materials relating to the future repair and operation of the systems whose purchase the Stone Bank Loan was to finance. Additionally, because the Stone Bank Loan was the first water and wastewater project Stone Bank had ever considered, the process was further slowed.

15. As the discussions with Stone Bank progressed (in which I began to participate in on or after August 28, 2023), upon information and belief, Currituck was required to close on the

purchase of the Water and Wastewater Assets so that they could be pledged as collateral for the Stone Bank Loan. Upon information and belief, Currituck accordingly closed the sale transaction, and officially took ownership of the Water and Wastewater Assets, on May 15, 2023 (as reflected in the real property records filed with the Currituck County Register of Deeds).

16. Ultimately, Currituck was not able to proceed with the Stone Bank Loan. The terms of the Stone Bank Loan were unfavorable and unacceptable both to Currituck and also to the Public Staff (which was apprised by Currituck about the negotiations). The Public Staff specifically raised the concern that the interest rate for the proposed loan – which was set at 10.25% – was too high to be appropriately recovered through water and wastewater rates.

17. Immediately after the Stone Bank Loan fell through, Currituck sought financing from alternative sources. Eventually it was successful in obtaining financing from BCP. As noted previously, BCP provided a $6 Million equity investment, portions of which Currituck has utilized to finance the upgrade of the Water and Wastewater Assets as well as those associated with Eagle Creek and to make immediate and necessary improvements to both systems.

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I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT.

Dated: 4/25/2024

Matthew Klein

Matthew Klein

W-1333, Sub 5
Klein Exhibit 1
PUBLIC

REDACTED

KLEIN EXHIBIT 1
FILED UNDER SEAL

CURRITUCK WATER AND SEWER, LLC

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this "Agreement") of Currituck Water and Sewer, LLC (the "Company"), is entered into as of this 31st day of May, 2019. Longleaf Utilities, Inc. (the "Member") is the sole member of the Company.

WHEREAS, the Company was formed as a limited liability company on February 6, 2018 by the filing of a Articles of Organization with the Secretary of State of the State of North Carolina pursuant to and in accordance with the North Carolina Limited Liability Company Act (the "Act"); and

WHEREAS, the Member agrees that the membership in and management of the Company shall be governed by the terms set forth herein.

NOW, THEREFORE, the Member agrees as follows:

1. Name. The name of the Company is Currituck Water and Sewer, LLC The Manager may change the name of the Company from time to time as she deems advisable, provided appropriate amendments to this Agreement and the Articles of Organization and necessary filings under the Act are first obtained.

2. Purpose. The purpose of the Company shall be to engage in any lawful business for which limited liability companies may be organized under the Act. The Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

3. Registered Agent; Registered Office. The Company's registered office shall be at the office of its registered agent at 3700 Glenwood Avenue, Suite 240, Raleigh, Wake County, North Carolina 27612. The name of such initial Registered Agent at such address is **Forrest Firm, P.C..** The registered agent and registered office may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of North Carolina pursuant to the Act and the applicable rules promulgated thereunder.

4. Principal Place of Business. The principal place of business of the Company within the state of North Carolina shall be at 4700 Homewood Court, Suite 108, Raleigh, North Carolina 27609. The Company may locate its place(s) of business and registered office at any other place or places as the Managers may from time to time deem necessary or advisable.

5. Term. The Company shall continue in existence until it is dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

6. Members. Longleaf Utilities, Inc. is the sole Member. The Member hereby agrees to contribute to the Company such cash, property or services as determined by the Member. The Company will not issue any certificates to evidence ownership of the membership interests.

7. Management; Powers. The business and affairs of the Company shall be managed by one (1) or more managers (each a "Manager"). The Managers shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including, without limitation, (i) to mortgage, pledge, hypothecate or assign any or all of the assets of the Company; (ii) to

incur debt on behalf of the Company; (iii) to acquire or sell any assets of the Company; (iv) to provide indemnities or guaranties in the name and on behalf of the Company; (v) to enter into, perform and carry out documents, instruments, agreements and contracts of any kind, including, without limitation, contracts with any person or entity affiliated with the Company, necessary to, in connection with, convenient to or incidental to the accomplishment of the purposes of the Company; and (vi) to take any and all other actions they deem necessary, desirable, convenient or incidental for the furtherance of the objects and purposes of the Company, and shall have and may exercise all of the powers and rights conferred upon a limited liability company formed pursuant to the Act. All decisions with respect to management of the business and affairs of the Company shall be made by the action of a combination of Managers constituting more than 50% of the number of Managers then elected and qualified. The Company shall not be required to hold annual meetings of its Members or Managers.

In addition, the Member or Managers may, from time to time, appoint such natural persons and such entities as they deem appropriate to conduct business on behalf of the Company, to approve transactions (including, without limitation, mergers and transfers of assets) on behalf of the Company and to execute documents as an "Authorized Signatory" of the Company until such authorization is revoked by the Members, Managers or another person or entity authorized to effect such revocation.

Initially, the Company shall have one (1) Manager, Longleaf Utilities, Inc., and to it is delegated the full power and authority to conduct the business and affairs of the Company.

8. Dissolution. The Company will be dissolved upon the happening of any of the following events:

(A) All or substantially all of the assets of the Company are sold, exchanged or otherwise transferred (unless the Members have elected to continue the business of the Company);

(B) The Members sign a document stating their election to dissolve the Company;

(C) The entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating the Company to be bankrupt and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal; or

(D) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.

9. Allocation of Profits and Losses. All profit and loss of the Company and all assets and liabilities of the Company shall, *solely* for state and federal tax purposes, be treated as that of the Member, but for no other purpose (including, without limitation, limited liability protection for the Member from the Company's liabilities).

10. Distributions. Distributions of assets shall be made on such basis and at such time as determined by the Members, subject to the limitations of distributions in N.C. Gen. State §57D-4-05.

11. Admission of Additional Members. One or more additional members of the Company may be admitted to the Company with the unanimous consent of the Members. Prior to the admission of any such additional members to the Company, the Member shall amend this Agreement to make such changes as the Member shall determine to reflect the fact that the Company shall have such additional members. Each additional member shall execute and deliver a supplement or counterpart to this Agreement, as necessary.

12. Restrictions on Transfer of a Member's Interest. No Member may sell, transfer, assign, pledge, encumber or otherwise dispose of all or any part of his or her interest in the Company to any individual or entity, other than the other Member hereto, without the written consent of each and every other Member. Any transfer between Members shall be on those terms and conditions agreed upon by the Members at the time of such transfer.

13. Limited Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Members shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company.

14. Governing Law. This Agreement shall be governed by and construed under the laws of the State of North Carolina, all rights and remedies being governed by said laws, without regard to principles of conflict of law.

15. Treatment for Tax Purposes. As long as the Company has only one member, it is the intention of the Company and the Member that the Company be treated as a disregarded entity for federal and all relevant state tax purposes and neither the Company nor the Member shall take any action or make any election which is inconsistent with such tax treatment. All provisions of this Agreement are to be construed so as to preserve the Company's tax status as a disregarded entity.

16. Amendments. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Members.

17. Survival of Rights. Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

18. Severability. If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

19. Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

20. Indemnification. The Company shall indemnify the Members, the Managers and any authorized delegatee(s) in connection with their services to the Company to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by such person upon the approval of the Members, upon the receipt by the Company of a signed statement from such person agreeing to reimburse the Company for such advance in the event it is ultimately determined that such person is not entitled to be indemnified by the Company against such expenses.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement of Currituck Water and Sewer, LLC as of the date first above written.

Longleaf Utilities, Inc.

_____

By: Michael J. Myers, Director
Its: Director

FIRST AMENDMENT TO OPERATING AGREEMENT OF CURRITUCK WATER AND SEWER, LLC

This First Amendment to the Operating Agreement of Currituck Water and Sewer, LLC (this "Amendment") is made and entered into this 20th day of December, 2021 (the "Amendment Effective Date"), by and between Longleaf Utilities, LLC, a North Carolina limited liability company ("Longleaf" (f/k/a Longleaf Utilities, Inc.)), Currituck Water and Sewer Holdings, LLC, a North Carolina limited liability company ("CWS Holdings"), and Currituck Water and Sewer, LLC, a North Carolina limited liability company (the "Company") (each, a "Party" and collectively, the "Parties").

WHEREAS, Longleaf Utilities, Inc. and the Company entered into that certain Operating Agreement of the Company, dated as of May 31, 2019 (the "Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, Longleaf Utilities, Inc. was the sole member of the Company;

WHEREAS, since the date of the Operating Agreement, Longleaf Utilities, Inc. underwent a reorganization, whereby it converted into Longleaf, and Longleaf became the sole member of the Company;

WHEREAS, pursuant to that certain Contribution and Unit Purchase Agreement by and between Longleaf and CWS Holdings dated as of December 20, 2021(the "Contribution Agreement"), Longleaf contributed 100% of the membership interests of the Company to CWS Holdings in exchange for certain Class B Units of CWS Holdings; and

WHEREAS, the Parties wish to enter into this Amendment to reflect CWS Holdings becoming the sole member of the Company.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set out herein, the Parties agree as follows:

1. Incorporation. The above Recitals are hereby incorporated into this Amendment.

2. Amendments. Effective as of the Amendment Effective Date, the Operating Agreement is hereby amended as follows:

(a) The last sentence of the introductory paragraph to the Operating Agreement is hereby deleted in its entirety and replaced with the following: "Currituck Water and Sewer Holdings, LLC (the "Member") is the sole member of the Company."

(b) **Section 3 –** The first and second sentences of Section 3 are hereby deleted in their entirety and replaced with the following: "The Company's registered office shall be at the office of its registered agent at 160 Mine Lake Court, Suite 200, Raleigh, NC 27615. The name of such Registered Agent at such address is CT Corporation System."

(c) **Section 6 –** The first sentence of Section 6 is hereby deleted in its entirety and replaced with the following: "Currituck Water and Sewer Holdings, LLC is the sole Member."

(d) **Section 7 –** The final sentence of Section 7 is hereby deleted in its entirety and replaced with the following: " Initially, the Company shall have one (1) Manager, Currituck Water and Sewer Holdings, LLC, and to it is delegated the full power and authority to conduct the business and affairs of the Company. The Member shall have the sole authority to appoint any additional Manager(s)."

(e) **Section 7 –** The following is added as the final paragraph of Section 7: "As of the Amendment Effective Date, the Manager shall be the sole Authorized Signatory of the Company. For the avoidance of doubt, the Company shall have no Authorized Signatory other than the Manager, unless such other person is expressly authorized in writing by the Manager as such after the Amendment Effective Date. Any and all authorizations made prior to the Amendment Effective

Date with respect to Authorized Signatories are hereby revoked and of no further force or effect."

3. **Operating Agreement Ratified**. Except as specifically modified or supplemented herein, the terms and conditions of the Operating Agreement shall remain in full force and effect. Each Party hereto reaffirms and ratifies each and every term, condition and obligation contained in the Operating Agreement with like effect as if herein fully repeated, except as amended or otherwise supplemented hereby.

4. **Counterparts**. This Amendment may be executed in or more counterparts, and by one or more facsimile, .pdf or other electronic signatures, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be effective as of the Amendment Effective Date.

CURRITUCK WATER AND SEWER, LLC

By: Currituck Water and Sewer Holdings, LLC
Its: Manager

By: Jeffrey Yuknis
Name: Jeffrey R. Yuknis
Title: Authorized Signatory

LONGLEAF UTILITIES, LLC

By: _____
Name: Michael J. Myers
Title: Manager

IN WITNESS WHEREOF, the Parties have caused this Amendment to be effective as of the Amendment Effective Date.

CURRITUCK WATER AND SEWER, LLC

By: Currituck Water and Sewer Holdings, LLC
Its: Manager

By: _____
Name: Jeffrey R. Yuknis
Title: Authorized Signatory

LONGLEAF UTILITIES, LLC

By: _____
Name: Michael J. Myers
Title: Manager

AMENDED AND RESTATED OPERATING AGREEMENT

OF

CURRITUCK WATER AND SEWER HOLDINGS, LLC

(a North Carolina Limited Liability Company)

Effective December 20, 2021

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE NORTH CAROLINA SECURITIES ACT, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE MEMBERSHIP INTERESTS IS RESTRICTED AS STATED IN THIS OPERATING AGREEMENT, AND IN ANY EVENT IS PROHIBITED UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO IT AND ITS COUNSEL THAT SUCH SALE OR OTHER DISPOSITION CAN BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES ACTS AND LAWS. BY ACQUIRING THE MEMBERSHIP INTERESTS REPRESENTED BY THIS OPERATING AGREEMENT, THE MEMBER REPRESENTS THAT IT WILL NOT SELL OR OTHERWISE DISPOSE OF ITS MEMBERSHIP INTERESTS WITHOUT REGISTRATION OR OTHER COMPLIANCE WITH THE AFORESAID ACTS AND THE RULES AND REGULATIONS ISSUED THEREUNDER.

EXHIBIT
3

AMENDED AND RESTATED OPERATING AGREEMENT
OF
CURRITUCK WATER AND SEWER HOLDINGS, LLC

THIS AMENDED & RESTATED OPERATING AGREEMENT (this "Agreement") of CURRITUCK WATER AND SEWER HOLDINGS, LLC, a North Carolina limited liability company (the "Company"), is made as of December 20, 2021 (the "Effective Date"), by and among the Members listed on the signature page hereto. Capitalized terms used herein are defined in Section 1.1 hereof.

RECITALS:

WHEREAS, the Company was organized in accordance with the North Carolina Limited Liability Company Act on November 12, 2021; and

WHEREAS, the Members desire to set forth their respective ownership interests in the Company and the principles by which the Company will be operated and governed.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members agree as follows:

ARTICLE 1
DEFINED TERMS

1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.

"Accruing Preferred Distribution" shall mean an accruing, cumulative distribution in the amount of eight percent (8.0%) per annum of the Preferred Base Amount, compounding annually. Accrual of the Accruing Preferred Distribution shall commence on the date of original issuance of the Preferred Units and shall be payable in accordance with the provisions of Section 5.3(a)(i).

"Act" means the North Carolina Limited Liability Company Act, as amended.

"Adjusted Capital Account" means, with respect to any Member, the balance in such Person's Capital Account as of the end of the relevant taxable year after giving effect to the following adjustments: (i) credit to such Capital Account of any amounts that such Person is obligated to restore or deemed to be obligated to restore pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (ii) debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Account Deficit" means, with respect to the Capital Account of any

Member as of the end of any Fiscal Year or other relevant period, the amount by which the balance in such Capital Account is less than $0.00, after giving effect to the following adjustments:

(a) Each Member's Capital Account shall be increased by the amount, if any, such Member is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) or Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Each Member's Capital Account shall be decreased by the amount of any of the items described in Treasury Regulation Sections 1.704-1 (b)(2)(ii)(d)(4), (5) and (6).

"Affiliate" means with respect to any specified Person, any other Person that directly or indirectly controls, is under common control with, or is controlled by, such specified Person. As used in this definition, "control," including, its correlative meanings, "controlled by" and "under common control with," shall mean possession of power to direct or cause the direction of management or policies (whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise).

"Additional Capital Contribution" has the meaning specified in Section 4.2(b).

"Agreement" means this Amended and Restated Operating Agreement, as the same may be amended, modified, supplemented or restated from time to time in accordance with the terms hereof.

"Articles of Organization" means the Articles of Organization of the Company as originally filed with the Secretary of State of the State of North Carolina on November 12, 2021, and as amended from time to time.

"Board" has the meaning specified in Section 6.1(a).

"Business Day" means any day other than a Saturday, Sunday or a legal holiday in the State of North Carolina or any other day on which commercial banks in such state are authorized by law or government decree to close.

"Capital Account" means, with respect to any Member, the account maintained for such Member in accordance with the provisions of Section 4.4.

"Capital Contribution" means, with respect to any Member, the aggregate amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company pursuant to ARTICLE 4, and shall include such Member's Initial Capital Contribution and all Additional Capital Contributions.

"Cash from Operations" means at the time of calculation, cash funds provided from operations of the Company, without deductions for depreciation or amortization or expenses, but after deduction of cash funds from operations used to pay, or establish a reserve for, all other expenses debt payments and capital improvements and replacements. Specifically, for purposes of this calculation, infrastructure life cycle costs (for example, replacement reserves) shall constitute reserves which shall reduce the amount of Cash from Operations available for

distributions.

"Class A Preferred Units" means Membership Rights in the Company having the voting and economic rights set forth herein with respect to "Class A Preferred Units."

"Class B Common Units" means Membership Rights in the Company having the voting and economic rights set forth herein with respect to "Class B Common Units."

"Clear Current" means Clear Current, LLC, a Delaware limited liability company.

"Code" means the U.S. Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

"Common Member" means a Member holding Common Units in such Member's capacity as a holder of such Common Units.

"Common Percentage Interest" means the proportion of Common Units owned by a Common Member relative to all outstanding Common Units, as initially set forth on Schedule A hereto.

"Common Units" means the Class B Common Units.

"Company" means Currituck Water and Sewer Holdings, LLC, the North Carolina limited liability company that is the subject of this Agreement.

"Company Debt Guaranty" shall have the meaning specified in Section 9.7.

"Company Sale" means either: (a) a transaction or series of related transactions in which a Person or a group of related Persons, acquires fifty percent (50%) or more of the issued and outstanding Units in the Company; (b) a merger into an acquiring entity (other than a merger into an entity more than fifty percent (50%) of the voting equity of which is owned by the Members); or (c) a sale of substantially all of the Company's assets.

"Company Subsidiaries" means Currituck Water and Sewer, LLC, a North Carolina limited liability company that is a wholly-owned subsidiary of the Company, as well as any subsidiaries the Company formed following the Effective Date

"Company Undersubscription Notice" shall have the meaning specified in Section 7.6(d).

"Covered Person" means (a) the Preferred Member and each officer, director, stockholder, member, partner, representative or agent of the Preferred Member, (b) each Manager, (c) the Partnership Representative and (d) any officer, employee or agent of the Company, such agent(s) designated as such by the Board.

"Effective Date" has the meaning specified in the preamble.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute.

"Exercising Members" shall have the meaning specified in Section 7.6(d).

"Fiscal Year" means a calendar year.

"Gross Asset Value" means, with respect to any asset, such asset's adjusted basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as agreed to by the contributing Member and the Board;

(b) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company; (iii) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-l(b)(2)(ii)(g); and (iv) whenever else allowed by Treasury Regulation Sections 1.704-1(b)(2)(iv)(f) or (s); provided, however, that adjustments pursuant to clauses (i), (ii), and (iv) of this sentence shall be made only if the Board reasonably determines such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) the Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as agreed to by the Member receiving such distribution and the Board.

Any Board determinations or agreements referenced in the foregoing definition shall be made by the Majority Managers.

"Liquidating Trustee" has the meaning specified in Section 10.3.

"Longleaf" means Longleaf Utilities, LLC, a North Carolina limited liability company.

"Manager" has the meaning specified in Section 6.1(a).

"Majority Managers" means at any time Managers having more than fifty percent (50%) of the total number of votes (as provided in Section 6.3) that may be cast by all Managers then in office.

"Member" means each of the Persons listed on Schedule A hereto, and includes any Person admitted as an additional Member or a substitute Member pursuant to the provisions of this Agreement, in such Person's capacity as a member of the Company.

"Membership Rights" means all legal and beneficial ownership interests in, and rights and duties as a Member of, the Company, including, without limitation, the right to share in Profits and Losses, the right to receive distributions of cash and other property from the Company, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from the Company.

"Members Notice" means written notice from any Members notifying the Company and the selling Member that such Member intends to exercise its Secondary Refusal Right as to a portion of the Units with respect to any Proposed Transfer.

"Members' Parties" has the meaning specified in Section 9.1.

"Member Undersubscription Notice" shall have the meaning specified in Section 7.6(d).

"Original Issue Price" means $1.00 per Unit, subject to appropriate adjustment in the event of any recapitalization or exchange of Units, and any subdivision (by split or otherwise) or any combination (by reverse split or otherwise) of the Units.

"Partnership Representative" has the meaning specified in Section 9.6.

"Percentage Interest" means the proportion of Units owned by a Member relative to all outstanding Units, as initially set forth on Schedule A hereto.

"Permitted Transfer" means a Transfer of Units to any Affiliate of such Member.

"Person" includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

"Preferred Base Amount" shall mean the Original Issue Price of the Preferred Units (as adjusted for any recapitalization or exchange of such Preferred Units), and any subdivision (by split or otherwise) or any combination (by reverse split or otherwise).

"Preferred Member" means the Member holding Preferred Units.

"Preferred Units" means the Class A Preferred Units.

"Profits" and "Losses" means, for each Fiscal Year or other relevant period, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Section 703(a) of the Code (but including in taxable income or loss, for this purpose, all items of income, gain, loss, deduction or credit required to be stated separately pursuant to Section 703(a)(1) of the Code), with the following adjustments:

(a) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code (or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted in accordance with paragraph (a) or paragraph (b) of the definition of "Gross Asset Value" above,

the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value; and

(e) any items which are specially allocated pursuant to 5.1(d) hereof shall not be taken into account in computing Profits or Losses.

"Proposed Transfer" means any direct or indirect (through merger, indirect equity sale or otherwise) Transfer to any Person with the intent of circumventing the terms of Section 7.6 hereof.

"Proposed Transfer Notice" means written notice from a Member setting forth the terms and conditions of a Proposed Transfer.

"Prospective Transferee" means any Person to whom a Member proposes to make a Proposed Transfer.

"Regulatory Allocations" has the meaning specified in Section 5.1(d)(iii).

"Right of First Refusal" has the meaning specified in Section 7.6(a)

"Sale Plan" has the meaning specified in Section 7.5(a).

"Secondary Notice" means written notice from the Company notifying the non-selling Members and the selling Member that the Company does not intend to exercise its Right of First Refusal as to all Transfer Units with respect to a Proposed Transfer, on the terms and conditions specified in the Proposed Transfer Notice.

"Secondary Refusal Right" shall have the meaning specified in Section 7.6(c).

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute.

"Securities Laws" means the Securities Act, the Exchange Act and each and every other securities law of the United States and the states thereof, and all rules and regulations promulgated under all of such laws.

"Tax Distribution Limitation Amount" has the meaning specified in Section 5.4.

"Transfer" means any sale (including, without limitation, a sale by a trustee or debtor in bankruptcy or arising out of any manner of creditor's proceeding), assignment, transfer (including, without limitation, a transfer by will or intestate distribution or any court order for sale or transfer pursuant to a decree including, without limitation, a divorce decree), exchange, mortgage, pledge, foreclosure, execution, garnishment, attachment, sheriff's sale, gift, or other disposition or encumbrance (whether voluntarily or involuntarily or by operation of law) of, or the granting of a security interest in, all or any portion of a Member's Units or other interest in the Company, except

for security interests, encumbrances, or pledges as required by any debt financing of the Company approved by the Board.

"Transfer Units" means Units owned by a Member, or issued to a Member after the date hereof, subject to a Proposed Transfer.

"Undersubscription Notice Period" has the meaning specified in Section 7.6(d)

"Units" means, collectively, the Preferred Units and the Common Units, and any other class or series of units of the Company created hereafter.

"Unpaid Preferred Accruing Distributions" means, with respect to a holder of Preferred Units, the Accruing Preferred Distributions for such Preferred Units less the aggregate distributions made with respect to such Units pursuant to Section 5.3(a)(i).

1.2 Headings. The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

ARTICLE 2
FORMATION AND ORGANIZATION

2.1 Formation and Name. The Company was formed on November 12, 2021 when the Articles of Organization were filed with the Secretary of State of the State of North Carolina. The name of the Company is Currituck Water and Sewer Holdings, LLC. All Company business shall be conducted in the name of "Currituck Water and Sewer Holdings, LLC" or such other names that comply with applicable law as the Board may select from time to time.

2.2 Principal Place of Business. The Company may locate its principal place of business and registered office at any place or places as the Board may from time to time deem advisable. Its initial principal place of business for receipt of mail shall be 4700 Homewood Court, Suite 108, Raleigh, North Carolina 27609.

2.3 Registered Office and Registered Agent. The Company's registered office shall be 160 Mine Lake Court, Suite 200, Raleigh, NC 27615, the office of its registered agent. The name of such initial registered agent at such address is CT Corporation System. The registered agent and registered office may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of North Carolina pursuant to the Act and the applicable rules promulgated thereunder.

2.4 Term. The term of the Company commenced with the filing of the Articles of Organization with the Secretary of State of the State of North Carolina and shall continue until the Company is dissolved in accordance with the provisions of this Agreement.

2.5 No State Law Partnership. The Members intend that the Company (a) shall be taxed as a partnership for all applicable federal and, to the extent applicable, state and local income tax purposes, and (b) shall not be a partnership or joint venture for any other purpose, and that no Member or any Manager shall, by virtue of this Agreement, be a partner or joint venturer of any

other Member or Manager.

2.6 Ownership of Company Property. All property acquired by the Company, real or personal, tangible or intangible, shall be owned by the Company as an entity and no Member, individually, shall have any ownership interest therein solely due to its capacity as a Member.

ARTICLE 3
PURPOSE AND POWERS OF THE COMPANY

3.1 Purpose. The purposes of the Company are (i) to accomplish any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets; (ii) to exercise all other powers to or reasonably connected with the Company's business that may be legally exercised by limited liability companies under the Act; and (iii) to engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

3.2 Powers of the Company. Subject to the provisions of this Agreement, the Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes set forth in Section 3.1.

ARTICLE 4
UNITS, CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

4.1 Units.

(a) There are hereby established and authorized for issuance (i) 2,800,000 Class A Preferred Units with a value (at the time of issuance) of $1.00 per unit; and (ii) 700,000 Class B Common Units with a value (at the time of issuance) of $1.00 per unit. All of the issued and outstanding Units are held by the Persons and in the amounts set forth on Schedule A and were issued in exchange for Capital Contributions of each Member, as applicable, in the stated amounts set forth on Schedule A. The number of authorized Units may be increased or decreased with the approval of the Board, and such Units may be issued in fractional shares. No Units or other interests purporting to confer Membership Rights shall be issued unless they have been authorized for issuance by the Company under the terms of this Agreement.

(b) Subject to Section 6.4, the Board shall have the right to cause the Company to authorize and issue at any time after the date hereof, and for such amount and form of consideration as the Board may determine, (i) additional Class A Preferred Units, Class B Common Units, or other interests in the Company (including classes or series of preferred Units having such powers, designations, preferences and rights as may be determined by the Board), (ii) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other interests in the Company and (iii) warrants, options or other rights to purchase or otherwise acquire Units or other interests in the Company and in connection therewith the Board shall have the power to make such amendments to this Agreement as the Board in its discretion deems necessary or appropriate to give effect to such additional issuance.

4.2 Capital Contributions.

(a) Upon execution of this Agreement, each Member agrees to contribute cash or other property to the Company in exchange for receipt of the Units reflected on Schedule A hereto (the "Initial Capital Contributions").

(b) If the Board determines that the Initial Capital Contributions are insufficient to carry out the purposes of the Company, the Board may require that the Members make additional contributions to the capital of the Company. In such instances, each of the Members shall then be obligated to make such additional contributions (each an "Additional Capital Contribution") to the Company ratably in accordance with such Members' then existing Percentage Interest within the time period required by the Board. In the event any Member fails to fulfill any commitment to contribute additional capital (the "Defaulting Member"), each remaining Members may elect (the "Participating Members") to contribute to the Company, in proportion to their respective Percentage Interests, such Additional Capital Contribution of the Defaulting Member or Defaulting Members (or, should an eligible remaining Member decline to make such contribution in whole or in part, the remaining eligible Member shall be entitled to make the balance of the eligible contributions not so made). In the event of any such Additional Capital Contribution by Participating Members, each such Participating Member may elect to treat such Additional Capital Contributions as follows:

(i) as a loan to the Defaulting Member bearing interest at the prime rate, as set out in the Wall Street Journal on the date of the loan, plus three percent (3%) interest per annum, until repaid. Until all of such loans are repaid by the Defaulting Member, all distributions from the Company that would have been paid to the Defaulting Member shall be paid to the Participating Members in proportion to the then outstanding interest and principal of such loans; or

(ii) on the date of such Additional Capital Contribution, the number of Units of the Participating Members making such contribution shall be increased by one Preferred Unit for each dollar of such contribution made by such Participating Members.

(c) Each Member, severally with respect to such Member, represents and warrants to the Company that the following statements are true and complete as of the date of this Agreement:

(i) The execution, delivery and performance by such Member of this Agreement, and the consummation by such Member of the transactions contemplated hereby, have been duly authorized by all necessary action on the part of such Member. Such Member has the full right, power and authority to enter into, execute and deliver this Agreement, and to perform his, her or its obligations hereunder and thereunder. This Agreement has been duly executed and delivered by such Member and constitutes the valid and binding obligation of such Member, enforceable against him, her or it in accordance with its terms.

(ii) Such Member is not party to, subject to or bound by any agreement or any judgment, order, writ, prohibition, injunction, decree, award or other requirement of any governmental entity that would prevent the execution or delivery of this Agreement. The execution and delivery by such Member of this Agreement does not, and the performance of this Agreement will not, (a) conflict with, result in a breach of, constitute (with or without due notice

or lapse of time or both) a default under, or require any notice, consent or waiver under, any material contract, instrument or other agreement to which such Member is a party (either with the Company or with another Person) or to which such Member may be bound or subject, (b) violate any fiduciary or confidential relationship or (c) conflict with or violate the provisions of any applicable laws or regulations or any order of any governmental entity.

4.3 Nature of Interests. The Units shall for all purposes be personal property. No Member has any interest in specific Company property. Each Member hereby waives any and all rights such Person may have to initiate or maintain any suit or action for partition of the Company's assets.

4.4 Capital Accounts. An individual capital account ("Capital Account") shall be established and maintained for each Member in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv). Each Member's Capital Account shall be increased by (i) the amount of money contributed by such Member to the Company, (ii) the Gross Asset Value of property contributed by such Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and (iii) allocations to such Member of Profits (and any items in the nature of income or gain separately allocated to such Member). Each Member's Capital Account shall be decreased by (x) the amount of money distributed to such Member by the Company, (y) the Gross Asset Value of property distributed to such Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under Section 752 of the Code), and (z) allocations to such Member of Loss (and any items in the nature of losses or deductions separately allocated to such Member). The Capital Accounts also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation Section 1.704-1(b)(2)(iv) and Section 1.704-1(b)(4). On the transfer of all or a portion of a Member's Units, the Capital Account of the transferor that is attributable to the transferred Units shall carry over to the transferee Member in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(1).

4.5 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance that may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

4.6 No Withdrawal. No Member shall be entitled to resign from the Company or withdraw all or any portion of such Member's Capital Contributions or the balance of such Member's Capital Account, or to receive any distribution from the Company, except as expressly provided herein.

4.7 Loans from Members. Loans by Members to the Company shall not be considered Capital Contributions. Except as set forth in Section 4.2(b)(ii), if any Member shall advance funds to the Company in excess of the amounts required hereunder to be contributed by such Member to the capital of the Company, the making of such advances shall not result in any increase in the amount of the Capital Account of such Member. The amount of any such advances that are not agreed to be additional Capital Contributions shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

ARTICLE 5
ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations of Profit and Loss.

(a) Except as otherwise provided in this Article 5, Profit and Loss for each Fiscal Year shall be allocated to the Members in a manner such that the Adjusted Capital Account of each Member, immediately after making such allocation is, as nearly as possible, equal (proportionately) to the distributions that would be made to such Member pursuant to Section 10.3 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the asset securing such liability), and the net assets of the Company were distributed in accordance with Section 10.3.

(b) Losses allocated in accordance with Section **Error! Reference source not found.** shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. All Losses in excess of such limitation shall be allocated to the Members who would not have an Adjusted Capital Account Deficit as a result of such allocation (*pro rata*, in proportion to the excess of each such Member's Capital Account balance over the amount of such allocations that would cause such Member to have an Adjusted Capital Account Deficit).

(c) The parties intend that the allocation provisions of this Section 5.1 shall produce Capital Account balances of the Members that will be consistent with the distribution provisions of Section 5.3. Notwithstanding anything to the contrary in this Agreement, to the extent the Board determines that the allocation provisions of this Section 5.1 may fail to produce such Capital Account balances, (i) such provisions shall be amended by the Board to the extent necessary to produce such result and (ii) Profits and Losses and other items of income, gain, loss, credit and deduction of the Company for the most recent open year (or items of income, gain, loss, deduction, and Code Section 705(a)(2)(B) expenditures of the Company for such years) shall be reallocated among the Members to the extent it is not possible to achieve such results with allocations of Profits and Losses (or items of income, gain, loss, deduction, and Code Section 705(a)(2)(B) expenditures) for the current year and future years, as determined by the Board. This Section 5.1(c) shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

(d) Special Allocations.

(i) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 5.1(d)(i) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 5 have been tentatively made as if this

Section 5.1(d)(i) were not a term of this Agreement. This Section 5.1(d)(i) is intended to constitute a "qualified income offset" provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(ii) Gross Income Allocation. In the event any Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.1(d)(ii) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit in excess of such sum after all other allocations provided for in this Section 5.1(d) have been tentatively made as if this Section 5.1(d)(ii) and Section 5.1(d)(i) hereof were not in the Agreement.

(iii) Curative Allocations. The allocations set forth in Sections 5.1(b) and 5.1(d)(i) and (ii) hereof (collectively, the "Regulatory Allocations") are intended to comply with requirements of the Treasury Regulations. It is the intent of the parties hereto that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 5.1(d)(iii). Therefore, notwithstanding any other provision of Article 5 (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account such Member would have had if the Regulatory Allocations were not terms of this Agreement and all Company items were allocated pursuant to Section 5.1.

(iv) Allocations of Withholding. To the extent the Company receives (or is deemed to receive) an amount of income that is net of any withholding tax, (i) such income shall be allocated among the Members as if the Company received the gross amount of such income before giving effect to the payment of the withholding tax and (ii) any resulting tax credit shall be allocated among the Members in proportion to such Member's allocated share of income (including income allocated pursuant to Section 704(c) of the Code) to which the credit relates.

5.2 Tax Allocations.

(a) Generally. Except as otherwise provided in this Section 5.2, taxable income and loss and all items thereof shall be allocated to the Members to the greatest extent practicable in a manner consistent with the manner set forth in Section 5.1 and Sections 704(b) and (c) of the Code. Allocations pursuant to this Section 5.2 are solely for federal income tax purposes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits and Losses, other items or distributions pursuant to any provision of this Agreement.

(b) Section 704(c) of the Code. In accordance with Section 704(c) of the Code, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for income tax purposes**,** be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

(c) Adjustments under Section 704(c) of the Code. In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (b) of the definition of "Gross Asset Value," subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted tax basis of such asset and its Gross Asset Value in the same manner as under Section 704(c) of the Code.

(d) Decisions Relating to Section 704(c) of the Code. Any elections or other decisions relating to allocations under this Section 5.2, including the selection of any allocation method permitted under Treasury Regulation Section 1.704-3, shall be made by the Board. The Board is hereby authorized to amend this Agreement as necessary to implement the method selected under Treasury Regulation Section 1.704-3.

(e) Changes in Members' Interests. If during any Fiscal Year or other accounting period of the Company there is a change in any Member's interest in the Company, the Board shall allocate Profits or Losses to the Members in the Company in a manner that complies with the provisions of Section 706 of the Code.

5.3 Distributions. Subject to the provisions of Sections 5.4 and **Error! Reference source not found.**, the Company may, upon approval of the Board, make distributions, if any, to the Members as follows:

(a) Distributions of Cash From Operations. The Company shall make any distributions of Cash from Operations to the Members in the following amounts and order of priority:

(i) First, to the Preferred Member with an Unpaid Preferred Accruing Distributions balance, pro rata in proportion to such balance until the Unpaid Preferred Accruing Distributions balances equal zero; and

(ii) Thereafter, to the Members pro rata in accordance with their respective Percentage Interests.

(b) Fees and Expenses. For the avoidance of doubt, if, at the direction of the Board, any fees are paid, or expenses are paid or reimbursed, to a holder of Preferred Units or its Affiliates, such amounts shall not be considered distributions for any purpose under this Section 5.3 or otherwise hereunder.

(c) Dissolution and Liquidation. In the event of the dissolution and liquidation of the Company, the assets of the Company shall be disbursed in the following order of priority:

(i) first, to make payment of all debts and liabilities owing to creditors and the expenses of dissolution or liquidation;

(ii) second, to establish such reserves as reasonably deemed by the Board necessary for any contingent or unforeseen liabilities or obligations of the Company; and

(iii) third, in accordance with the priority set forth by Section 5.3(a)

(d) Former Members. Notwithstanding any provision of the Act, except as otherwise provided in this Agreement, no Person that ceases to be a Member of the Company shall be entitled to receive the fair value of such Person's interest in the Company prior to the dissolution and winding up of the Company.

5.4 Tax Distributions. On or before March 15th of each Fiscal Year, the Company shall distribute to each Person who was a Member during the immediately preceding Fiscal Year of the Company an amount of cash (the "Tax Distribution Limitation Amount") intended to equal the aggregate federal and state income tax liability of the Members computed with respect to the Company's Profit, Loss, and other allocable items for each Fiscal Year (or a portion thereof), reduced by any prior distributions pursuant to this Section 5.4 with respect to such Fiscal Year and prior Fiscal Years; provided that such distributions shall be made only to the extent of Cash from Operations; and provided further that the Company may pay to the Members advances of distributions to be made under this Section 5.4 with respect to a Fiscal Year to coincide with quarterly estimated tax payment due dates in amounts reasonably determined by the Board. Notwithstanding the foregoing, no distribution shall be made or required under this Section 5.4 with respect to any Fiscal Year to any Member in excess of the Tax Distribution Limitation Amount. No distribution under this Section 5.4 shall be made if the making of such distribution would constitute a violation of the Act or any other applicable law or regulation or order of any court of competent jurisdiction or any contract or agreement by which the Company is bound. Distributions made under this Section 5.4 shall be treated as advance distributions of amounts otherwise distributable to the Members pursuant to Section 5.3(a) and shall reduce the amounts that would subsequently otherwise be distributable pursuant to Section 5.3(a); provided, that distributions made under this Section 5.4 shall not be treated as distributed in accordance with Section 5.3(a) until such distributions are actually applied against and reduce amounts distributed under Section 5.3(a).

5.5 Limitation on Distributions to Members. No distribution shall be made to a Member if prohibited by Section 57D-4-06 of the North Carolina General Statutes.

5.6 Withholding. All amounts withheld pursuant to the Code or any provision of tax laws with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the Member or Members subject to such withholding obligation in accordance with this Agreement and, accordingly, shall be credited to each Member as if such Member had received such distribution in accordance with Section 5.3(a).

ARTICLE 6
MANAGEMENT OF COMPANY; MEMBER VOTING RIGHTS

6.1 Management by Board of Managers.

(a) Except for situations in which the approval of one or more Members is expressly required by this Agreement or by nonwaivable provisions of applicable law, (i) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, a Board of Managers (the "Board," and each member thereof being referred to for purposes of this Agreement as a "Manager") and (ii) the

Board may make all decisions and take all actions for the Company not otherwise provided in this Agreement.

(b) Designation. There shall initially be five (5) Managers on the Board, which shall consist of three (3) Managers designated by Clear Current and two (2) Managers designated by Longleaf. Longleaf's right to appoint two Managers pursuant to this Section 6.1(b) shall survive for so long as Longleaf maintains a Percentage Interest equal to or exceeding 20%. In the event Longleaf's Percentage Interest is less than 20% but equal to or greater than 10%, it shall have the right to appoint one (1) Manager. Longleaf's right to appoint a Manager pursuant to this Section 6.1(b) shall terminate in the event it fails to maintain a Percentage Interest of at least 10%. Should Longleaf no longer be entitled to appoint a Manager, such Manager shall be appointed by the Managers designated by Clear Current.

(c) Any Manager designated herein shall serve as a Manager until the earliest to occur of (i) such Person's death, resignation or adjudication of incompetency, (ii) such Person's removal pursuant to Section 6.1(d) hereof, or (ii) any event described in Section 47D-3-02(a)(1) of the Act with respect to such Manager.

(d) Removal. Each Manager shall serve at the discretion of the Member entitled to designate such Manager, and a Manager may be removed at any time by the affirmative vote of Member entitled to designate such Manager.

(e) Resignation. The Managers may resign at any time by giving written notice to the Members. The resignation of a Manager shall take effect upon receipt of notice thereof, or at such later time as shall be specified in such notice; and, unless specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager as such shall not affect that Manager's rights as a Member, nor shall it constitute the withdrawal of such Member.

(f) Vacancies. Any vacancy occurring in the office of a Manager may be filled only by the affirmative vote of the Member entitled to appoint such Manager pursuant to Section 6.1(b).

(g) Failure to Designate a Manager. In the absence of a designation from the Members with the right to designate a Manager as specified above, the Manager previously designated by them and then serving shall continue to serve if still eligible to serve as provided herein.

6.2 Manager Expenses. The reasonable out-of-pocket expenses of members of the Board associated with attending meetings or business related to the Company will be borne by the Company, and all Managers will be treated identically with regard to compensation and expense reimbursement related to their service as members of the Board.

6.3 Meetings of Board of Managers. The Company shall call and hold meetings of the Board in accordance with this Agreement, but in any event not less than once in every quarter (until the Majority Managers vote to schedule meetings less frequently). Subject to the conditions of this Article 6, the vote of the Majority Managers shall be necessary and sufficient for the Board

to take or consent to any action at a meeting of the Board. Each Manager shall have one (1) vote on all matters voted upon by the Board. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if the Majority Managers consent to the action in writing. For the avoidance of doubt, the approval of a majority of non-interested Managers of the Board shall be required for the Board to approve any Company transaction with an Affiliate of an interested Manager that is not entered into on an arms' length basis. A Manager shall be an "interested Manager" for these purposes if the transaction in question is with an Affiliate (other than any Company Subsidiary) of the Member that appointed such Manager. Special meetings of the Board may be called by the chairman of the Board, the president, any vice president, the secretary or any Manager.

6.4 Member Voting Rights; Powers of Member.

(a) No Member has any right to bind the Company, or vote on any action or matter affecting, or taken by, the Company, except for matters specifically set forth in the Act, this Agreement, or on the amendment of the Articles or this Agreement. The Board may submit other matters to a vote of the Members. Submission of other matters to a vote of the Members will be in the sole discretion of the Board. The Managers have the authority to make all decisions and take all actions not expressly subject to Member approval hereunder.

(b) Each Common Unit and each Preferred Unit shall be entitled to one (1) vote on any matter upon which a vote of the Members is required hereunder. Except as otherwise provided herein, the Common Units and the Preferred Units shall vote together as a single class.

(c) Except as otherwise expressly stated in this Agreement, any action requiring the approval or consent of the Members shall require the affirmative vote of the Members holding a majority of the outstanding Units in order to constitute the action of or approval by the Members. Except as otherwise provided by law, any action or vote of the Members may be taken by a consent setting forth the action or vote so taken and signed by Members holding the requisite percentage of Units entitled to vote necessary to authorize or take such action.

6.5 Unanimous Consent. The consent of all of the Members (Common and Preferred) shall be required before the Board or the Company may take any of the following actions:

(i) amend, alter or repeal any provision of the Company's Articles of Organization or this Agreement, each as amended from time to time, in a manner that materially and adversely affects the powers, preferences or rights of the Preferred Units;

(ii) authorize, issue or obligate itself to issue any new or existing class or classes of equity interests having any preference or priority as to distributions, liquidation, conversion, voting or assets superior to or on a parity with any such preference or priority of the Preferred Units or authorize or issue equity interests of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any equity interests of the Company having any preference or priority as to distributions, liquidation, conversion, voting or assets superior to or on a parity with any such preference or priority of the Preferred Units;

(iii) (A) reclassify, alter or amend any existing security of the Company that is on parity with the Preferred Units in respect of distributions, liquidation, conversion, voting or assets, if such reclassification, alteration or amendment would render such other security superior to any such preference or priority of the Preferred Units or (B) reclassify, alter or amend any existing security of the Company that is junior to the Preferred Units in respect of distributions, liquidation, conversion, voting or assets, if such reclassification, alteration or amendment would render such other security superior to or on parity with any such preference or priority of the Preferred Units; or

(iv) Decrease the size of the Board or, except in circumstances where the Board determines such an increase is advisable to facilitate any equity or debt financing of the Company by a third party and such third party would be enabled to appoint the additional Board member or members resulting from such increase in the size of the Board (which, for clarity would not require the approval of all of the Members pursuant to this Section 6.5), increase the size of the Board .

6.6 Officers. The Board may, from time to time, delegate to one or more individuals such authority and duties as the Board deems advisable, and such individuals shall owe the same fiduciary duty to the Company and the Members as officers of a corporation owe to such corporation and its stockholders under North Carolina law. In addition, the Board may assign titles to officers of the Company and, unless the Board decides otherwise, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office. Any number of titles may be held by the same individuals. The salaries, bonuses or other compensation, if any, of such individuals shall be fixed from time to time by the Board in accordance with the terms of any Employment Agreement, if applicable. Any delegation pursuant to this Section 6.6 may be revoked at any time by the Board, in its sole and absolute discretion.

ARTICLE 7
TRANSFER RESTRICTIONS; ADDITIONAL MEMBERS

7.1 General. Except for Permitted Transfers or Transfers effected in compliance with Section 7.5 or 7.6 hereof, no Member shall have the right to:

(i) Transfer any Units; or

(ii) withdraw from the Company.

Any attempted Transfer by a Member of Units or any interest, right, or part thereof, in or in respect of the Company other than in accordance with this Article 7 of this Agreement shall be, and is hereby declared, null and void ab initio.

7.2 Substitute Members.

(a) Any Person who acquires Units from a Member shall become a Member for purposes hereof only if the transfer of such Units was effected in compliance with this Article 7 and upon consent of the Board, and such Person agrees in writing to be bound by the terms of this Agreement in the same manner as the Member from which such Person acquired the Units.

(b) The Member effecting a Transfer and any Person admitted to the Company as a Member in connection therewith shall pay, or reimburse the Company for, all costs incurred by the Company in connection with such Transfer or admission.

7.3 Allocations between Assignor and Assignee. If a Member transfers Units in accordance with this Agreement, then the transferor and transferee shall each be entitled to distributions and allocations as hereafter provided in this Section 7.3. Unless the transferor and transferee shall agree otherwise and so provide in the instrument of assignment pursuant to which such transfer is effected and provide the Company with a copy thereof at the time of such transfer, distributions shall be made to the Person owning the Units at the date of distribution and Profits and Losses shall be allocated between the transferor and transferee by taking into account their varying interests during the period in accordance with Section 706(d) of the Code, using any conventions permitted by law and selected by the Board.

7.4 Certificates. The Company may, at the discretion of the Board, but need not, issue certificates evidencing the Units issued by the Company. Any such certificate representing Units held by the Members or issued to any permitted transferee shall be endorsed by the Company with legends reading substantially as follows:

> THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH UNITS MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.
>
> THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF AN OPERATING AGREEMENT BY AND AMONG THE MEMBER, THE COMPANY AND CERTAIN OTHER HOLDERS OF UNITS OF THE COMPANY AND CERTAIN OTHER AGREEMENTS BY AND AMONG THE MEMBER, THE COMPANY AND CERTAIN OTHER HOLDERS OF UNITS OF THE COMPANY, AS EACH MAY BE AMENDED FROM TIME TO TIME. COPIES OF SUCH AGREEMENTS MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

Each Member agrees that the Company may instruct its transfer agent to impose transfer restrictions on any Units represented by certificates bearing the legend referred to in this Section 7.4 to enforce the provisions of this Agreement, and the Company agrees to promptly do so. The Company shall supply, free of charge, a copy of this Agreement and the other referenced agreements to any holder of Units upon written request from such holder to the Company at its principal office. The failure to cause any certificates evidencing the Units to bear the legend required by this Section 7.4 and /or the failure of the Company to supply, free of charge, a copy of this Agreement as provided herein shall not affect the validity or enforcement of this Agreement.

7.5 Drag Along.

(a) In the event that the Majority Managers determine that it would be in the best interests of the Company and its Members to authorize a Company Sale, the Board may, on behalf of the Company, adopt a plan of merger or other plan of sale (each, a "Sale Plan") to effectuate such Company Sale pursuant to this Section 7.5. Subject to this Section 7.5, each holder of Units shall take whatever reasonable action is required under such Sale Plan adopted by the Board to effect the transactions contemplated therein.

(b) The obligations of the Members with respect to the Sale Plan are subject to the consideration payable to all Members upon consummation of the Company Sale being allocated among the Members in accordance with the provisions of Section 7.5(f) hereof. In the event that any securities are part of the consideration payable to the Members, each Member that is not an "accredited investor" as such term is defined under applicable Securities Laws may, in the discretion of the Board, receive, and hereby agrees to accept, in lieu of such securities, cash consideration equal to the fair market value of such securities (as determined by the Managers).

(c) Each of the Members hereby agrees to cooperate fully with the Board with regards to any Sale Plan, including without limitation answering questions of the acquirer and its representatives in connection with the Company Sale, and to execute any and all agreements and instruments requested by the Board to be executed that are necessary to effectuate the Company Sale (including with respect to any indemnification obligation).

(d) The Board shall have full and plenary power and authority to cause the Company to enter into a Company Sale under a Sale Plan and to take any and all such further action in connection therewith as the Board may deem necessary or appropriate in order to consummate a Sale Plan. Except as otherwise provided in this Agreement, the Board shall have complete discretion over the terms and conditions of any Sale Plan, including, without limitation, price, type of consideration, payment terms, conditions to closing, representations, warranties, affirmative covenants, negative covenants, indemnification, holdbacks and escrows; provided that (i) the aggregate consideration payable in such Company Sale shall be allocated among the Members in accordance Section 7.5(f) hereof; and (ii) no Member shall be required to make any representations or warranties in connection with a Company Sale other than customary representations and warranties, including as to (A) the Member's ownership of its Units or its ability to transfer such Units free and clear of all liens, claims and encumbrances, other than those arising hereunder, (B) the Member's power and authority to enter into the Sale Plan and effect such transfer, (C) the valid, binding and enforceable nature of the agreements entered into by the Member in connection with the Sale Plan, (D) the absence of any legal or contractual impediments to the participation of the Member in the Sale Plan or to the transfer of the Member's Units and (E) the absence of finder's or broker's fees incurred by the Member. Without limitation of and subject to the foregoing, the Board may authorize and cause the Company to execute (or execute on behalf of the Company) such agreements, documents, applications, authorizations, registration statements and instruments (collectively, "Sale Documents") as it shall deem necessary or appropriate in connection with any Company Sale, and each third person who is party to any such Sale Documents may rely on the authority vested in the Board under this Section 7.5 for all purposes.

(e) The Company shall pay for all transaction costs and expenses incurred in connection with any Sale Plan to the extent not paid by the acquiring party. Each Member shall

pay for all transaction costs and expenses incurred by such Member on an individual basis. Additionally, each Member, in accordance with its Percentage Interest, shall pay its share of those transaction costs and expenses incurred by the Company for the benefit of all of the Members as a group in connection with any Sale Plan, to the extent not paid by the Company or the acquiring party. In addition, each Member shall bear its share of any indemnities required of all of the Members in connection with a Sale Plan (other than indemnities arising out of representations concerning a Member's own Units, the authority of that Member to effect the transaction, the enforceability of that Member's obligations thereunder, and other representations and covenants particular to the individual Member, for which such Member shall be solely responsible) (collectively, the "Indemnity Payments"), provided that (x) a Member's liability for such Indemnity Payments shall be several and not joint, (y) such Member's share of any Indemnity Payments shall be determined by the Board, taking into account the effect of Indemnity Payments on the value of the transaction and the disparate rights of Members to share in any distributions depending on the value of the transaction and (z) the maximum amount of any Member's liability for any Indemnity Payment shall be limited to the value of the net proceeds received by such Member in such transaction except in the case of fraud.

(f) The proceeds of any Company Sale pursuant to a Sale Plan that are received by the Members participating in such Company Sale will be allocated among such Members based upon the classes of Units included or deemed to be included in such Company Sale as if the proceeds of such Company Sale were paid to the participating Members pursuant to Section 5.3(a) of this Agreement in connection with a distribution and the Units of the Members included or deemed to be included in such Company Sale were the only outstanding Units of the Company at the time of such distribution. Each Member hereby acknowledges and agrees that, in connection with a Company Sale (whether pursuant to a Sale Plan or otherwise), such Member is not entitled to any dissenter's rights, appraisal rights or similar rights under the Act or otherwise, and hereby waives all related claims (including any claims for breach of fiduciary duty arising out of or related to any Company Sale, including, without limitation, claims relating to the fairness of such Company Sale, the amount, nature, form or terms of consideration paid for Units in such Company Sale even if such Company Sale results in no consideration being paid or payable to any or all of the Members, the process or timing of such Company Sale, or any similar claims).

(g) Each of the Members hereby grants to Clear Current a power of attorney to sign any and all agreements and instruments that are being executed in connection with a Company Sale pursuant to Section 7.5, on behalf of such Member in its capacity as a holder of Units of the Company. In connection with any Company Sale required by this Section 7.5, each Member appoints Clear Current or its designee as its representative to make all decisions in connection with any sale agreement (including the right to resolve any potential indemnification claims or other disputes on behalf of all the Members); provided that all Members holding a particular class of Units shall be treated in the same manner. Clear Current may pursue any and all rights and remedies it may have to enforce the obligations of the Members in connection with a Company Sale, including seeking specific performance and/or immediate injunctive relief or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of Section 7.5.

7.6 Right of First Refusal

(a) Each Member hereby unconditionally and irrevocably grants to the Company a right of first refusal (a "Right of First Refusal") to purchase all or any portion of the Transfer Units that such Member may propose to transfer in a Proposed Transfer (other than any Permitted Transfers or Proposed Transfers to be effected pursuant to Section 7.5, which for clarity, shall not be subject to the provisions of this Section 7.6) at the same price and on substantially the same terms and conditions as those offered to the Prospective Transferee.

(b) Each Member proposing to make a Proposed Transfer must deliver a Proposed Transfer Notice to the Company not later than forty-five (45) days prior to the consummation of such Proposed Transfer. Such Proposed Transfer Notice shall contain the material terms and conditions (including price and form of consideration) of the Proposed Transfer, the identity of the Prospective Transferee and the intended date of the Proposed Transfer. To exercise its Right of First Refusal under this Section 7.6, the Company must deliver a Company Notice to the selling Member within fifteen (15) days after delivery of the Proposed Transfer Notice specifying the number of Transfer Units to be purchased by the Company.

(c) Each Member hereby unconditionally and irrevocably grants to the other Members a secondary refusal right (a "Secondary Refusal Right") to purchase all or any portion of the Transfer Units not purchased by the Company pursuant to the Right of First Refusal, as provided in this Section 7.6(c). If the Company does not provide the Company Notice exercising its Right of First Refusal with respect to all Transfer Units subject to a Proposed Transfer, the Company must deliver a Secondary Notice to the selling Member and to each Member to that effect no later than fifteen (15) days after the selling Member delivers the Proposed Transfer Notice to the Company. To exercise its Secondary Refusal Right, a Member must deliver a notice to the selling Member and the Company within ten (10) days after the Company's deadline for its delivery of the Secondary Notice as provided in the preceding sentence.

(d) If options to purchase have been exercised by the Company and the Members pursuant to Sections 7.6(a) – (c), with respect to some but not all of the Transfer Units by the end of the ten (10) day period specified in the last sentence of Section 7.6(c) (the "Undersubscription Notice Period"), then the Company shall, within five (5) days after the expiration of the Undersubscription Notice Period, send written notice (the "Company Undersubscription Notice") to those Members who fully exercised their Secondary Refusal Right within the Undersubscription Notice Period (the "Exercising Members"). Each Exercising Member shall, subject to the provisions of this Section 7.6(d), have an additional option to purchase all or any part of the balance of any such remaining unsubscribed Transfer Units on the terms and conditions set forth in the Proposed Transfer Notice. To exercise such option, an Exercising Member must deliver written notice (a "Member Undersubscription Notice") to the selling Member and the Company within ten (10) days after the expiration of the Undersubscription Notice Period. In the event there are two (2) or more such Exercising Members that choose to exercise the last-mentioned option for a total number of remaining Transfer Units in excess of the number available, the remaining Transfer Units available for purchase under this Section 7.6(d) shall be allocated to such Exercising Members pro rata based on the number of Transfer Units such Exercising Members have elected to purchase pursuant to the Secondary Refusal Right (without giving effect to any Transfer Units that any such Exercising Member has elected to purchase pursuant to the Company Undersubscription Notice). If the options to purchase the remaining

Transfer Units are exercised in full by the Exercising Members, the Company shall immediately notify all of the Exercising Members and the selling Member of that fact.

(e) Notwithstanding the foregoing of Sections 7.6(a) – (d), if the total number of Transfer Units that the Company and the Members have agreed to purchase in the Company Notice, and Members Notice(s) is less than the total number of Transfer Units, then the Company and the Members shall be deemed to have forfeited any right to purchase such remaining Transfer Units, and the selling Member shall be free to sell all, but not less than all, of the Transfer Units to the Prospective Transferee on terms and conditions substantially similar to (and in no event more favorable than) the terms and conditions set forth in the Proposed Transfer Notice, it being understood and agreed that (i) any such sale or transfer shall be subject to the other terms and restrictions of this Agreement; (ii) any future Proposed Transfer shall remain subject to the terms and conditions of this Agreement, including this Section 7.6; and (iii) such sale shall be consummated within forty-five (45) days after receipt of the Proposed Transfer Notice by the Company and, if such sale is not consummated within such forty-five (45) day period, such sale shall again become subject to the Right of First Refusal and Secondary Refusal Right on the terms set forth herein.

(f) Any Proposed Transfer (other than any Permitted Transfers or Proposed Transfers to be effected pursuant to Section 7.5, which for clarity, shall not be subject to the provisions of this Section 7.6) not made in compliance with the requirements of this Section 7.6 shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company. Each party hereto acknowledges and agrees that any breach of this Section 7.6 would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Transfer Units not made in strict compliance with the provisions of this Section 7.6).

(g) If the consideration proposed to be paid for the Transfer Units is in property, services or other non-cash consideration, the fair market value of the consideration shall be reasonably determined in good faith by the Board and as set forth in the Company Notice. If the Company or any Member cannot for any reason pay for the Transfer Units in the same form of non-cash consideration, the Company or such Member may pay the cash value equivalent thereof, as reasonably determined in good faith by the Board and as set forth in the Company Notice. The closing of the purchase of Transfer Units by the Company and the Exercising Members shall take place, and all payments from the Company and the Exercising Members shall have been delivered to the selling Member, by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Transfer; and (ii) forty-five (45) days after delivery of the Proposed Transfer Notice.

ARTICLE 8
COMPANY SUBSIDIARIES

8.1 Management of Company Subsidiaries.

(a) Except as determined by the Board to the contrary, the Board shall have supervisory authority over the activities of the Company Subsidiaries. The powers of the Company Subsidiaries shall be exercised by or under the authority of, and the business and affairs of the Company Subsidiaries shall be managed under the direction of the Board and the Board may make all decisions and take all actions for the Company Subsidiaries.

ARTICLE 9
LIABILITY AND EXCULPATION; INDEMNIFICATION; CERTAIN COVENANTS

9.1 Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person. This Agreement is not intended to, and does not, create or impose any fiduciary duty (or liability for breach of fiduciary duty) on any Member, Manager or any of their respective Affiliates, officers, directors, shareholders, partners, members, agents and employees (the "Members' Parties"). Further, to the full extent permitted by the Act, all Members hereby waive any and all fiduciary duties that, absent such waiver, may be implied by law or equity, and in doing so, recognize, acknowledge and agree that the duties and obligations of the Members' Parties to the other Members and to the Company are only as expressly set forth in this Agreement.

9.2 Exculpation.

(a) To the fullest extent permitted by applicable law, no Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that (i) a Covered Person shall be liable for any such loss, damage or claim incurred by reason of (A) any breach of such Covered Person's legal obligations to the Company, (B) acts or omissions by such Covered Person not in good faith or which involve intentional misconduct or a knowing violation of the law or (C) any transaction from which such Covered Person derived an improper personal benefit, and (ii) this provision shall not reduce or limit the contractual liability of a Covered Person for breach of any agreement with the Company to which such Covered Person is a party (including without limitation any claim for indemnification under this Agreement).

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits, Losses or income or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid. Without limiting the foregoing, neither the Company nor any Covered Person shall have any liability with respect to any valuations performed pursuant to this Agreement, and shall be fully protected in relying in good faith upon the records of the Company and upon information, opinions, reports or statements presented to the Company by any person as to matters which the Company

or such Covered Person reasonably believes are within such other Person's professional or expert competence.

9.3 Indemnification Generally. The Company shall have the power, to the extent and in the manner permitted by the Act, to indemnify any Covered Person against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any action, suit or proceeding, arising by reason of the fact that such Person is or was an agent of the Company or was otherwise acting in such Person's capacity as a Covered Person. For purposes of this Section 9.3, a Covered Person shall include, without limitation, any person (a) who is or was an officer, employee or agent of the Company, (b) who is or was serving at the request of the Company as a director, officer, manager, member, partner, trustee, employee or other agent of another Person, including any subsidiary of the Company, or (c) who was an officer, employee or agent of a Person that was a predecessor of the Company or of another Person at the request of such predecessor of the Company.

9.4 Indemnification of Managers. The Company shall, to the maximum extent and in the manner permitted by the Act, indemnify each of its Managers against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was serving as a Manager or acting as an agent of the Company. For purposes of this Section 9.4 only, a Manager of the Company includes any person (a) who is or was a Manager of the Company, (b) who is or was serving at the request of the Company as a director, manager, member, partner, trustee, or other agent of another Person, or (c) who was a director or manager of another Person that was a predecessor to the Company or of another Person at the request of such predecessor. Such indemnification shall be a contract right and shall include the right to receive payment of any expenses incurred by the indemnitee in connection with any proceeding in advance of its final disposition, consistent with the provisions of applicable law as then in effect. The right of indemnification provided in this Section 9.4 shall not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled, and the provisions of this Section 9.4 shall inure to the benefit of the heirs and legal representatives of any person entitled to indemnity under this Section 9.4 and shall be applicable to proceedings commenced or continuing after the adoption of this Section 9.4, whether arising from acts or omissions occurring before or after such adoption. In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions and remedies shall apply with respect to advancement of expenses and the right to indemnification under this Section 9.4.

9.5 Expenses; Advances. Subject to the Company's indemnification obligations, whether in this Agreement or any other, to the fullest extent permitted by applicable law, the Company shall pay the expenses (including reasonable legal fees and expenses and costs of investigation) incurred by a Covered Person in defense or settlement of any claim, demand, action, suit or proceeding (whether civil, criminal, administrative, investigative or otherwise) that may be subject to a right of indemnification hereunder as such expenses are incurred by such Covered Person and prior to the final disposition thereof upon receipt of an undertaking by or on behalf of such Covered Person to repay such amount to the extent that it shall be determined by a final judgment of a court of competent jurisdiction that such Covered Person is not entitled to be indemnified hereunder. The Company shall ensure that its Board and officers are covered under a

directors and officers' insurance policy for so long as it is available at commercially reasonable rates, as determined by the Board.

9.6 Partnership Representative. Clear Current shall serve as the initial "partnership representative" of the Company for all purposes of Code Section 6223 and any comparable provision of state or local tax law or successor or subsequent related provision of federal law until a successor is duly designated by the Board (the "Partnership Representative"). The Partnership Representative shall have authority, acting in good faith, to take any action that may be taken by a "partnership representative" under Code Section 6223 and any similar state or local tax law with full power and authority to act on behalf of the Company and the Members in such capacity. The Partnership Representative is authorized, so far as the Partnership Representative acts in good faith (a) to represent the Company (at the Company's expense) in connection with all examinations by income tax authorities of the Company's affairs and any Company related items, including resulting administrative and judicial proceedings, (b) to sign consents and to enter into settlements and other agreements with such authorities with respect to any such examinations or proceedings, (c) to extend the statute of limitations for any taxes, (d) to determine whether the Company will contest or continue to contest any income tax deficiencies assessed or proposed to be assessed by any income taxing authority on the Company, (e) to take any other significant action affecting the tax liability of or with respect to the Company and (f) to expend Company funds for professional services and costs associated therewith; provided that the Partnership Representative shall keep the Board and the Members reasonably informed regarding any communication it has received from any income tax authorities relating to any material income tax matter of the Company and the status of any administrative or judicial proceedings relating to any material income tax matter of the Company. Each Member will cooperate with the Partnership Representative and do or refrain from doing any or all things requested by the Partnership Representative with respect to the conduct of such examinations or proceedings, including providing the Partnership Representative and the Company with any information or documentation available to and relating to such Member (or its direct or indirect owners) that the Partnership Representative determines, in its reasonable discretion, could help mitigate any tax due by the Company or the Members. If the Company is required to make any payment of tax (including interest, penalties or additions to tax) in respect of an imputed underpayment, each Member will indemnify and reimburse the Company for such holder's proportionate share of any such liability assessed to the Company, as determined and requested by the Partnership Representative; provided that the Partnership Representative shall use commercially reasonable efforts to cause any such payment requested from such Member to reflect any reduction in the amount of the imputed underpayment pursuant to any procedures adopted pursuant to Code Section 6225 and any Regulations or other guidance promulgated or issued relating thereto (or any applicable similar provision of state or local law) attributable to the status of such Member. If the Partnership Representative makes an election on behalf of the Company pursuant to Code Section 6226 with respect to an imputed underpayment, each Member shall comply with the requirements thereunder. The Company will indemnify and reimburse, to the fullest extent permitted by law, the Partnership Representative for all expenses (including legal and accounting fees) incurred as Partnership Representative pursuant to this Section 9.6 in connection with any administrative or judicial proceeding with respect to the tax liability of the Members attributable to their Units.

9.7 Indemnification of Guarantors. In the event any Member guarantees any third party indebtedness obligations of the Company (any such guaranty, a "Company Debt Guaranty"), the

Company shall indemnify and hold harmless such Member from any losses suffered by such Member in its capacity as a guarantor under the applicable Company Debt Guaranty, provided that such Member agrees in writing to promptly notify the Company if the beneficiary of the applicable Company Debt Guaranty is enforcing its rights under such Company Debt Guaranty in lieu of seeking recourse against the Company for the same. For clarity, any indemnification obligations arising under this Section 9.7 shall reside solely with the Company and no Member shall have any indemnification, contribution or other obligations or liabilities to any other Member with respect to any Company Debt Guaranty.

9.8 Nature of Rights. The rights set forth in Article 9 are contractual in nature and may not be revised as applied to prior actions of a Covered Person by a subsequent amendment of this Agreement without such Covered Person's prior written approval.

ARTICLE 10
DISSOLUTION, LIQUIDATION AND TERMINATION

10.1 No Dissolution. Only the events set forth in Section 10.2 hereof shall cause the dissolution of the Company. The Company shall not be dissolved by the admission of additional or substitute Members in accordance with the terms of this Agreement.

10.2 Events Causing Dissolution. The Company shall be dissolved and its affairs shall be wound up as follows:

(a) upon written approval by (i) the Board and (ii) all of the Members pursuant to Section 6.5;

(b) upon the sale or distribution by the Company of all or substantially all of its assets; or

(c) upon the entry of a decree of judicial dissolution under the Act.

Any other provision of this Agreement to the contrary notwithstanding, no withdrawal, assignment, removal, bankruptcy except as required by applicable law, insolvency except as required by applicable law, death, incompetency, termination, dissolution or distribution with respect to any Member or any Unit will effect a dissolution of the Company.

10.3 Liquidation. Upon dissolution of the Company, the Board may appoint one or more Persons to carry out the winding up of the Company (such Person(s) if appointed, or the Board if no such Person(s) are so appointed, being referred to as the "Liquidating Trustee(s)"), which Liquidating Trustee(s) shall immediately commence to wind up the Company's affairs in an orderly fashion. The proceeds of liquidation shall be disbursed as provided in Section 5.3(c).

10.4 Termination. The Company shall terminate when all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed as provided in Section 5.3(c).

10.5 Claims of the Members. The Members and former Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company

remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against the Company or any other Member with respect to such Capital Contributions.

ARTICLE 11
MISCELLANEOUS

11.1 Governing Law. This Agreement (including any claim or controversy arising out of or relating to this Agreement) shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to conflict of law principles that would result in the application of any law other than the laws of the State of North Carolina.

11.2 Submission to Jurisdiction; Waiver. Each party irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by another party hereto or its successors or assigns shall be brought and determined in the state or federal courts situated in Mecklenburg County, North Carolina. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to lawfully serve process, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (c) to the fullest extent permitted by applicable law, that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper and (iii) this Agreement or the subject matter hereof, may not be enforced in or by such courts.

11.3 No Expansion of Duties. To the maximum extent permissible under applicable law, the Company hereby renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any and all business opportunities that are presented to the Preferred Member whose primary business is investment activities, or its affiliates (including, without limitation, any representative or affiliate of the Preferred Member serving on the Board, but excluding any person who is an employee or officer of the Company or any of its subsidiaries) (collectively, the "Preferred Parties"), unless such business opportunity is presented to a Preferred Party solely in such Preferred Party's capacity as a member of the Board. Without limiting the foregoing renunciation, the Company (a) acknowledges that certain of the Preferred Parties are in the business of making investments in, and have or may have investments in, other businesses similar to and that may compete with the businesses of the Company ("Competing Businesses") and (b) agrees that the Preferred Parties shall have the unfettered right to make investments in other Competing Businesses independent of their investments in the Company.

11.4 Equitable Remedies; Failure to Pursue Remedies. The parties hereto agree that irreparable harm may occur in the event that any of the agreements and provisions this Agreement, specifically including, but without limitation, Article 7 hereof, were not performed fully by the parties hereto in accordance with their specific terms or were otherwise breached, and that money damages may be an inadequate remedy for breach hereof because of the difficulty of ascertaining

and quantifying the amount of damage that will be suffered by the parties hereto in the event that this Agreement is not performed in accordance with its terms or is otherwise breached. It is accordingly hereby agreed that the parties hereto shall be entitled to an injunction or injunctions to restrain, enjoin and prevent breaches of this Agreement by the Company and the other parties hereto and to enforce specifically such terms and provisions of this Agreement against the Company and other parties hereto, as applicable, in any court of the United States or any state having jurisdiction, such remedy being in addition to and not in lieu of, any other rights and remedies to which the parties are entitled to hereunder and at law or in equity.

11.5 Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Except where a time period is otherwise specified, no delay on the part of any party in the exercise of any right, power, privilege or remedy hereunder shall operate as a waiver thereof, nor shall any exercise or partial exercise of any such right, power, privilege or remedy preclude any further exercise thereof or the exercise of any right, power, privilege or remedy.

11.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, legal representatives and assigns.

11.7 Notices. The Board will notify the Members of any change in the name, principal or registered office or registered agent of the Company. Any notice or other communication required by this Agreement must be in writing and may be given either by personal delivery, by facsimile transmission or other form of electronic communication or by mail or private carrier. Notices and other communications will be deemed to have been given when delivered by personal delivery or dispatched by means of facsimile transmission or other form of electronic communication. If mailed, such notice shall be deemed to have been given on the third Business Day after being deposited in the United States mail, postage prepaid. In each case, notice hereunder shall be addressed to the Member to whom the notice is intended to be given at its address set forth on Schedule A to this Agreement or, in the case of the Company, to its principal place of business. A Member may change its notice address by notice in writing to the Company and to each other Member given in accordance with this Section 11.7.

11.8 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

11.9 Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

11.10 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, and all of which shall constitute one and the same document. This Agreement may be executed by facsimile or pdf signatures.

11.11 Article and Section Headings and References. The article and section headings are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties. Any reference in this agreement to a particular article, section or subsection shall refer to an article, section or subsection of this Agreement, unless specified otherwise.

11.12 Integration; Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, written or oral, relating to such subject matter.

11.13 Amendments. Except as otherwise specified herein, this Agreement may be amended or terminated and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by the Members holding a majority of the outstanding Units.

(i) any amendment or modification of this Agreement that would affect any class of Units in a manner materially and disproportionately adverse to any other class of Units in existence immediately prior to such amendment will be effective against the holders of that class of Units so materially, adversely and disproportionally affected only with the prior written consent of the holders of at least a majority of such class of Units, provided that, such consent is not to be unreasonably withheld, conditioned or delayed;

(ii) any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party; and

(iii) Schedule A hereto may be amended by the Company from time to time in order to add information regarding additional Capital Contributions, additional Members admitted to the Company in accordance with the terms hereof and similar items, without the consent of the other parties hereto.

The Company shall give prompt written notice of any amendment, termination or waiver hereunder to any party that did not consent in writing thereto. Any amendment, termination or waiver effected in accordance with this Section 11.13 shall be binding on each Member and all of such Member's successors and permitted assigns, whether or not any such Member, successor or assignee entered into or approved such amendment, termination or waiver.

11.14 Acknowledgments and Representations. Each Member hereby acknowledges and represents the following:

(a) Investment Intent. Such Member is (i) an "accredited investor" as defined in Regulation D of the Securities Act and (ii) acquiring the Units to be purchased or otherwise acquired by such Member pursuant to Article 4 hereof for investment only and not with a view to the distribution thereof. Such Member hereby agrees that it, he or she will not transfer the Units in a manner that will violate the Securities Act.

(b) Investment Risk. Such Member represents that it, he or she is in a financial position to hold the Units for an indefinite period of time and able to bear the economic risk and withstand a complete loss of its, his or her investment in the Units.

(c) Authorization. The execution, delivery and performance by such Member of this Agreement has been duly authorized by all necessary or appropriate action.

(d) Enforceability. The execution and delivery by such Member of this Agreement will result in legally binding obligations of such Member enforceable against such Member in accordance with the respective terms and provisions hereof and thereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity).

(e) Exemption. Such Member understands that the Units are not registered under the Securities Act on the grounds that the Company intends the sale and the issuance of securities hereunder to be exempt from registration under the Securities Act pursuant to Regulation D thereof or other exemptions available thereunder, and that the Company's reliance on such exemption is predicated on the Members' representations set forth herein.

(f) Experience. Such Member is experienced in evaluating and investing in companies such as the Company, or is familiar with the risks associated with the business and operations of the Company, and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment.

(g) Restrictions on Resale. Such Member understands that the Units may not be sold, transferred or otherwise disposed of without registration under the Securities Act and applicable state securities laws or an exemption therefrom, and that in the absence of an effective registration statement covering the Units or an available exemption from registration under the Securities Act and applicable state securities laws, the Units must be held indefinitely. Such Member understands that any certificates representing the Units may bear a restrictive legend to this effect.

(h) No Legal Actions. No legal action or suit against such Member, or to which such Member is a party, is pending or, to the knowledge of such Member, threatened, which seeks to delay or prevent the consummation of any of the transactions contemplated by this Agreement.

(i) Separate Counsel. Each Member has had the opportunity to seek the advice of counsel and other personal advisors and acknowledges that neither the Company nor any of its Affiliates has provided such Member with any advice regarding the tax, economic or other impacts to such Member of the arrangements contemplated hereby.

IN WITNESS WHEREOF, the undersigned, being the initial Managers and all of the Members of the Company, have caused this Agreement to be duly adopted by the Company as of the Effective Date, and do hereby assume and agree to be bound by and to perform all of the terms and provisions set forth in this Agreement.

MEMBERS:

LONGLEAF UTILITIES, LLC

Michael J. Myers
Its: Manager

CLEAR CURRENT, LLC

By: Jeffrey R. Yuknis
Its: Authorized Signatory

MANAGERS:

Michael J. Myers

Kenneth Raber

Jeffrey R. Yuknis

Thomas Henley

Julius Bedford

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MEMBERS:

LONGLEAF UTILITIES, LLC

_____
Michael J. Myers
Its: Manager

CLEAR CURRENT, LLC

Jeffrey Yuknis
_____
By: Jeffrey R. Yuknis
Its: Authorized Signatory

MANAGERS:

_____
Michael J. Myers

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Kenneth Raber

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_____
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_____
Thomas Henley

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Its: Manager

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MANAGERS:

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Jeffrey R. Yuknis

_____
Thomas Henley

_____
Julius Bedford

SCHEDULE A

Company Unit Register

Members	Capital Contribution	Class A Units	Class B Units	Percentage Interest
Clear Current, LLC	$2,800,000	2,800,000	0	80%
Longleaf Utilities, LLC	$700,000	0	700,000	20%
Total	$			**100%**

Addresses for Notice:

Longleaf Utilities, LLC
4700 Homewood Court, Suite 108
Raleigh, NC 27609
Attn: Michael J. Myers

Clear Current, LLC
c/o Bernhard Capital Partners
400 Convention St.
Baton Rouge, LA 70802
Attn: Julius Bedford