

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Franklin County Service Company,	)	Case No. WC-2006-0363
Melody Lake Water & Sewer, LLC,	)	
Melody Lake Ranch Associates, Inc.,	)	
Gerald Johnston.	)	
	)	
Respondents.	)	

**STAFF’S SUPPLEMENTAL RECOMMENDATION AND DISMISSAL OF GERALD  
JOHNSTON**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and respectfully submits as follows:

1. On August 8, 2006, Staff filed its Staff Recommendation in this case. The Staff Recommendation provided options for resolving this case. Staff believes that a proper response to Staff’s Recommendation should specify what options, if any, that Respondents wish to pursue. Such a response is required because some of the options are mutually exclusive.

2. Staff is now submitting its Supplemental Staff Recommendation in this case.

3. Staff’s Memorandum is attached hereto as Appendix A. Staff requests that the Commission issue an Order consistent with Staff’s Recommendations.

4. Staff also dismisses its Complaint against Gerald Johnston pursuant to 4 CSR 240-2.116. Staff understands that Mr. Johnston is no longer involved in the management of the assets involved in this case.

5. Staff further recommends that Staff's Complaint in this case be dismissed as long as the Commission issues an Order consistent with Staff's Recommendation in this case.

**WHEREFORE**, Staff respectfully requests that the Commission issue an Order in this case consistent with Staff's Recommendations. Staff also voluntarily dismisses its Complaint against Gerald Johnston.

Respectfully submitted,

/s/ Robert V. Franson

Robert V. Franson  
Senior Counsel  
Missouri Bar No. 34643

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-6651 (Telephone)  
(573) 751-9285 (Fax)  
email: robert.franson@psc.mo.gov

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 2<sup>nd</sup> day of February, 2007.

/s/ Robert V. Franson

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

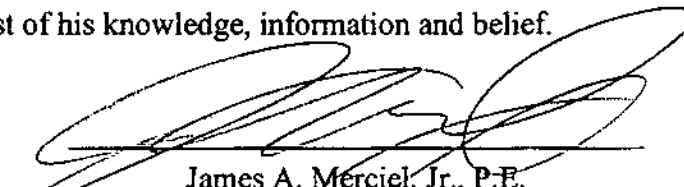
The Staff of the Missouri Public Service Commission, )  
Complainant, )  
v. )  
Franklin County Service Company, )  
Melody Lake Water & Sewer, LLC, )  
Melody Lake Ranch Associates, Inc., )  
Gerald Johnston. )  
Respondents. )

Case No. WC-2006-0363


**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

James A. Merciel, Jr., of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of this **Staff's Supplemental Recommendation And Dismissal Of Gerald Johnston** and the Attachments thereto (RECOMMENDATION); (3) that he has knowledge of the matters set forth in this RECOMMENDATION; and (4) that the matters set forth in this RECOMMENDATION are true and correct to the best of his knowledge, information and belief.

  
James A. Merciel, Jr., P.E.  
Assistant Manager - Engineering  
Water & Sewer Department  
Utility Operations Division

Subscribed and sworn to before me this 2<sup>nd</sup> day of February 2007.

  
Notary Public

My Commission Expires:

9-21-10



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

# APPENDIX A

## STAFF MEMORANDUM & ATTACHMENT

CASE No. WC-2006-0363

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## Official Case File Memorandum

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. WC-2006-0363  
Franklin County Service Co.  
Melody Lake Water & Sewer, LLC  
Melody Lake Ranch Associates, Inc.  
Gerald R. Johnston

FROM: Jim Merciel – Water & Sewer Department

<u>/s/ Dale W. Johansen</u>	<u>02/02/07</u>
Project Coordinator	Date

<u>/s/ Robert V. Franson</u>	<u>02/02/07</u>
General Counsel's Office	Date

SUBJECT: Staff's Recommendation Supporting Recognition of Transfer of Assets, Cancellation of Certificate of Convenience and Necessity, Cancellation of Tariffs, and Dismissal of Formal Complaint

DATE: February 2, 2007

### **GENERAL BACKGROUND**

On Sept 8 2006, the Staff filed a Memorandum with the subject line "Staff Recommendation Regarding Resolution of Complaint and Approval of Asset Transfer" (Staff's First Recommended Resolution) in this case. In its First Recommended Resolution, the Staff outlined the background of this case, that of Franklin County Service Company (FCSC) and the utility service it provides in the Melody Lake Ranch subdivision, as well as the roles of Melody Lake Ranch Associates (the Association) which is an organization of property owners in the development, and Melody Lake Water & Sewer, LLC (the LLC) which is an organization created by the Association for the purpose of owning and operating the water and sewer systems in the development. The Staff also included some documents purporting to show the creation and operation of the LLC, and a transfer of assets of FCSC to the LLC. Other filings by parties in this case also include background information, and address these documents.

The Staff's conclusions set out in its First Recommended Resolution were (and remain), considering its belief that FCSC is, for all practical purposes, a defunct company, that: (a) the transfer of assets from FCSC to the LLC was accomplished, albeit without the proper and required authority from the Commission; (b) the LLC is a legitimate and competent entity capable of providing water and sewer utility services to the development; and (c) the Commission should recognize that the subject asset transfer took place. Although the LLC was created with the contemplation that it would be operated as a water and sewer utility that is not subject to the Commission's jurisdiction, the Staff stated its belief that the Commission should

regulate the LLC if it were to operate under its "Operating Agreement" dated April 29, 2004 (the Original Operating Agreement), a copy of which was included with the First Recommended Resolution.

The basis for the Staff's position was outlined and referenced using what are sometimes called the "Rocky Ridge Ranch Points" which are used as a guide for evaluating customer-controlled utilities such as homeowners associations. Additionally, the Staff noted that the by the terms of the Original Operating Agreement the LLC did not meet these criteria. In order for the Staff to recommend that the Commission recognize the transfer of assets and also recognize the LLC as a utility that meets the Rocky Ridge Ranch Points, and is thus not subject to the Commission's jurisdiction, the Staff suggested several changes and modifications to the Original Operating Agreement. These changes included giving more power to the LLC's board rather than the power being held by the Association, providing that persons serving on the LLC's board be customers of the utility, and providing for utility customers to have complete and exclusive control over the selection of the LLC's board members, as opposed to also permitting lot owners who are not customers to exercise any such control. With these changes, in the Staff's opinion, the LLC would operate consistent with the Rocky Ridge Ranch Points, and the Staff believes that the LLC would thus not be subject to Commission jurisdiction.

After the Staff filed its First Recommended Resolution, the LLC sent the Staff a copy of an Amended Operating Agreement dated September 14, 2006, a copy of which is attached hereto as Attachment 1. Although the Staff discussed some finer points with the LLC's counsel regarding annual meetings, notice of the meetings, and terms of the board members, the Staff believes that the Amended Operating Agreement has been sufficiently modified from the Original Operating Agreement, and meets the Rocky Ridge Ranch Points. The Association retains some power and control since it is the financial resource of the LLC.

### **STAFF'S CONCLUSIONS & RECOMMENDATIONS**

Based on the above, the Staff has concluded that under the provisions of the Amended Operating Agreement, the LLC is legitimately controlled by its customers, and that the LLC may be operated as a utility that is not subject to the Commission's jurisdiction pursuant to the Rocky Ridge Ranch Points. As a result, the Staff recommends that the Commission issue an order that:

- (a) Recognizes that the assets formerly owned and operated by FCSC were transferred to the LLC;
- (b) Recognizes that the LLC is owned and controlled by its utility customers; and
- (c) Approves cancellation of the Certificate of Convenience and Necessity held by FCSC and the tariffs on file for FCSC.

Assuming that the Commission issues an order such as the one recommended above, the Staff believes that other allegations with respect to this case, including the Staff's Complaint, should be considered to have been resolved, and thus further recommends that this case be closed.

## Memo Attachment 1

Amended Operating Agreement of Melody Lake Water & Sewer, LLC



## **AMENDED OPERATING AGREEMENT**

THIS AMENDED AGREEMENT is made and entered into as of the 14<sup>th</sup> day of September 2006, ("the Effective Date"), by Melody Lake Ranch Water & Sewer, LLC (the "Company") and Melody Lake Ranch Associates, Inc. ("the Forming Corporation").

WHEREAS, the Company and Member have agreed to amend the original operating agreement in order to provide control of the Company by lot owners that receive water and/or sewer service as opposed to lot owners that receive no such services and;

WHEREAS, this Agreement sets forth the understandings with respect to the organization and operation of the Company and the scope and conduct of its business;

NOW THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is agreed as follows:

### **1. ORGANIZATION:**

A. **FORMATION OF COMPANY:** The Company shall be formed under and pursuant to the provisions of the Missouri Limited Liability Company Act, Sections 347.101, et. seq., of the Revised Statutes of the State of Missouri (the "Act") for the purpose and scope set forth in this Agreement. The President/Manager shall cause to be filed in the appropriate governmental office the Articles of Organization which conform to the requirements of the Act in order to constitute the Company as a valid limited liability company under the Act. Member shall execute such Articles of Organization and take such further action as may be required to effect such filings.

B. **NAME:** The name of the Company is MELODY LAKE WATER & SEWER, LLC., and all business of the company shall be conducted under that name or any other name, but in any case, only to the extent permitted by applicable law.

C. **TERM:** The Company shall continue until December 31, 2096, unless the Company is sooner terminated.

D. **CHARACTER OF BUSINESS; POWERS:** The Company is formed to transact any and all lawful business for which a limited liability company may being organized pursuant to the Missouri Limited Liability Company Act ( the "Act") and, in relation to the transaction of such business, to have and exercise any and all of the powers and rights which a limited liability company may lawfully exercise pursuant to the Act.

E. **MEMBERS OF THE COMPANY:** The membership of the Company shall be divided into two categories: (1) "Equity Members" and (2) "Voting Members". Equity Members are those that contribute to the capital of the Company and shall be entitled to distributions therefrom

as set forth in Section 2(B) and Section 9(C) and shall solely include MELODY LAKE RANCH ASSOCIATES, INC. Voting Members are those entitled to vote on matters specified herein and shall include MELODY LAKE RANCH ASSOCIATES, INC., and the owners of all lots located within Melody Lake Ranch Subdivision that receive water and/or sewer services.

F. VOTING: Each Voting Member shall be entitled to one vote. Specifically, there shall be one vote per lot and one vote for MELODY LAKE RANCH ASSOCIATES, INC. In order for a lot owner to be able to cast a vote, the payments due for water and sewer services provided to that lot must be current at the time the issue is to be voted upon.

G. PROXIES: A person, by becoming a lot owner within the Melody Lake Ranch Subdivision and making payments for water and sewer services, becomes a Voting Member of MELODY LAKE WATER & SEWER, LLC. Each lot owner that is a Voting Member hereby appoints the members of the Board of Members in office from time to time of the Company as his/her proxy and authorizes that a majority of the Board of Members in the absence of the Voting Member at any special or annual meeting of the members of the Company to cast any votes the Voting Member would be entitled to cast if personally present, on any and all matters, from time to time, and from year to year until this proxy is cancelled by a writing delivered to the Company from the Voting Member.

H. MANAGEMENT: The property and day to day affairs of the Company shall be overseen and controlled by a President/Manager, whom shall be elected by a Board of Members. Five members shall constitute the Board of Members.

i. Each member of the Board of Members shall be elected by ballot with the nominees receiving the greatest number of votes being elected. Only Voting Members eligible to vote at the time of the annual meeting may cast a vote for a nominee. The members of the Board of Members shall serve three (3) year terms. Time and place for the annual meeting is to be set by the Board of Members.

ii. A quorum of the entire Board of Members shall be necessary to conduct any business at a meeting. A majority of the Board of Members present at a meeting shall constitute a quorum. Any action or decision of a majority of the Board of Members at a meeting at which a quorum is present shall be the action or decision of the Board of Members, except in the case of an action or decision required by this Agreement to be made with the unanimous consent of the Board.

iii. All special and annual meetings of the Board of Members may be held without notice. However, special meetings of the Board of Members may be held upon three days written notice given to all Voting Members.

iv. The Board of Members shall elect the officers of the Company. The officers of the Company shall include the President/Manager, the Vice President, the Secretary, and the Treasurer and any other office that the Board of Members shall from time to time create.

H. PRINCIPAL PLACE OF BUSINESS: The principal place of business of the Company shall be at 333 Playmor Drive- Leslie, MO 63056 and any such other locations as may be hereafter determined by the Board of Members.

I. CERTAIN DEFINITIONS: As used herein, the following terms have the meanings set forth in this sub-section and all language used herein shall apply equally to both singular and plural forms of the terms defined. Also, whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine, and neuter forms.

i. "Business Property" means all property, assets and interest (whether real or personal, tangible or intangible) now or hereafter owned or held by the Company, and includes the Company's interest in the Property and Assets.

ii. "Distribution Percentage" means, for each Equity Member, the percentage set forth opposite such Member's name as follows and shall refer to the percentage distribution of assets that said Member will receive upon distribution of the Company's assets upon dissolution:

EQUITY MEMBER

DISTRIBUTION PERCENTAGE

MELODY LAKE RANCH ASSOCIATES, INC.

100%

iii. "Board of Members" means the directors of the Company and will consist of a five person board that is from time to time elected by the Voting Members of the Company.

iv. "Capital Account" means a separate account that shall be maintained for each Equity Member in accordance with the capital account maintenance rules set forth in Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

iv. A members "interest" in the company means any and all right, title and interest in and to distributions, surplus and capital to which such Equity Member may be entitled as provided in this Agreement, together with the duties and obligations of such member to comply with all the terms and provisions of this Agreement.

v. "President/Manager" means the individual elected by the Board of Members and his/her permitted successors as President/Manager hereunder. The President/Manger shall be the chief executive officer of the Company; shall preside at all meetings of the Company, including those of the Board of Members; shall execute all bonds, mortgages, conveyances, and other contracts requiring the seal of the Company; shall oversee and participate in all day to day operations of the Company and all regulatory matters of the Company; and shall see that all orders and resolutions of the Board of Members are carried into effect. All aforementioned duties and powers are subject, however, to the right of the Board of Members to delegate and of such duties and powers to any other officer, officers, or agent of the Company. In the absence of direction by the Board of

Members to the contrary, the President/Manager shall have the power to sign all membership certificates and such other papers of the Company as he may be authorized to sign by the Board of Members.

vi. "Vice President" means the individual elected by the Board of Members and his/her permitted successors as Vice President hereunder. The Vice President shall perform such duties as shall be assigned to him and shall exercise such powers as may be granted to him by the Board of Members or by the President/Manager. In the absence or disability of the President/Manager such that he/she is unable to perform his/her executive duties under this Agreement, or in the event of his inability or refusal to act, the Vice President shall perform the duties and exercise the powers of the President/Manager with the same force and effect as if performed by the President/Manager, and in such case shall be subject to all restrictions imposed upon the President/Manager.

vii. "Secretary" means the individual elected by the Board of Members and his/her permitted successors as Secretary hereunder. The Secretary shall attend all meetings of the Board of Members and of the members of the Company and shall act as clerk thereof, and shall record all votes held thereat and record the minutes of all proceedings in a minute book to be kept for such purpose. The Secretary shall keep in safe custody the seal of the Company and, when authorized by the President/Manager or Vice President, shall affix the seal to any instrument that requires the seal, and, when so ordered, shall add his/her signature as an attestation thereof. The Secretary shall give, or cause to be given, notices as required of all meetings. The Secretary shall keep a list of the member's addresses as the members shall give those addresses to him/her and shall perform such other duties as may be prescribed from time to time by the Board of Members.

viii. "Treasurer" means the individual elected by the Board of Members and his/her permitted successors as Treasurer hereunder. The Treasurer shall keep, or cause to be kept, full and accurate accounts of receipts and disbursements in books of the Company to be maintained for such purpose. The Treasurer shall file, or cause to be filed, all financial reports on a timely basis with the various regulatory agencies and report to the members of the Company such information as required by the Board of Members.

ix. "Operating Proceeds" for the applicable period means the gross receipts of the Company during such period plus any reductions in funded reserves arising out of the reversal of such reserves, less the following: (1) cash operating expenses paid during such period, (2) interest and principal paid during such period on an indebtedness of the Company, including any loans by any members, (3) case expenditures for capital improvements and other capital items paid during such period, and (4) additions to funded reserves made during such period. For purposes of the foregoing, gross receipts of the Company shall not include (a) Dissolution Proceeds (as discussed in Section 9(C)) or any part thereof, (b) any proceeds from capital contributions or loans by any members, and c) reserves for anticipated or contingent liabilities and working capital as shall be established by the Board of Members. No deductions from gross receipts of the Company shall be made for amounts paid out of funded reserves.

## 2. CAPITAL CONTRIBUTIONS:

A. CONTRIBUTIONS OF PROPERTY: The following members shall contribute to the capital of the Company the property and assets described for each respective member on Exhibit A, attached to this Agreement and made a part hereof by this reference:

MELODY LAKE RANCH ASSOCIATES, INC.

See attached Exhibit A

B. CREDITS TO CAPITAL ACCOUNTS: The contributing Equity Member's Capital Account shall be credited with the cash amounts and the values of the property as set forth above.

3. DISTRIBUTIONS: The Company shall make no annual distributions of Operating Proceeds, unless approved by a majority of the Board of Members. All members hereby irrevocably waive any and all rights that may be held, currently or in the future, to maintain any action for partition of any of the Business Property.

4. ALLOCATION OF PROFITS AND LOSSES: Subject to Section 4(A), the Company's income, gain, loss, deductions, and credits (and items thereof) for each fiscal year of the Company shall be allocated to MELODY LAKE RANCH ASSOCIATES, INC.

A. ALLOCATIONS WITH RESPECT TO TAX MATTERS: Solely for tax purposes, any income, gain, loss, or deduction with respect to property contributed to the Company by any Equity Member shall be allocated in accordance with Section 704(c) of the Internal Revenue Code (the "Code"), Treasury Regulations issued thereunder, and Treasury Regulations 1.704-1(b)(2)(iv)(g), so as to take account of any variation between the basis of the property to the company and its fair market value at the time of contribution.

i. For purposes of determining an Equity Member's respective share of nonrecourse liabilities of the Company under Treasury Regulation 1.752-3(a)(3), it is hereby specified in accordance with such Treasury Regulation that each Equity Member's percentage interest in Company profits is the same as his Distribution Percentage.

ii. If the Company revalues its property under the provisions of Treasury Regulations 1.704-1(b)(2)(iv)(f), the Equity Member's Capital Accounts shall be adjusted in accordance with Treasury Regulation 1.704-1(b)(2)(iv)(g) for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to so much of the Company's property as has been subject to such 'revaluation', as that term is used in Treasury Regulation 1.704-1(b)(2)(iv)(f) (the "Revalued Property"). The Equity Member's distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to Revalued Property, shall be determined so as to take account of the variation between the adjusted tax basis and book value of such Revalued Property in the same manner as under Section 704(d) and the Treasury Regulations thereunder.

## 5. ACCOUNTING:

A. ACCOUNTING METHODS AND RECORDS: The books and records of the Company shall be kept, and the financial position and results of its operations recorded in accordance with generally accepted accounting methods, consistently applied, except that the Equity Member's Capital Accounts shall be maintained as provided in this Agreement. The Company shall be on the cash basis for both tax and accounting purposes. \_\_\_\_\_ is hereby designated as the 'tax matters partner' (as such term is defined in Section 6231(a)(7) of the Code) or the equivalent representative for the Company.

B. FISCAL YEAR: The fiscal year of the Company shall begin on the 1<sup>st</sup> day of January each year and end on the 31<sup>st</sup> day of December each year.

C. CAPITAL ACCOUNTS: A Capital Account shall be established for each Equity Member and determined, maintained, and adjusted in accordance with Treasury Regulation 1.704-1(h)(2)(iv) and in accordance with the provisions of this Agreement. The Capital Accounts shall be adjusted upon each distribution of property by the Company to the Equity Member to the extent required by and in the manner described in Treasury Regulation 1.704-1(b)(2)(iv)(e).

D. 754 ELECTION: In the case of a transfer of an Interest which is permitted by this Agreement and which is made in the manner provided in Section 743 of the Code, then upon the request of the transferee of such Interest, the Company shall file an election under Section 754 of the code in accordance with procedures set forth in the Treasury Regulations applicable thereto.

## 6. POWERS, RIGHTS, AND DUTIES OF THE PRESIDENT/MANAGER:

### A. APPOINTMENT OF PRESIDENT/MANAGER:

i. There shall at all times be at least one (1), but not more than two (2) President/Managers.

ii. The President/Manager shall discharge, or cause the discharge, of his/her duties as a President/Manager unless and until (1) the President/Manager resigns or is replaced pursuant to the provisions of this Section and, (2) a successor President/Manager is approved. A President/Manager may resign and/or be replaced at anytime with said replacement only being effective if approved by a majority of the Board of Members. In the event of the resignation, replacement, death, incapacity, or inability of the President/Manager to act, another person may be designated as his/her successor by a majority vote of the Board of Members. The removed or resigning President/Manager shall take such actions as may be required to permit the successor President/Manager to act in accordance with the provisions of this Agreement.

iii. The President/Manager shall not be required to devote the President/Manager's exclusive time and efforts to the Company but shall devote such time and effort as may be

reasonably necessary to conduct the Company's business.

**B. MANAGEMENT AUTHORITY AND DUTIES:** Subject to the provisions of Section 6(D) and the other rights expressly granted to MELODY LAKE RANCH ASSOCIATES, INC. under the provisions of this Agreement, the President/Manager shall have the exclusive right, authority, and responsibility to manage the day to day operations and affairs of the Company and to make all decisions with respect thereto. The President/Manager shall also have the exclusive right, authority, and responsibility to manage and oversee all regulatory matters of the Company. Pursuant to the foregoing language of this Section 6 and subject to the other provisions of this agreement, the President/Manager shall have all of the rights and powers of a President/Manager as provided under the Act and as otherwise provided by law.

**C. SPECIFIC AUTHORITY OF THE PRESIDENT/MANAGER:** Without in any way limiting the general powers and authority of the President/Manager, and subject to the provisions of Section 6(E) and the other rights expressly granted to MELODY LAKE RANCH ASSOCIATES, INC. under the provisions of this Agreement, the President/Manager is hereby specifically authorized for, and in the name of and on behalf of the Company:

i. To Execute and deliver any and all agreements, contracts, document, certifications, and instruments necessary or convenient in connection with the carrying on in the usual way of the business and affairs of the Company;

ii. To execute and deliver, in furtherance of any or all of the purposes of the Company, any deed, lease, mortgage, mortgage note, bill of sale, contract or other instrument purporting to convey, exchange or encumber all or any part of the Business Property, or an interest therein, for the purpose of carrying on in the usual way of the business and affairs of the Company;

iii. To borrow money and issue evidences of indebtedness and assume existing indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the Company;

iv. To prepay, in whole or in part, refinance, recast, increase, modify, or extend any mortgage or other indebtedness relating to the company or the Business Property;

v. To deal with, or otherwise engage in business with, or provide services to and receive compensation therefor from any person who provides any services to, lends money to, sells property to, or purchases property from the Company;

vi. To deposit or invest Company funds in Such interest-bearing or non-interest-bearing accounts as is deemed advisable to the extent such funds are not then required for company operations and are not required to be distributed pursuant to this Agreement;

vii. To retain or employ and coordinate the services of employees,

supervisors, accountants, attorneys and other persons necessary or appropriate to carry out the business and purposes of the Company;

viii. To engage in any kind of activity and to perform and carry out such contracts of any kind necessary to, or in connection with, or incidental to in the furtherance of, the carrying on in the usual way of the business and purposes of the Company in accordance with this Agreement;

ix. To the extent that funds of the Company are available therefor, to pay all debts and other obligations of the Company, including amounts due under permanent and other loans to the Company;

x. To supervise the operation, maintenance, manufacture, management, and repair of the Property, including supervision of the performance of such functions as hiring and termination of employees, leasing and/or selling of the business Property, collection of rents and receivables, provisions of utilities, cleaning, repairs and maintenance services for the purpose of carrying on in the usual way of the business and affairs for th Company;

xi. To handle all matters in connection with the manufacture and sale of the business Property, including the securing of all necessary licenses, permits and like consents and securing all necessary financing and the execution of all documents related thereto for the purpose of carrying on the usual way of the business and affairs of the company; and

xii. To perform other duties provided elsewhere in this Agreement to be performed by the President/Manager.

D. AUTHORIZATION: Any person dealing with the Company or President/Manager may rely upon a certificate signed by the President/Manager, thereunto duly authorized, as to:

(1) The identity of any member of the Board of Members, Voting Member, or officer;

(2) The existence or nonexistence of any fact which may constitute a condition precedent to acts by the President/Manager or, in any other manner, be germane to the affairs of the Company;

(3) The persons who are authorized to execute and deliver any instrument or document of the company; or

(4) Any act or failure to act by the Company.

E. RESTRICTIONS ON AUTHORITY OF THE PRESIDENT/MANAGER;  
CERTAIN MAJOR DECISIONS: Notwithstanding the provisions of Sections 6(B) and 6(C), no action shall be taken or sum expended or obligation incurred by the Company or the



President/Manager with respect to a matter within the scope of any of the "Major Decisions" (as defined below) affecting the Company, unless such Major Decision has been approved by 80% of the Board of Members. The "Major Decisions" shall be the following:

- i. The employment, change in compensation of, and/or removal of the President/Manager, Vice President, Secretary, or Treasurer;
- ii. The acquisition by the Company of any real estate or any interest therein (other than the Business Property);
- iii. The sale or transfer of all or substantially all of the business Property;
- iv. The confession of a judgment against the Company in connection with any threatened or pending legal action;
- v. The borrowing of money by the Company; or
- vi. The distribution of Operating Proceeds or Dissolution Proceeds other than strictly in accordance with the provisions of Sections 3 and 9.

#### F. PRESIDENT/MANAGER'S INDEMNIFICATION; COMPENSATION

- i. The Company shall indemnify and hold harmless the President/Manager; from any loss, damage, liability or expense incurred or sustained by reason of any act performed or any omission for or on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, reasonable attorney's fees and other costs and expenses (which may be advanced by the Company) incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided, however, that the foregoing indemnity shall not relieve the President/Manager from liability for gross negligence, willful malfeasance or misconduct.
- ii. The President/Manager shall be compensated on such terms and conditions as may be mutually agreed upon and approved by a majority vote of the Board of Members.

7. MEETINGS AND VOTING. Notwithstanding anything to the contrary in this Agreement, a determination by MELODY LAKE RANCH ASSOCIATES, INC. shall be effective whether or not votes are cast at a meeting of MELODY LAKE RANCH ASSOCIATES, INC., or by formal or informal, oral or written instructions of MELODY LAKE RANCH ASSOCIATES, INC., and such determination so made by the MELODY LAKE RANCH ASSOCIATES, INC. authorized to do so shall be effective.

#### 8. TRANSFER OF INTERESTS:

#### A. RESTRICTIONS:

i. Except as provided herein, no sale, assignment, exchange, transfer, encumbrance or hypothecation, whether voluntary or involuntary (each a "Transfer"), shall be made by MELODY LAKE RANCH ASSOCIATES, INC. of the whole or any part of its Interest without the prior written consent of a majority of the Board of Members.

ii. If any Transfer of an Interest (other than a Transfer described in Section 8(C) or Section 9) is purported to be made or suffered without complying with the applicable provisions in this Section, such purported Transfer shall be void ab initio, and an option to purchase such Interest shall be deemed to have been granted to the Company pursuant to Section 8(B) of this Agreement as of the date the Company first had actual knowledge of such purported Transfer. In enforcing this provision, the Company may refuse to transfer any Interest or any claim thereto in addition, and without prejudice, to any and all other rights or remedies which may be available to MELODY LAKE RANCH ASSOCIATES, INC.

B. PERMITTED TRANSFEREES: This Section shall not apply to a transfer to the Company.

C. EFFECT OF ASSIGNMENT; DOCUMENTS: All whole or partial Interests transferred, assigned or bequeathed pursuant to the provisions of this Section shall be subject to the restrictions and obligations set forth in this Agreement. Unless otherwise agreed by MELODY LAKE RANCH ASSOCIATES, INC. or expressly provided herein, no Transfer permitted hereunder shall relieve the assignor from any of its obligations under this Agreement accruing prior to such Transfer.

#### 9. DISSOLUTION OF THE COMPANY:

A. DISSOLUTION ACTS: No act, thing, occurrence, event or circumstance shall cause or result in the dissolution of the Company except that the happening of any one of the following events shall work an immediate dissolution of the Company:

i. The sale or other disposition of all or substantially all of the Business Property;

ii. A decision to dissolve and terminate the Company that is approved in writing by two-thirds (2/3) of all Voting Members who are entitled to vote on such a matter;

iii. The termination of the term of the Company pursuant to Section 1(C) of this Agreement;

iv. Subject to Section 9(B), the death, retirement, withdrawal, expulsions, bankruptcy or dissolution (each an "Event of Withdrawal") occurring with respect to MELODY

LAKE RANCH ASSOCIATES, INC.

B. ASSIGNMENT NOT A DISSOLUTION: Without limiting the other provisions hereof, neither the assignment of all or any part of a Member's Interest in the Company hereunder nor the admission of a new member shall work the dissolution of the Company.

C. DISTRIBUTION OF PROCEEDS ON DISSOLUTION; WINDING UP; RESERVES:

i. Upon the dissolution and termination of the company, the President/Manager shall proceed with the liquidation of the Company as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice, and the proceeds therefrom and any other assets and funds of the Company (collectively the "Dissolution Proceeds") shall be applied and distributed in the following order of priority:

(1) First, to the payment of all unpaid secured indebtedness of the Company to the extent of the lesser of the value of the secured property or the amount of the secured indebtedness;

(2) Second, to the payment of the Company's then outstanding unsecured indebtedness, but if the amount available therefore shall be insufficient, then a pro rata amount on account thereof; and

(3) Third, the balance, if any, less such reserves ("Dissolution Reserves") as the President/Manager reasonably determines are necessary or appropriate for anticipated or contingent expenses of the Company, shall be distributed to MELODY LAKE RANCH ASSOCIATES, INC.

ii. To the extent the President/Manager subsequently determines Dissolution Reserves (or any part thereof) to be unnecessary for the Company expenses, the President/Manager shall cause such amounts to be distributed or paid to MELODY LAKE RANCH ASSOCIATES, INC. as if such funds had not been used for Dissolution Reserves.

10. GENERAL PROVISIONS:

A. IN GENERAL: The covenants and agreements contained herein shall be binding upon an inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri. Each Provision of this Agreement shall be considered severable and if for any reason, any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and/or contrary to any existing or future law, such invalidity shall no impair the operation or affect those provisions of this Agreement which are valid. This Agreement sets forth all the representations, promises, agreements and understanding among all of

the parties hereto with respect to the Company, the Company's business and the property of the Company, and there are no representations, promises, agreements or understandings, written or oral, express or implied, among them other than as set forth herein. Any alteration or amendment of this Agreement shall be in writing and signed by each party to this Agreement.

B. NOTICE: Any notice required or permitted under this Agreement must be in writing and may be hand delivered or sent by registered or certified mail or overnight delivery:

If to the Company: 333 Playmor Drive - Leslie, MO 63056

If to MELODY LAKE RANCH ASSOCIATES, INC.: Same as above;

or to any other address or facsimile number of which any party will notify any other in writing.

C. POWER OF ATTORNEY: MELODY LAKE RANCH ASSOCIATES, INC. hereby irrevocably makes, constitutes and appoints the President/Manager as true and lawful attorney-in-fact to make, execute, sign, acknowledge, and file with respect to this or any successor Company:

i. Such amendments to or restatements of the Company's Articles of Organization as may be required or appropriate pursuant to the provisions of this Agreement, or otherwise under the Act;

ii. All papers which may be deemed necessary or desirable by the President/Manager to effect the dissolution and liquidation of the Company after its termination as provided herein; and

iii. All such other instrument, documents and certificates which may from time to time be required by the laws of the State of Missouri, the United States of America, or any political subdivision or agency thereof to effectuate, implement, continue, and defend the valid and subsisting existence of the company and any other instruments, documents, or certificates required to qualify the Company to do business in any other state where it is required to so qualify.

IN WITNESS WHEREOF, the parties have hereto affixed their signatures as of the date first written above.

MELODY LAKE WATER AND SEWER, LLC.

BY: Gerald L. Johnson  
President/Manager

Deborah Piessel  
Secretary

MELODY LAKE RANCH ASSOCIATES, INC.

BY: *Hey C. Dwyer*  
President

*Marta Orlick*  
Secretary