

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
PHOENIX 6 BROADCASTING LLC**

**THIS LIMITED LIABILITY COMPANY AGREEMENT of Phoenix 6 Broadcasting LLC**, a Florida limited liability company (the “Company”), is made as of August 31, 2004 (the “Effective Date”), by and among the Company and each of the Persons whose names are set forth on Schedule “A” attached hereto as Members. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Article 2.

**WHEREAS**, the Members desire to set forth herein and establish their respective rights and obligations with respect to the Company.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and provisions hereinafter contained and intending to be legally bound hereby, the Members hereby agree as follows:

**ARTICLE 1  
THE LIMITED LIABILITY COMPANY**

**Section 1.1    Formation.** The term of the Company commenced upon the filing of the Articles of Organization (the “Articles”) with the Secretary of State of Florida in accordance with the provisions of the Florida Limited Liability Company Act (such Act, or any successor law, as amended from time to time, the “Act”) and shall continue in existence until its affairs are dissolved, liquidated and terminated in accordance with this Agreement and the Act.

**Section 1.2    Name.** The name of the Company is “Phoenix 6 Broadcasting LLC”. The Board may, in its sole discretion and in compliance with the Act, change the name of the Company from time to time and shall give prompt written notice thereof to the Members; *provided, however*, that such name may not contain any portion of the name or mark of any Member without such Member’s consent. In any such event, the Board shall promptly file in the office of the Secretary of State of Florida an amendment to the Articles reflecting such change of name.

**Section 1.3    Purpose.** The purposes of the Company shall be (i) to, directly or indirectly (including through its wholly-owned subsidiary, Phoenix 6 TV LLC, a Florida limited liability company), purchase, hold, manage, sell, and exercise rights with respect to assets and/or debt and equity investments (“Investments”) for its own account in KMOH-TV, a television station located, on the date hereof, in Kingman, Arizona (the “Station”), to be purchased pursuant to that certain Asset Purchase Agreement, dated November 13, 2003 (the “Asset Purchase Agreement”), with Multimedia Holdings Corporation (as assigned to the Company by Bela) and other activities reasonably related thereto (collectively, the “Lines of Business”), (ii) to directly or indirectly operate, manage and control the Lines of Business of the Investments and (iii) to engage or participate in any other lawful business activities that may be required in order to effect the actions described in the foregoing clauses (i) and (ii).

**Section 1.4 Address.** The address of the Company's initial principal place of business shall be 7500 NW 72<sup>nd</sup> Street, Miami, Florida 33166. The Board may change such principal place of business from time to time. The Company may from time to time have such other or additional places of business within or without the State of Florida as may be designated by the Board.

**Section 1.5 Fiscal Year.** The fiscal year (the "Fiscal Year") of the Company shall end on the last day of each calendar year unless, for federal income tax purposes, another Fiscal Year is required. The Company shall have the same Fiscal Year for United States federal income tax purposes and for accounting purposes.

**Section 1.6 Members.**

(a) Members. The Persons whose names are set forth on Schedule "A" attached hereto, as amended from time to time pursuant to the terms of this Agreement, shall be the Members from such date as they become parties to this Agreement. Additional Members may be admitted to the Company (a) upon conversion of the Senior Notes or (b) otherwise only with the consent of a majority of the Board, subject to Sections 6.10, 9.5 and 12.5. The Members acknowledge and agree that the admission of additional Members as a result of new issuances of Membership Interests or other equity securities will reduce their proportionate rights with respect to the Company, including without limitation their Membership Interests, and hereby consent to the admission of additional Members and to such reductions, as determined by the Board if effected in accordance with the terms hereof. In the event of any issuance of new Membership Interests or other equity securities or Transfer pursuant to this Agreement, at any time and from time to time, the recipient or transferee of such Membership Interests or other equity securities shall take such Membership Interests or other equity securities pursuant and subject to all of the provisions, conditions and agreements set forth in this Agreement as an additional Member. This Agreement shall be amended by the Board to reflect the additional Member as a party, and Schedule "A" shall be amended accordingly. As a condition precedent to the issuance or Transfer of such Membership Interests or other equity securities to the additional Member, the additional Member shall agree, for and on behalf of himself, his legal representatives, and his transferees, successors and assigns, in writing, to be bound by all provisions, conditions and agreements of this Agreement, as so amended. The failure or refusal of an additional Member to execute and deliver to the Company such an agreement shall not limit the applicability of this Agreement, as amended, to the Membership Interests or other equity securities so issued or Transferred to the additional Member. Notwithstanding anything to the contrary set forth herein, the Members, and any additional Members who may be admitted after the date hereof, hereby consent to the admission as a Member of each of the Senior Holders upon conversion of their respective Senior Notes.

(b) Series B Condition Subsequent. Notwithstanding anything to the contrary herein or in the Purchase Agreement, Bela shall not be deemed to be a Member under this Agreement unless and until the required application with and approval of the FCC shall have been filed and obtained, which Bela and the Company agree to use their best efforts to accomplish in the shortest commercially practicable time. Until such FCC approval shall be obtained, Bela's interest in the Company shall be limited to the right to receive a distribution in

accordance with Section 4.1 of this Agreement and it shall not otherwise be deemed to be a Member or have any rights as a Member.

**Section 1.7 Common and Preferred Membership Interests.**

(a) Membership Interests. Each Member shall hold a membership interest in the Company, which shall represent all of the rights, privileges, preferences and obligations of each Member with respect to the Company created under this Agreement or under the Act (“Membership Interest”). Each Membership Interest shall be denominated as a percentage, and the relative rights, privileges, preferences and obligations with respect to the Member’s Membership Interest shall be determined under this Agreement and the Act based upon such percentage. The Membership Interests of the Company shall be designated as “Common Membership Interests”, “Series A Preferred Membership Interests,” and “Series B Preferred Membership Interests”, and each respective class and series shall have the designations, preferences, and relative, participating, optional or other special rights, and qualifications, limitations or restrictions as set forth herein. The parties hereto acknowledge that the Company has issued the Senior Notes, which are convertible into Series A Preferred Membership Interests. The Series A Preferred Membership Interests and the Series B Preferred Membership Interest are collectively referred to herein as the “Preferred Membership Interests.”

(b) Membership Interest Percentages. The Series A Preferred Membership Interests, when issued, will constitute fifty percent (50%) of the fully diluted Membership Interests of the Company on an as-converted basis and, upon conversion of the Senior Notes into such Membership Interests, such percentage will be pro rated among the Senior Holders based on the principal amount of Senior Notes held by each such Person as it relates to the aggregate principal amount outstanding under all Senior Notes at the time of conversion. The Series B Preferred Membership Interests will constitute twenty (20%) of the fully diluted Membership Interests of the Company on a fully diluted basis and are owned as set forth on Schedule “A.” The Common Membership Interests constitute thirty percent (30%) of the fully diluted Membership Interests of the Company on an as-converted basis and are owned as set forth in Schedule “A.”

(c) FCC Clawback. Notwithstanding the foregoing, in the event that the outstanding Membership Interests of the Company owned by foreign persons (as defined under FCC regulations, “Foreign Persons”) exceed twenty-five percent (25%) at any time, then to the extent required pursuant to a written opinion of the FCC counsel and provided that Section 9.6 hereof shall have been fulfilled by the Company and such Foreign Person, the Series A Preferred Membership Interests of the Company shall be reallocated as follows:

(i) The Series A Preferred Membership Interests held by all Foreign Persons in the aggregate shall be limited to twenty-five percent (25%) of the fully diluted Membership Interests of the Company on an as-converted basis, and such percentage shall be prorated among such Foreign Persons based on each such Person’s Conversion Amount as it relates to the aggregate Conversion Amounts of all Foreign Persons.

(ii) The Series A Membership Interests held by all non-Foreign Persons in the aggregate shall be increased to twenty-five percent (25%) of the fully

diluted Membership Interests of the Company on an as-converted basis, and such percentage shall be prorated among such non-Foreign Persons based on the total amount of each such Person's Conversion Amount as it relates to the aggregate Conversion Amounts of all non-Foreign Persons.

(iii) In the event that in the written opinion of FCC Counsel to Company, the foregoing reallocations are insufficient to remedy any potential violation of FCC rules or regulations, then the Members agree to negotiate in good faith and use reasonable efforts to amend this Agreement to remedy any such potential violation.

## **ARTICLE 2**

### **DEFINITIONS**

**Section 2.1 Definitions.** Capitalized words and phrases used in this Agreement have the following meanings:

"Accreted Value" with respect to a Senior Note shall mean the original principal amount of a holder's Senior Note plus accrued and unpaid interest thereon.

"Act" shall have the meaning set forth in Section 1.1 of this Agreement.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member for any Fiscal Year, the deficit balance, if any, in such Member's Capital Account as of the end of such Fiscal Year after giving effect to the following adjustments: (a) crediting to such Capital Account any amounts that such Member is obligated to restore as described in the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5) or any provision of this Agreement, and (b) debiting from such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Affected Member" shall mean any Member owning or acquiring a Conflicting Attributable Interest or having levels of foreign ownership that, in the Board's good faith determination based upon written advice of FCC Counsel, would result in the Company being in violation of the Communications Act.

"Affiliate" shall mean with respect to any Person:

- (a) Any Person directly or indirectly Controlling, Controlled by or under common Control with such Person ("Control Persons");
- (b) Individuals who are Family Members of a Person;
- (c) Any officer, director, manager, member or partner of such Person; and
- (d) Any Person that is Controlled by such Control Person.

“Agreement” shall mean this Limited Liability Company Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Articles” shall have the meaning set forth in Section 1.1 of this Agreement.

“Attributable Interest” shall mean the types of managerial and ownership interests considered by the FCC under its Attribution Rules in evaluating the compliance of parties with respect to the Multiple Ownership Rules.

“Attribution Rules” shall mean the rules and policies of the FCC identifying the types of managerial and ownership interests to be considered in evaluating the compliance of parties to an FCC application with the Multiple Ownership Rules.

“Base Rate” shall mean, as of any date, a variable rate of interest *per annum* equal to the rate of interest most recently published by *The Wall Street Journal* as the “prime rate” at large U.S. money center banks; *provided, however*, that if *The Wall Street Journal* is not published as of the date of determination, then the prime rate established shall be that reported by any U.S. money center bank reasonably selected by the Board.

“Bela” means Bela Broadcasting LLC, a Florida limited liability company.

“Board” shall have the meaning set forth in Section 6.1(a) of this Agreement.

“Board Members” shall have the meaning set forth in Section 6.1(a) of this Agreement.

“Board Seats” shall have the meaning set forth in Section 6.2(a) of this Agreement.

“Book Item” shall have the meaning set forth in Section 5.7(a)(i) of this Agreement.

“Business Day” shall mean a day which is not a Saturday or Sunday or a legal holiday and on which banks in Miami, Florida are open.

“Capital Account” shall have the meaning set forth in Section 5.1 of this Agreement.

“Capital Contribution” shall mean, with respect to any Member, the amount of money and the fair market value (as determined by the Board) at the date of contribution of any property (other than money) contributed to the Company by such Member or by an individual retirement account on behalf of a Member. It is understood that Capital Contributions made as of the Effective Date are set forth on Schedule “A” and shall not be subject to adjustment by the Board.

“Chairman” shall have the meaning set forth in Section 6.13 of this Agreement.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.

“Common Membership Interests” shall have the meaning set forth in Section 1.7(a) of this Agreement.

“Communications Act” shall mean the Communications Act of 1934, as amended, and any successor act.

“Company” shall mean the limited liability company formed in accordance with the terms, conditions and provisions of this Agreement.

“Company Assets” shall mean all intangible and tangible personal property and real property acquired by the Company and any replacements of, or additions or improvements to, such property and shall include, without limitation, Investments and assets held indirectly through subsidiaries or other arrangements.

“Company Media Enterprise” shall have the meaning set forth in Section 9.3(a)(i)(1).

“Company Minimum Gain” shall have the meaning set forth for “Partnership Minimum Gain” in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

“Conflicting Attributable Interest” shall mean any Attributable Interest which when held in common with the Company’s Attributable Interests would result in a violation of the Multiple Ownership Rules.

“Control” (including the correlative terms “Controlled by” and “Controlling”) shall mean the possession, directly or indirectly, of the power to direct, or to cause the direction of, the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Conversion Amount” shall mean with respect to the holders of Series A Preferred Membership Interests, the Accreted Value of the Senior Notes at the time of conversion of such Senior Notes.

“Credit Facility” shall mean a senior secured indebtedness of the Company in an amount not to exceed \$2 million from any institutional lender or Person entered into to fund the capital improvements and operations of the Station.

“Depreciation” shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted tax basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided, however*, that if the adjusted tax basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

“Depreciation Recapture” shall have the meaning specified in Section 5.7(a)(ii)(A)(III) hereof.

“Effective Date” shall have the meaning set forth in the preamble of this Agreement.

“External Auditor” shall mean a “Big 4” accounting firm or other nationally or regionally recognized accounting firm or Kaufman Rossin & Co.

“Fair Market Value” shall mean, with respect to any item, the price (in cash or other consideration) at which said item would be sold in a sales transaction between a willing buyer and a willing seller negotiating on arms’-length terms. The Fair Market Value of an item shall be deemed for all purposes to be equal to the Fair Market Value of such items as determined by a unanimous vote of the Board and specified in writing to the Members, so long as such determination is reasonable and made in good faith by the Board. In the event the affected Member does not agree with the Board’s determination, such affected Member shall deliver written notice to the Company and the Board within ten (10) days of the Board’s determination. Within twenty (20) days following such written notice of disagreement, the affected Member shall have the right to elect one independent appraiser and the Company shall have the right to elect another independent appraiser and then the two such elected appraisers shall timely elect a third independent appraiser to determine Fair Market Value, which determination will be final and binding on all Members. Each party to such disagreement shall bear the fees and expenses of its own independent appraiser and shall share equally the fees and expenses of the third independent appraiser.

“Family Member” of a Person means the spouse, ancestors, lineal descendants and siblings of a Person, and the spouse, ancestors, lineal descendants and siblings of the foregoing Family Members.

“FCC” shall mean the Federal Communications Commission, or any successor agency.

“FCC Counsel” shall mean Leibowitz and Associates, P.A. or any nationally or regionally recognized FCC counsel, provided that to the extent that the holders of Preferred Membership Interests are materially adversely affected by the advice or opinion being rendered by Leibowitz and Associates, P.A. (other than advice and opinions rendered in the ordinary course to the Company pertaining to operational matters), then a majority-in-interest of such affected holders may require that the Board select alternative FCC Counsel to advise or opine with respect to such matter, and no member or associate of Leibowitz and Associates, P.A. shall participate in such vote by the Board. The opinion or advice of such alternate FCC Counsel shall govern.

“Fiscal Year” shall have the meaning set forth in Section 1.5 of this Agreement.

“Foreign Person” shall have the meaning set forth in Section 1.7(a).

“GAAP” shall mean generally accepted accounting principles applied on a consistent basis as in effect in the United States.

“Gross Asset Value” shall mean, with respect to any asset, such asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The Gross Asset Value of any asset contributed by a Member to the Company is the Fair Market Value of such asset as determined at the time of contribution;

(b) The Gross Asset Value of all Company Assets shall be adjusted to equal their respective Fair Market Values, as determined by the Board, as of the following times: (i) the acquisition of any 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 the Member of more than a *de minimis* amount of property as consideration for an interest in the Company; and (iii) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); *provided, however*, that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(c) The Gross Asset Value of any Company Asset distributed to any Member shall be adjusted to equal the Fair Market Value of such Company Asset on the date of distribution as determined by the Board.

If the Gross Asset Value of a Company Asset has been determined or adjusted pursuant to paragraph (a) above or clause (i) or (ii) of paragraph (b) above, such Gross Asset Value shall be adjusted only by the Depreciation taken into account, the contribution of said asset under clause (a) or the adjustment under clause (b) with respect to such asset for purposes of computing Net Profit or Net Loss.

“Indemnified Party” shall have the meaning set forth in Section 10.1 of this Agreement.

“Investments” shall have the meaning set forth in Section 1.3 of this Agreement.

“Lines of Business” shall have the meaning set forth in Section 1.3 of this Agreement.

“Liquidity Event” shall mean (i) a sale of all or substantially all of the Membership Interests (either by Transfer of issued and outstanding Membership Interests (as permitted under this Agreement) or issuance of new Membership Interests, but excluding the issuance of Membership Interests upon conversion of the Senior Notes); (ii) a sale of all or substantially all of the consolidated assets of the Company and its subsidiaries taken as a whole (other than to an entity of which a majority of the voting power is held by Persons who, immediately prior to such transaction, held a majority of the voting power of the Company); or (iii) any merger or consolidation involving the Company (unless a majority of the voting power of the surviving or resulting entity is held by Persons who, immediately prior to such transaction, held a majority of the voting power of the Company).

“Major Decision” shall have the meaning set forth in Section 6.10(a).

“Media Enterprise” shall mean any entity that directly or indirectly owns, controls, or operates any broadcast radio or television station or network; any cable, satellite master antenna television, or wireless cable television system; any daily newspaper, any other communications facility operated pursuant to a license, permit, or other authorization granted by the FCC; or any other entity that is subject to the Multiple Ownership Rules.

“Member” shall mean any Person listed as a Member on Schedule “A” attached hereto, as the same may be amended from time to time, pursuant to the provisions of this Agreement.



“Member Nonrecourse Debt” shall have the meaning set forth for “Partner Nonrecourse Debt” in Treasury Regulation Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” shall mean a Member’s share of Company Minimum Gain as set forth in Treasury Regulation Sections 1.704-2(g) and (i).

“Member Nonrecourse Deductions” shall have the meaning set forth for “Partner Nonrecourse Deductions” in Treasury Regulation Sections 1.704-2(i)(1) and (2).

“Membership Interests” shall have the meaning set forth in Section 1.7(a) and shall include, collectively, the Common Membership Interests and the Preferred Membership Interests.

“Multiple Ownership Rules” shall mean the several rules and policies of the FCC (however denominated) governing common ownership, operation or control of the various media of mass communication including but not limited to, radio broadcast stations, television broadcast stations, cable television systems, multipoint distribution systems, newspapers, direct broadcast satellite and any other medium of mass communication that is now or may hereafter be considered relevant for FCC regulatory analysis of media ownership.

“Net Loss” and “Net Profit” shall mean, for each Fiscal Year or portion thereof, an amount equal to the Company’s taxable income or loss for such Fiscal Year or portion thereof, determined in accordance with Section 703(a) of the Code (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 shall be included in taxable income or loss) with the following adjustments:

(a) any income of the Company that is exempt from U.S. federal income tax and not otherwise taken into account as an item of profit or income 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 Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account as an item of loss or expense 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 pursuant to paragraphs (b) or (c) of the definition of “Gross Asset Value” hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Company Asset for purposes of computing Net Profit or Net Loss;

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

(e) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or portion thereof; and

(f) any items specially allocated pursuant to Sections 5.4 hereof shall not be considered in determining Net Profit and Net Loss.

“Net Proceeds” shall have the meaning set forth in Section 4.1(e) of this Agreement.

“Nonrecourse Deductions” shall have the meaning set forth in Sections 1.704-2(b)(1) and 1.704-2(c) of the Treasury Regulations.

“Nonrecourse Liability” shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

“Person” shall mean any individual, association, partnership, corporation, limited liability company, trust or other entity.

“Preferred Membership Interests” shall have the meaning set forth in Section 1.7(a) of this Agreement.

“Purchase Agreement” shall mean the Membership and Note Subscription Agreement, dated as of August 31, 2004, between the Company and the investors named therein.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations thereunder as in effect from time to time.

“Senior Holders” shall mean the holders of the Senior Notes.

“Senior Notes” shall mean the Senior Convertible Notes of the Company issued pursuant to the Purchase Agreement.

“Series A Portion” shall have the meaning set forth in Section 4.1(d) of this Agreement.

“Series A Preferred Membership Interests” shall have the meaning set forth in Section 1.7(a) of this Agreement.

“Series B Preferred Membership Interests” shall have the meaning set forth in Section 1.7(a) of this Agreement.

“Subsidiary” shall mean any corporation or other entity or organization, whether incorporated or unincorporated, in which the Company owns, directly or indirectly, a majority equity or other ownership interest or otherwise controls (including, without limitation, as a manager in the case of a limited liability company).

“Tax Matters Member” shall have the meaning set forth in Section 11.3 of this Agreement.

“Transfer” shall mean any sale, exchange, transfer, gift, bequest, assignment or pledge or granting of a security interest in, or other encumbrance of, all or any portion of any interest in tangible or intangible personal or real property, including Membership Interests in the Company, voluntarily or involuntarily, by operation of law or otherwise; provided, however that neither the

pledge of Membership Interests pursuant to the security and pledge agreement to be entered into for the benefit of the Senior Holders, nor any pledge pursuant to the Credit Facility shall constitute a Transfer pursuant to this Agreement.

“*Treasury Regulations*” shall mean the Income Tax Regulations promulgated under the Code, as they may be amended from time to time.

### **ARTICLE 3** **CAPITAL CONTRIBUTIONS**

#### **Section 3.1    Capital Contributions by the Members.**

(a)    **Initial Capital Contributions.** The name, address, and value of the initial Capital Contribution of each Member shall be set forth on Schedule “A” attached hereto. Bela, as a holder of a Series B Preferred Membership Interest, shall be credited with an initial Capital Contribution set forth on Schedule A in respect of its assignment to the Company of the Asset Purchase Agreement pursuant to the Assignment and Assumption Agreement between Bela and the Company. Upon conversion of the Senior Notes, each such converting Senior Holder shall be credited with an initial Capital Contribution in respect of the Membership Interests issued therefor equal to the Accreted Value of the Senior Note converted and Schedule “A” shall be amended accordingly.

(b)    **Additional Contribution Obligations.** No Member shall be obligated to make any additional Capital Contributions to the Company. Subject to the terms of this Agreement, each Member, pro rata in accordance with such Member’s Membership Interest, may, but shall not be obligated to, make any additional Capital Contributions to the Company at such time and in such amounts as the Board determines is necessary, appropriate or desirable. If a Member does not contribute such Member’s pro rata share, then the non-contribution of capital by the non-contributing Member hereunder shall be treated as a redistribution of the Membership Interests between the Members so that thereafter, for all purposes under this Agreement, the Membership Interest of the non-contributing Member shall be reduced to a percentage equal to a fraction, the numerator of which is the total of the Capital Contributions theretofore made by such non-contributing Member and the denominator of which is the total of the Capital Contributions (including the current additional Capital Contributions of the contributing Members) made by all of the Members. The Membership Interests of the contributing Members shall be increased by a percentage equal to a fraction, the numerator of which is the total of the Capital Contributions theretofore made by such contributing Member and the denominator of which is the total of the Capital Contributions (including the current additional Capital Contributions of the contributing Members) made by all of the Members.

**Section 3.2    Withdrawal of Capital.** No Member shall have the right to withdraw any capital from the Company; *provided, however*, that the Board may distribute capital to the Members from time to time, in accordance with the terms hereof.

**Section 3.3    Interest.** No Member shall be entitled to interest on its Capital Contributions or its Capital Account. Any interest actually received by reason of temporary investment of any part of the Company’s funds shall be included in the Company’s funds.

**Section 3.4 Benefited Parties.** The foregoing Capital Contribution commitments of the Members are solely for the benefit of the Members, as among themselves, and may not be enforced by any creditor, receiver, or trustee of the Company or by any other person.

## **ARTICLE 4** **DISTRIBUTIONS**

**Section 4.1 Distributions.** The Net Proceeds shall be distributed in the following priority after repayments of amounts due under the Credit Facility, if any:

(a) First, to each of the Members holding a Series A Preferred Membership Interest, the greatest of (i) the original principal amount of such Member's Senior Note that was converted into such Member's Series A Preferred Membership Interest, plus twenty-five percent (25%) simple interest thereon accruing on an annual basis from the date hereof to the date of the Liquidity Event, (ii) one and one-half (1.5) times the original principal amount of the Senior Note that was converted into such Member's Series A Preferred Membership Interest, or (iii) the Series A Portion (as defined below) of the Net Proceeds, to be shared ratably among such Members in accordance with the proportion that the Series A Preferred Membership Interest of each such Member relates to all such Series A Preferred Membership Interests outstanding (such greatest amount being referred to as the "Series A Preferred Return"). Notwithstanding the foregoing, if the Net Proceeds are less than the aggregate original principal amount of the Senior Notes (other than any Senior Notes issued to Robert Behar) then the distribution payable in respect of the Series A Preferred Membership Interest issued to Robert Behar shall be reduced by the amount of such shortfall (but not below zero) and such shortfall shall be allocated to the other Members holding Series A Preferred Membership Interests on a pro rata basis based on their respective Series A Preferred Membership Interests;

(b) Second, to each of the Members holding a Common Membership Interest in an amount equal to the Capital Contribution made by such Member in respect of the issuance of such Common Membership Interest to the extent not otherwise previously returned to such Member (the "Common Return"); and

(c) Thereafter, the excess, if any, of the Net Proceeds over the Series A Preferred Return and Common Return shall be paid to Bela as the holder of the Series B Preferred Membership Interest pursuant to that certain Assignment and Assumption Agreement dated as of August 31, 2004, between the Company and Bela.

(d) As used herein, "Series A Portion" means a fraction (x) the numerator of which is the aggregate original principal amount of the Senior Notes and (y) the denominator of which is the sum of (1) aggregate original principal amount of the Senior Notes plus (2) the Capital Contribution of Bela as the holder of the Series B Preferred Membership Interest.

(e) As used herein, "Net Proceeds" means the gross proceeds received pursuant to the Liquidity Event (i) less (A) any amounts owed pursuant to and indebtedness in respect of borrowed money required to be repaid from the gross proceeds (including under the Credit Facility), (B) any transactional expenses relating to the Liquidity Event, (C) any other liquidated liability of the Company and (D) a reserve fund (which may be in the form of cash or

other property) in a reasonable amount, as the Board by unanimous vote (including the Place 4 Seat and the Place 5 Seat) may determine to be necessary, for any and all other liabilities, including contingent liabilities, of the Company, (ii) plus any assets remaining in the Company at the time of such Liquidity Event. If any proceeds are in the form of property other than cash, the value of such proceeds shall be the Fair Market Value thereof and such property may be distributed in kind or liquidated for distribution in cash as the Board by unanimous vote (including the Place 4 Seat and the Place 5 Seat) may determine to be practicable.

(f) In the event that insufficient funds are available to satisfy the obligations to any class or series under any of the foregoing subsections (a), (b) or (c), then all members of such class or series shall share on a pro rata basis based on their respective Membership Interests within such class or series (except as set forth in subsection (a) with respect to Bob Behar).

**Section 4.2 Restriction on Distributions.** No distribution shall be made that would have the effect of reducing the value of the Company Assets below the liabilities of the Company (on a consolidated basis), other than liabilities to Members on account of their interests in the Company. Prior to authorizing any distribution, the Board shall determine whether the Company has available to it unencumbered cash funds sufficient for the distribution after taking into account (except in the case of liquidation of the Company) the amounts which should be set aside to provide a reasonable reserve for the continuing conduct of the business of the Company and for normal working capital.

**Section 4.3 Demand for Distributions.** No Member shall be entitled to demand and receive a distribution of Company Assets in return for its Capital Contributions to the Company, except in accordance with the terms hereof.

**Section 4.4 Tax Withholding; Tax Distributions.**

(a) **Tax Withholding.** If the Company or other Members or agents of the Company are required to withhold and pay over Federal income tax, estimated tax, interest or penalties with respect to income or gain allocable to any Member as a result of its status as a Member of the Company, or other Members or agents of the Company, as the case may be, shall withhold and pay over to the applicable authorities such amounts as may be required on behalf of such Member (said payments are referred to as “*Withholding Payments*”). Such Withholding Payments shall be treated as advance distributions to the Members on whose behalf they are made and shall be set-off against and reduce amounts otherwise to be distributed to said Members as quickly as possible. If Withholding Payments made by the Company or by any other Member or agent of the Company with respect to a Member are greater than the amount of distributions which are otherwise payable to said Member after the time when a Withholding Payment is made, said Member shall reimburse and indemnify the payor for the amount of such excess upon written demand therefor.

(b) **Tax Distributions.** Notwithstanding other provisions of the Agreement, the Board shall use reasonable efforts to cause the Company to make distributions, to the extent available, in an amount sufficient to enable the Members to pay all United States federal income taxes and state and local income taxes required to be paid by each Member in respect of the items of income, gain, loss, deduction and credit allocated to the Members and any withholding

tax relating thereto, assuming each Member pays the highest marginal rate of tax imposed on corporation or individuals under applicable tax codes and regulations (said distributions are referred to as “*Tax Distributions*”). Tax Distributions under this paragraph shall be superior in priority to other distributions under this Agreement, and any Tax Distributions made to a Member shall be considered to be in anticipation of amounts otherwise distributable to said Member, and shall be set-off against and reduce amounts otherwise to be distributable to said Members as quickly as possible. If Tax Distributions made by the Company with respect to a Member are greater than the amount of distributions which are otherwise payable to a Member after the time when a Tax Distribution is made, said Member shall reimburse and indemnify the Company for the amount of such excess upon written demand therefor.

## **ARTICLE 5**

### **CERTAIN TAX AND OTHER REGULATORY MATTERS**

#### **Section 5.1    Capital Account.**

“*Capital Account*” shall mean, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(a) To each Member’s Capital Account there shall be credited such Member’s Capital Contribution, such Member’s distributive share of Net Profit or any item in the nature of income or gain which are specially allocated pursuant to Section 5.4, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member.

(b) To each Member’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, such Member’s distributive share of Net Loss and any item in the nature of expenses or losses which are specially allocated pursuant to Section 5.4, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(c) In the event all or a portion of a Membership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the transferred Membership Interest.

(d) In determining the amount of any liability for purposes of paragraphs (a) and (b) of this Section 5.1, there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and Treasury Regulations.

The foregoing provision and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

**Section 5.2    General Application.** The rules set forth in this Article 5 shall apply for the purposes of determining each Member’s general allocable share of the items of income, gain, loss or expense of the Company comprising Net Profit or Net Loss of the Company for each

Fiscal Year, determining special allocations of other items of income, gain, loss and expense, and adjusting the balance of each Member's Capital Account pursuant to Section 5.1 hereof to reflect the aforementioned general and special allocations. For each Fiscal Year, the special allocations in Section 5.4 hereof shall be made immediately prior to the general allocations of Section 5.3 hereof.

**Section 5.3    General Allocations.**

(a)    The items of income, expense, gain and loss of the Company comprising Net Profit or Net Loss for a Fiscal Year shall be allocated among the Persons who were Members during such Fiscal Year in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such Fiscal Year to equal the excess (which may be negative ) of:

(i)    the hypothetical distribution (if any) that such Member would receive if, on the last day of the Fiscal Year, (x) all Company Assets, including cash, were sold for cash equal to their Gross Asset Value, taking into account any adjustments thereto for such Fiscal Year, (y) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each nonrecourse liability, to the Gross Asset Value of the assets securing such liability), and (z) the net proceeds thereof (after satisfaction of such liabilities) were distributed in full pursuant to Section 4.1 hereof, over

(ii)    the sum of (x) the amount, if any, which such Member is obligated to contribute to the capital of the Company, (y) such Member's share of the Company Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(g), and (z) such Member's share of Member Nonrecourse Debt Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described in Section 5.3(a)(i) above.

(b)    Determination of items comprising allocations.

(i)    In the event that the Company has Net Profit for a Fiscal Year,

(A)    for any Member as to whom the allocation pursuant to Section 5.3(a) is negative, such allocation shall be comprised of a proportionate share of each of the Company's items of expense or loss entering into the computation of Net Profit for such Fiscal Year; and

(B)    the allocation pursuant to Section 5.3(a) in respect of each Member (other than a Member referred to in Section 5.3(b)(i)(A)) shall be comprised of a proportionate share of each Company item of income, gain, expense and loss entering into the computation of Net Profit for such Fiscal Year (other than the portion of each Company item of expense and loss, if any, that is allocated pursuant to Section 5.3(b)(i)(A)).

(ii)    In the event that the Company has a Net Loss for a Fiscal Year,

(A) for any Member as to whom the allocation pursuant to Section 5.3(a) is positive, such allocation shall be comprised of a proportionate share of the Company's items of income and gain entering into the computation of Net Loss for such Fiscal Year; and

(B) the allocation pursuant to Section 5.3(a) in respect of each Member (other than a Member referred to in Section 5.3(b)(ii)(A)) shall be comprised of a proportionate share of each Company item of income, gain, expense and loss entering into the computation of Net Loss for such Fiscal Year (other than the portion of each Company item of income and gain, if any, that is allocated pursuant to Section 5.3(b)(ii)(A)).

(iii) For purposes of this Section 5.3, a gain recognized by the Company upon the disposition of an item of Company property shall be considered to be a single item of gain regardless of whether, for federal income tax purposes, part of the gain is treated differently from the remainder.

(c) Loss Limitation. Notwithstanding anything to the contrary in this Section 5.3, the amount of items of Company expense and loss allocated pursuant to this Section 5.3 to any Member shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year.

**Section 5.4 Special Allocations.** The following special allocations shall be made in the following order:

(a) In the event that there is a net decrease during a Fiscal Year in either Company Minimum Gain or Member Nonrecourse Debt Minimum Gain, then notwithstanding any other provision of this Article 5, each Member shall receive such special allocations of items of Company income and gain as are required in order to conform to Treasury Regulation Section 1.704-2;

(b) Subject to Section 5.4(a), but notwithstanding any other provision of this Article 5, items of income and gain shall be specially allocated to the Members in a manner that complies with the "qualified income offset" requirement of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3);

(c) In the event that a Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year, such Member shall be specially allocated items of Company income and gain in an amount necessary to reduce such excess to zero as quickly as possible; *provided that* any allocation under this Section 5.4(c) shall be made only if and to the extent that a Member would have an Adjusted Capital Account Deficit after all allocations provided for in this Article 5 have been tentatively made as if this Section 5.4(c) were not in this Agreement;

(d) Any item of Company loss or expense that is attributable to Member Nonrecourse Debt shall be specially allocated to the Members in the manner in which they share the economic risk of loss (as defined in Treasury Regulation Section 1.752-2) for such Member



Nonrecourse Debt. Each Nonrecourse Deduction of the Company shall be specially allocated among the Members in proportion to their Membership Interests; and

(e) In the event any payment to any Person that is treated by the Company as the payment of an expense is recharacterized by a taxing authority as a Company distribution to the payee as a Member, such payee shall be specially allocated an amount of Company gross income and gain as quickly as possible equal to the amount of the distribution.

**Section 5.5 Allocation of Nonrecourse Liabilities.** For purposes of determining each Member's share of Nonrecourse Liabilities, if any, of the Company in accordance with Treasury Regulation Section 1.752-3(a)(3), the Members' interests in Company profits shall be determined in accordance with their Membership Interests.

**Section 5.6 Transfer of Interest; Conversion of Debt Instruments.** (a) In the event of a Transfer of all or part of a Membership Interest (in accordance with the provisions of this Agreement) at any time other than the end of a Fiscal Year, the shares of items of Company Net Profit or Net Loss and specially allocated items allocable to the Membership Interest transferred shall be allocated between the transferor and the transferee in a manner determined by the Board in its sole discretion that is not inconsistent with the applicable provisions of the Code.

(b) Notwithstanding any other provision of this Agreement, if a Member acquires an interest in the Company as a result of the conversion of a convertible debt instrument issued by the Company, the holder of said interest shall only be allocated Net Profit or Net Loss which arise on the date of said conversion or thereafter, and the character of any Net Profit so allocated shall, to the maximum extent permitted by the Code and the regulations thereunder, consist of capital gains, and shall not consist of operating income earned by the Company prior to the date of such conversion.

**Section 5.7 Tax Allocations.**

(a) Section 704(b) Allocations.

(i) Each item of income, gain, loss, deduction or credit for federal income tax purposes that corresponds to an item of income, gain, loss or expense that is either taken into account in computing Net Profit or Net Loss or is specially allocated pursuant to Section 5.4 (a "Book Item") shall be allocated among the Members in the same proportion as the corresponding Book Item is allocated among them pursuant to Section 5.3 hereof or Section 5.4 hereof.

(ii) (A) If the Company recognizes Depreciation Recapture in respect of the sale of any Company Asset,

(I) the portion of the gain on such sale which is allocated to a Member pursuant to Section 5.3 hereof or Section 5.4 hereof shall be treated as consisting of a portion of the Company's Depreciation Recapture on the sale and a portion of the balance of the Company's remaining gain on such sale under principles consistent with Treasury Regulations Section 1.1245-1.

(II) If, for federal income tax purposes, the Company recognizes both “unrecaptured 1250 gain” (as defined in Section 1(h) of the Code) and gain treated as ordinary income under Section 1250(a) of the Code in respect of such sale, the amount treated as Depreciation Recapture under Section 5.7(a)(ii)(A)(I) hereof shall be comprised of a proportionate share of both such types of gain.

(III) (For purposes of this Section 5.7(a)(ii) “*Depreciation Recapture*” means the portion of any gain from the disposition of an asset of the Company which, for federal income tax purposes (a) is treated as ordinary income under Section 1245 of the Code; (b) is treated as ordinary income under Section 1250 of the Code; or (c) is “unrecaptured 1250 gain” as such term is defined in Section 1(h) of the Code.

(b) Section 704(c) Allocations. In the event any property of the Company is credited to the Capital Account of a Member at a value other than its tax basis (whether as a result of a contribution of such property or a revaluation of such property pursuant to subparagraph (b) of the definition of “*Gross Asset Value*” in Article 2 of this Agreement), then allocations of taxable income, gain, loss and deductions with respect to such property shall be made in a manner which will comply with Section 704(b) and Section 704(c) of the Code and the Treasury Regulations thereunder. The Company, in the discretion of the Board, may make, or not make, “curative” or “remedial” allocations (within the meaning of the Treasury Regulations under Section 704(c) of the Code) including, but not limited to:

(i) “curative” allocations which offset the effect of the “ceiling rule” for a prior Fiscal Year (within the meaning of Treasury Regulation 1.704-3(c)(3)(ii)); and

(ii) “curative” allocations from dispositions of contributed property (within the meaning of Treasury Regulations Section 1.704-3(c)(3)(iii)(B)).

(c) The tax allocations made pursuant to this Section 5.7 shall be solely for tax purposes and shall not affect any Member’s Capital Account or share of non-tax allocations or distributions under this Agreement.

**Section 5.8 Book-Up Adjustment Provisions.** Notwithstanding anything in this Agreement to the contrary, if the Company’s Gross Asset Value is adjusted pursuant to paragraph (b) of the definition of Gross Asset Value, the Capital Account of all Members shall, if necessary, be adjusted so that the Capital Accounts of such Members represent a percentage of the Capital Accounts of all Members equal to such Member’s Membership Interest.

**Section 5.9 Transfers.** In the case of a Transfer by a Member of a Membership Interest as permitted pursuant to this Agreement by sale or exchange, the death of a Member or the distribution of Company Assets, the Board shall, upon request of the transferee Member, make an election under Section 754 of the Code to adjust the basis of the Company Assets with respect to a transferee who acquires a Membership Interest from an exiting Member. The Capital Accounts of the Members shall be adjusted in accordance with Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations. Because of the significant accounting difficulties and extra expense to the Company which may be involved if this election is made,

the transferee Member will be required to pay all administrative and accounting expenses incurred in connection with the election.

## **ARTICLE 6**

### **MANAGEMENT**

#### **Section 6.1    Board.**

(a)     The Members have established the Company as a “manager-managed” limited liability company under the Act, and have agreed to designate a Board of Managers (the “Board”) of up to five (5) Persons to manage the Company and its business and affairs. The Persons appointed to the Board are referred to as “Board Members.” Any action by the Board shall be deemed to be an action by the managers of the Company for the purposes of the Act or otherwise.

(b)     The Board may exercise all powers of the Company (and all powers of a “manager” under the Act) and may do all such lawful acts and things as are not specifically required by the Act or by this Agreement to be exercised or done by the Members. The Board will be responsible for managing all business and affairs of the Company (including managing the business and affairs of any Investment of which the Company is the general partner or managing member), all in accordance with the terms of this Agreement.

(c)     The Board, in its sole discretion, may delegate its rights and powers to manage the business and affairs of the Company to one or more other Persons. The Board may also employ attorneys, accountants, consultants, contractors, agents, employees and other Persons to assist the Board in carrying out its duties and responsibilities under this Agreement. The wages, salaries and other compensation of any such person shall be determined by the Board.

#### **Section 6.2    Board Appointments and Procedures.**

(a)     Board Members. The number of Board Members which shall constitute the initial Board shall be five (5), and shall consist of “Place 1”, “Place 2”, “Place 3”, “Place 4” and “Place 5” Board seats (collectively, the “Board Seats”, and each a “Board Seat”). Initially, the Board Members shall be Robert Behar, Matthew Leibowitz, Michael Jesselson, Gary McBride and Nancy Friedberg, respectively.

(b)     Replacement of Board Seats. If a Board Seat should become vacant, subject to Section 9.5 of this Agreement, the holders of a majority in interest of the Common Membership Interests shall designate a replacement for such vacant Board Seat by delivering a written notice of such replacement to the Company, the Senior Holders and any other Members provided that such replacement shall be a person set forth on Schedule “B” attached hereto (such persons, “Approved Persons”).

(c)     Notwithstanding the foregoing provisions of paragraphs (a) and (b) of this Section 6.2, no Foreign Person shall be permitted to vote such portion of such Foreign Person’s Membership Interest with respect to the appointment or removal of a Board Member the extent that the FCC Counsel by written opinion determines that voting such portion would violate the

applicable provisions of the Communications Act and the rules and regulations of the FCC thereunder.

**Section 6.3    Reserved.**

**Section 6.4    Meetings of the Board.**

(a) Regular meetings of the Board shall be held at such time and place and on such notice, if any, as shall be determined from time to time by the Board.

(b) Special meetings of the Board may be called at any time by any Board Member on at least five (5) Business Days prior written notice from such Board Member to all of the other Board Members.

(c) At all meetings of the Board, a majority of the Board Members at the time in office, inclusive of the Place 4 and Place 5 Board Seats, shall be necessary and sufficient to constitute a quorum for the transaction of business; provided, however, that each of the Place 4 Seat and the Place 5 Seat may waive such quorum requirement for a particular meeting as to himself or herself by means of a written waiver received by the Chief Executive Officer of the Company prior to the conduct of the meeting to which the waiver applies. If a quorum is not present at any meeting of the Board, the Board Members thereat may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present. Notwithstanding the foregoing, if a quorum is not obtained at two consecutive duly noticed meetings of the Board due solely to the failure of the Place 4 and Place 5 Board Seats to attend, then the next duly noticed meeting may be conducted even if one or both of such Board Seats fails to attend.

**Section 6.5    Committees.** The Board may create committees for such terms and with such powers and duties as the Board deems appropriate, subject to the terms of this Article 6, provided that the Place 4 and Place 5 Board Seats shall be entitled to observe all such committee meetings and to receive simultaneously with the committee copies of all documentation provided to the committee members in their capacities as such in connection with any such meeting (including written consents in lieu of any meetings), unless otherwise prohibited by FCC regulations.

**Section 6.6    Voting.** All decisions of the Board must be approved by a majority of the Board Members then serving on the Board (not just a majority of the Board Members present at a particular meeting).

**Section 6.7    Telephone Meetings.** Board Members may attend any meeting of the Board or any committee thereof by conference telephone, radio, television, or similar means of communication by which all Persons participating in the meeting can hear each other, and all Board Members so attending shall be deemed present at the meeting for all purposes, including the determination of whether a quorum is present.

**Section 6.8    Action by Written Consent.** Any action required or permitted to be taken by the Board or a committee may be taken without a meeting if a consent in writing, setting forth the action so taken is signed by all of the Board Members. “Writing” for these

purposes includes any handwritten, typewritten, telegraphic, telexed, or telecopied communication. Notwithstanding the foregoing, if and for so long as the “Place 4” and “Place 5” Board Seats are vacant, the Board may not take action by written consent pursuant to this Section and all Board action shall be taken at a duly called meeting.

**Section 6.9 Waiver of Notice.** Whenever any notice is required to be given to any Board Member under the provisions of this Agreement, a waiver thereof in writing signed by the Person or Persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any Board meeting shall also constitute a waiver of notice thereof, other than attendance for the express purpose of objecting to such Board meeting on the grounds that such meeting is not lawfully convened.

**Section 6.10 Special Approval Rights.**

(a) No Member, Board Member, or any other Person shall have the right or the power to make any commitment or engage in any undertaking on behalf of the Company or any Subsidiary in respect of a Major Decision (as defined below) unless or until the same has been approved by a majority-in-interest of the holders of Series A Preferred Membership Interests, acting together as a class. As used herein, each of the following shall constitute a “Major Decision” subject to this Section 6.10:

(i) The Company or any Subsidiary (A) creating, incurring or assuming any indebtedness for borrowed money, whether or not in the ordinary course of business (other than trade credit incurred in the ordinary course of business and consistent with the applicable Business Plan (as defined in the Senior Note), or issuing any debt securities; (B) assuming, guaranteeing, endorsing or otherwise becoming liable or responsible (whether directly, contingently or otherwise) for, the obligations of any person or entity; (C) making any loans or advances to any other person or entity; or (D) making or committing to make any capital expenditures in excess of \$5,000 but excluding (x) the Credit Facility and (y) except as set forth in Section 6.10(a)(vii), that is proposed to be made in the Business Plan as approved by a majority-in-interest of the holders of Series A Preferred Membership Interests;

(ii) issuing, selling, pledging, disposing of, or encumbering, or, authorizing the issuance, sale, pledge, disposition, or encumbrance of any of the Company’s or any Subsidiary’s equity securities, including any membership units, partnership interests, capital stock of any class or any options, warrants, convertible or exchangeable securities or other rights of any kind to acquire any such equity securities, or any other Membership Interest, except pursuant to the Senior Note and except for pledges or encumbrances pursuant to the Credit Facility;

(iii) selling, leasing or otherwise disposing of, or permitting any Subsidiary to sell, lease or otherwise dispose of any material asset of the Company or any Subsidiary, in one or a series of transactions, whether by merger, sale of assets or otherwise; or making, permitting or suffering the imposition of any lien, encumbrance, pledge, hypothecation or other security interest of or on any assets of the Company or any Subsidiary, except to secure the Senior Notes or the Credit Facility, immaterial liens

arising in the ordinary course of business or by operation of law, and Permitted Liens pursuant to the Asset Purchase Agreement;

(iv) merging or consolidating with any other entity or permitting any Subsidiary to merge or consolidate with any other entity;

(v) (i) redeeming, repaying, purchasing or otherwise acquiring directly or indirectly any Junior Security (as defined in the Senior Note), or (ii) directly or indirectly paying or declaring any dividend or making any distribution upon or with respect to any Junior Security;

(vi) entering into or allowing any Subsidiary to enter into any new transaction (or amending in any material respect any existing transaction) with any Affiliate (as defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended) of the Company (other than another wholly-owned Subsidiary), its management or any holders of its membership interests, including without limitation, any loans or advances by or to any of its management, any holder of membership interests, any officer of the Company and any other Affiliate of the Company, its management or any holder of membership interests, unless such transaction is, and is certified by a resolution of a majority of the members of the Board of Managers who have no interest in such transaction ("Board Certified") and delivered to the holders of Series A Preferred Membership Interests within twenty (20) days of effecting such transaction, to be on terms at least as favorable to the Company as would be obtained in an arms length transaction; provided that in the case of a transaction involving more than \$250,000, such resolution shall be accompanied by the opinion of an independent nationally recognized financial advisor that such transaction is fair, from a financial point of view to the Company (except for the engagement of Barbara Laurence to act as a broker or financial advisor in connection with any sale of the Station, which engagement shall only be required to be Board Certified and will not require such an advisor's opinion);

(vii) making any material change in the nature of the Company's or any Subsidiary's business or any change in a Business Plan in excess of 20% with respect to any line item; provided, however that the aggregate of all such line item changes shall not exceed 10% of the total amounts referenced in the Business Plan prior to any such changes;

(viii) retaining any auditor other than one of the "Big Four" or nationally or regionally recognized accounting firm or Kaufman Rossin & Co.;

(ix) the initiation or settlement of any material litigation;

(x) making or permitting the making of any amendment or modification (other than any immaterial ministerial amendment or modification) of this Agreement, the Company's Articles of Organization or other organizational documents or the equivalent organizational documents of any Subsidiary;

(xi) acquiring, or permitting any Subsidiary to acquire, any interest in any entity or business (whether by a purchase of assets, purchase of stock, merger or otherwise), or entering into any joint venture or creating any direct or indirect Subsidiary other than one that is wholly-owned by the Company or another wholly-owned Subsidiary;

(xii) any liquidation, dissolution, recapitalization or reorganization of the Company or any Subsidiary in any form of transaction (including, without limitation, any reorganization into a corporation, partnership or other entity);

(xiii) except as set forth in the Business Plan and in Section 6.10(a)(vii), hiring any key executive or management personnel of the Company or any material Subsidiary, including the company's chief executive officer, chief financial officer, chief operating officer or any other employee with an annual salary of \$50,000 or more;

(xiv) except as set forth in a Business Plan and in Section 6.10(a)(vii), (A) increasing the compensation payable or to become payable to the Company's officers or salaried employees; (B) granting any severance or termination pay to, or entering into any employment or severance agreement with, any of its officers or salaried personnel; (C) establishing, adopting, entering into or amending any bonus, profit sharing, trust, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any officers, personnel or employees (except for the assumption under the Asset Purchase Agreement of any 401(k) Plan, if any (or similar plan)), or taking any action to accelerate any rights or benefits thereunder; or

(xv) amending the Management Agreement between the Company and Bela (the "Management Agreement") (other than any immaterial ministerial amendment or modification).

(b) The Members agree that the vote of the Board as provided in Section 6.6 on any action not considered a Major Decision shall be sufficient to cause or permit the Company to undertake such action.

**Section 6.11 First Meeting.** Each newly elected Board may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of Members, and no notice of such meeting shall be necessary.

**Section 6.12 Election of Officers.** At the first meeting of the Board after each annual meeting of Members at which a quorum shall be present, the Board shall elect the officers of the Company. The initial officers of the Company are as set forth on Schedule "C" attached hereto.

**Section 6.13 Procedure.** At meetings of the Board, business shall be transacted in such order as from time to time the Board may determine. The Chairman of the Board (the "Chairman"), if such office has been filled, and, if not or if the Chairman is absent or otherwise unable to act, the President shall preside at all meetings of the Board. In the absence or inability to act of either such officer, a chairman for such meeting shall be chosen by the Board from

among the Board Members present. The Secretary of the Company shall act as the secretary of each meeting of the Board unless the Board appoints another person to act as secretary of the meeting. The Board shall keep regular minutes of its proceedings which shall be placed in the minute book of the Company.

**Section 6.14 Compensation.** The Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, paid to Board Members for attendance at regular or special meetings of the Board or any committee thereof, provided that no director who is an officer, employee, consultant or other service provider of Bela shall receive additional compensation in his or her capacity as director, provided that he or she shall be entitled to expense reimbursement hereunder.

**Section 6.15 Devotion of Time.** The Board shall devote such time to the Company business as the Board shall deem to be necessary to manage and supervise the business and affairs of the Company in an efficient manner.

**Section 6.16 Competitive Activities.** No Board Member in his or her capacity as a Board Member shall be required to manage the Company as its sole and exclusive function and may have other business interests and may engage in other activities in addition to those relating to the Company, except as he or she may be restricted under a separate agreement. Such other business interests and activities may be of any nature or description, and may be engaged in independently or with others. Neither the Company nor any Member shall have any right, by virtue of this Agreement or the Company relationship created hereby, in or to such other ventures or activities of the Board or any other Member or any of their respective Affiliates, or to the income or proceeds derived therefrom, and the pursuit of such ventures, even if competitive with the business of the Company (except to the extent such Person may be restricted from such competition under a separate agreement), shall not be deemed wrongful or improper.

**Section 6.17 Transactions with Affiliates.** Subject to Section 6.10, notwithstanding any obligations or duties (fiduciary or otherwise) that the Board may have at law or in equity, the Company may from time to time enter into transactions with Board Members or Affiliates of Board Members in order to carry out the purpose of the Company as described in Section 1.3 above; *provided* that such transactions are, in the reasonable judgment of the Board (other than the affected Board Member), after full disclosure of the terms of such transaction to the entire Board, not less favorable than would be obtained in a comparable arms' length transaction with a Person that is not an Affiliate of such Board Member.

## **ARTICLE 7**

### **OFFICERS AND OTHER AGENTS**

**Section 7.1 Number; Titles; Term of Office.** The officers of the Company shall be a President, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint, including a Chairman, one or more Vice Presidents (with each Vice President to have such descriptive title, if any, as the Board shall determine), an Assistant Secretary, and an Assistant Treasurer. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, until his or her death, or until he or she shall resign or shall have been removed in the manner hereinafter provided. Any two or more offices may be held by the



same person. None of the officers need be a Member or a Board Member of the Company or a resident of the State of Florida.

**Section 7.2 Removal.** Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 7.3 Vacancies.** Any vacancy occurring in any office of the Company (by death, resignation, removal, or otherwise) may be filled by the Board.

**Section 7.4 Authority.** Officers shall have such authority and perform such duties in the management of the Company as are provided in this Agreement or as may be determined by resolution of the Board not inconsistent with this Agreement.

**Section 7.5 Compensation.** The compensation, if any, of officers and agents shall be fixed from time to time by the Board; *provided, however*, that no officer or agent who is an officer, director, employee, consultant or other service provider of Bela shall receive additional compensation in his or her capacity as an officer of the Company, provided that he or she shall be entitled to expense reimbursement hereunder. The Board may delegate the power to determine the compensation of any officer and agent (other than the officer to whom such power is delegated) to the Chairman or the President.

**Section 7.6 Chairman of the Board.** The Chairman, if elected by the Board, shall have such powers and duties as may be prescribed by the Board. Such officer shall preside at all meetings of the Members and of the Board.

**Section 7.7 President.** The President shall be the chief executive officer of the Company and, subject to the control and direction of the Board, shall have general executive charge and management of the properties and operations of the Company in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities. If the Board has not elected a Chairman or in the absence or inability to act of the Chairman, the President shall exercise all of the powers and discharge all of the duties of the Chairman. As between the Company and third parties, any action taken by the President in the performance of the duties of the Chairman shall be conclusive evidence that there is no Chairman or that the Chairman is absent or unable to act.

**Section 7.8 Vice Presidents.** Each Vice President shall have such powers and duties as may be assigned to him by the Board, the Chairman, or the President, and (in order of their seniority as determined by the Board or, in the absence of such determination, as determined by the length of time they have held the office of Vice President) shall exercise the powers of the President during that officer's absence or inability to act. As between the Company and third parties, any action taken by a Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

**Section 7.9 Treasurer.** The Treasurer shall have custody of the Company's funds and securities, shall keep full and accurate account of receipts and disbursements, shall deposit all monies and valuable effects in the name and to the credit of the Company in such depository or depositories as may be designated by the Board, and shall perform such other duties as may be prescribed by the Board, the Chairman, or the President.

**Section 7.10 Assistant Treasurers.** Each Assistant Treasurer shall have such powers and duties as may be assigned to him by the Board, the Chairman, or the President. The Assistant Treasurers (in the order of their seniority as determined by the Board or, in the absence of such a determination, as determined by the length of time they have held the office of Assistant Treasurer) shall exercise the powers of the Treasurer during that officer's absence or inability to act.

**Section 7.11 Secretary.** Except as otherwise provided in this Agreement, the Secretary shall keep the minutes of all meetings of the Board and of the Members in books provided for that purpose, and shall attend to the giving and service of all notices. To the extent authorized by the Board, the Secretary may sign, in the name of the Company, any contract, FCC application or report and other similar documents of the Company. The Secretary may sign with the Chairman or the President all certificates representing Membership Interests of the Company, and shall have charge of the certificate books, transfer books, and other papers as the Board may direct, all of which shall at all reasonable times be open to inspection by any Board Member upon application at the office of the Company during business hours; *provided, however*, that no certificate evidencing Membership Interests need be issued. The Secretary shall in general perform all duties incident to the office of the Secretary, subject to the control of the Board, the Chairman, and the President.

**Section 7.12 Assistant Secretaries.** Each Assistant Secretary shall have such powers and duties as may be assigned by the Board, the Chairman, or the President. The Assistant Secretaries (in the order of their seniority as determined by the Board or, in the absence of such a determination, as determined by the length of time they have held the office of Assistant Secretary) shall exercise the powers of the Secretary during that officer's absence or inability to act.

## **ARTICLE 8**

### **MEETINGS OF MEMBERS**

**Section 8.1 Place of Meetings.** All meetings of the Members shall be held at the principal place of business of the Company as provided in Section 1.4 or at such other place within or without the State of Florida as shall be specified or fixed in the notices or waivers of notice calling the meeting; *provided* that any or all Members may participate in any such meeting by means of conference telephone or similar communications equipment pursuant to Section 8.13.

**Section 8.2 Annual Meeting.** An annual meeting of the Members, for the transaction of all business as may properly come before the meeting, shall be held at such place, within or without the State of Florida, on such date and at such time as the Board shall fix and set forth in the notice of the meeting. The Senior Holders shall have the right to attend all such meetings

and to receive simultaneously with the Members timely notice of such meeting and copies of all documentation provided to the Members in connection with any such meetings (including written consents in lieu of any meetings), unless otherwise prohibited by FCC regulations.

**Section 8.3    Special Meetings.** Special meetings of the Members for any proper purpose or purposes may be called at any time by resolution of the Board or by a majority-in-interest of the Members. Such Members may call a meeting by delivering to the Board one or more written requests signed by the requisite number of Members stating that such Members wish to call a meeting and indicating the specific purpose for which the meeting is to be held. If not otherwise stated in the written request or fixed in accordance with the remaining provisions hereof, the record date for determining Members entitled to call a special meeting is the date any Member first signs the written request for a meeting. Only business within the purpose or purposes described in the notice (or waiver thereof) required by this Agreement may be conducted at a special meeting of the Members. The Senior Holders shall have the right to attend all such meetings and to receive simultaneously with the Members timely notice of such meeting and copies of all documentation provided to the Members in connection with any such meeting (including written consents in lieu of any meetings), unless otherwise prohibited by FCC regulations.

**Section 8.4    Notice and Waiver Thereof.** Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days nor more than sixty days before the date of the meeting, by or at the direction of the Board, to each Member entitled to vote at such meeting in accordance with Section 15.7. Attendance of a Member at a meeting shall constitute a waiver of notice of the meeting except where such Member attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Notice of a meeting may also be waived in writing. Attendance at a special meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the special meeting but not so included, if the objection is expressly made at the meeting.

**Section 8.5    Quorum.** A quorum shall be present at a meeting of Members if a majority-in-interest of the Members entitled to vote are represented at the meeting in person or by proxy.

**Section 8.6    Voting.**

(a)    Voting and Voting Power. Subject to Section 6.10, all Members shall, except as hereinafter provided, be entitled to vote at meetings. Members may vote either in person or by proxy at any meeting. Subject to Section 9.5 of this Agreement, each Member shall be entitled to vote in accordance with their Membership Interest in the Company. No Affected Member shall be entitled to vote except for those matters set forth in Section 9.3.

(b)    Voting on Matters Other than the Designation of Board Members. With respect to any matter other than the designation of Board Members (which shall be governed by Section 6.2) or a matter for which the affirmative vote of Members owning a specified percentage of the interests is required by the Act, the Articles or this Agreement, the affirmative

vote of a majority-in-interest of the Membership Interests actually present at a meeting and entitled to vote at which a quorum is present shall be the act of all the Members.

(c) Change in Voting Percentages. No provisions of this Agreement requiring that any action be taken only upon approval, vote or action of the Members holding a specified percentage of the Membership Interests of the Members may be modified, amended or repealed unless such modification, amendment or repeal is approved by Members holding at least such specified percentage of such Membership Interests and by a majority-in-interest (based on principal amount) of each of the Senior Holders.

(d) Series B Preferred Non-Voting. Notwithstanding anything to the contrary set forth herein or in the Act, the Member holding the Series B Preferred Membership Interest shall not be entitled to exercise any voting or consent rights in respect of such Series B Preferred Membership Interest.

**Section 8.7** Record Date. For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or any adjournment thereof, or entitled to receive a distribution (subject to Section 4 and the terms of the Senior Notes), or in order to make a determination of Members for any other proper purpose (other than determining Members entitled to consent to action by Members proposed to be taken without a meeting of the Members), the Board may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than thirty days and, in case of a meeting of Members, not less than ten days prior to the date on which the particular action requiring such determination of Members is to be taken. When a determination of the Members entitled to vote at any meeting of Members has been made as provided in this Section 8.7, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the records and the stated period of closing has expired. The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office or its principal place of business, or to the Board in accordance with the provisions of Section 15.7. Notwithstanding the foregoing, the Senior Holders shall be entitled to notice of any action proposed to be taken prior to conversion of the Senior Notes, and the record date for such action shall not occur prior to ten (10) days following delivery of such notice, thereby providing each Senior Holder with sufficient time to convert prior to such vote.

**Section 8.8** Voting Lists. The Board shall make, at least ten (10) days before each meeting of Members, a complete list of the Members entitled to vote at such meeting, showing the interests owned by each Member. Failure to comply with these requirements shall not affect the validity of any action taken at such meeting.

**Section 8.9** Adjournment. Notwithstanding the other provisions of the Articles or this Agreement, the Chairman or the Members holding a majority-in-interest of the Membership Interests actually present shall have the power to adjourn such meeting from time to time, without any notice other than announcement of the time and place of the holding of the adjourned meeting. If such meeting is adjourned by such Members, such time and place shall be determined by a vote of the majority-in-interest of the Members actually present. Upon the

resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

**Section 8.10 Proxies.** A Member entitled to vote may vote either in person or by proxy executed in writing by the Member. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by such Member shall be treated as an execution in writing for purposes of this Section 8.10. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

**Section 8.11 Conduct of Meeting.** The Board shall have full power and authority (applied in good faith) concerning the manner of conducting any meeting of the Members, including, without limitation, the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of this Article 8, the conduct of voting, the validity and effectiveness of any proxies, and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The Chairman shall preside at, and the secretary shall prepare minutes of, each meeting of Members, and in the absence of either such officer, his duties shall be performed by some Person or Persons selected by the Board.

**Section 8.12 Action by Written Consent.** Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by the Members holding not less than the minimum interests that would be necessary to take such action at a meeting at which the Members holding the required interests were present and voted. Every written consent shall bear the date of signature of each Member who signs the consent. A telegram, telex, cablegram or similar transmission by a Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this Section 8.12. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action. If any action by the Members is taken by written consent, any certificate or documents filed with the Secretary of State of Florida, if any, as a result of the taking of the action shall state, in lieu of any statement required by the Act concerning any vote of Members, that written consent has been given in accordance with the provisions of this Agreement.

**Section 8.13 Telephone and Similar Meetings.** Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE 9**

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

**Section 9.1    No Participation by Members.** Except as set forth herein, no Member shall have any independent right to participate in the management or control of the Company or of its business, which management and control is reserved specifically to the Board.

**Section 9.2    Liabilities of the Members.** Except as otherwise required by law, no Member shall be personally liable for any of the debts or obligations of the Company, and the liability of each Member to the Company shall be limited to the total Capital Contributions that such Member is required to make to the Company under Article 3 hereof, and such liability shall be enforceable only by the Company and the Members thereof and not by any creditors of the Company.

**Section 9.3    Membership Restrictions.**

(a)    The determination of a Conflicting Attributable Interest shall be made by the Board based upon the written advice of the Company's FCC Counsel, and for so long as a Conflicting Attributable Interest exists, the following restrictions shall be applicable to the Affected Member:

(i)    neither the Affected Member nor any officer, director, member or partner of the Affected Member nor any Person who owns 5% or more of any class of equity securities of the Affected Member shall:

(1)    be an employee of the Company whose functions directly or indirectly relate to any Media Enterprise of the Company (the "Company Media Enterprise");

(2)    serve in any material capacity as an independent contractor or agent with respect to any Company Media Enterprise;

(3)    serve as a Board Member of the Company;

(4)    communicate with the Company's Board Members, with any Member that is not an Affected Member or the management of any Company Media Enterprise on matters pertaining to the day-to-day ordinary course operations of any Company Media Enterprise;

(5)    perform any services for the Company that materially relate to any Company Media Enterprise; or

(6)    become actively involved in the management or operation of any Company Media Enterprise; and

(ii)   the Affected Member shall not vote on the election of any new Board Member of the Company unless such new Board Member is approved by the existing Board Members pursuant to the terms of this Agreement; and

(iii)   with respect to the replacement rights set forth in Section 6.2 and 6.3, the Affected Member shall not have the right to vote for the replacement of Board Members, unless such replacement Board Member is approved by the existing Board Members pursuant to the terms of this Agreement; and

(iv) the Affected Member shall not have the right to vote to remove a Board Member from the Company except where the Board Member is subject to bankruptcy proceedings, has been adjudicated incompetent by a court of competent jurisdiction, or has been removed for cause which was determined by an independent party to have constituted malfeasance, criminal conduct, wanton or willful neglect, or such other extraordinary conduct with respect to which a prudent investor would require the right to remove a Board Member; and

(v) the Affected Member shall use its best efforts, on an expedited basis, to divest or otherwise eliminate any Conflicting Attributable Interests; and

(vi) If the Board, based upon the written advice of the Company's FCC Counsel, determines that the application of clauses (i) through (v) above is insufficient to protect the Company from a violation of the Multiple Ownership Rules or a violation of the foreign ownership limitations of Section 310(b) of the Communications Act, then, after written notice to the Affected Member, the Board may place further restrictions on an Affected Member's Membership Interest designed to remedy the potential ownership violation, or the Board may cause the Company to purchase all or any portion of an Affected Member's Membership Interest in the Company, subject to Section 4.1, on the following terms and conditions:

(1) the purchase price for the Affected Member's Membership Interest shall be equal to the Fair Market Value at the date of such purchase.

(2) the purchase price shall, to the extent possible and subject to Section 4.1, be paid in full in cash on the date of the purchase of the Affected Member's Membership Interest with the proceeds of available credit under any Company credit agreement, or any other source of available cash. To the extent the purchase price is not paid in full on the date of purchase, the unpaid amount of the purchase price and interest on the unpaid balance thereof shall be evidenced by a promissory note secured by the Affected Member's purchased Membership Interest (the "Repurchase Senior Note"). The Company shall use its best efforts to ensure that the Repurchase Senior Note is paid as soon as practicable but in no event in more than eighteen (18) months from the date of issuance. The Repurchase Senior Note shall bear interest at an annual rate for the first twelve (12) months from the date of issuance, equal to the interest rate paid by the Company on its senior indebtedness, or in the absence of such indebtedness, at the Base Rate plus two percentage points *per annum* (but not in excess of the highest rate *per annum* permitted by law) on the date of issuance, and thereafter, the Repurchase Senior Note shall bear interest at an annual rate of eighteen percent (18%);

(3) within ten (10) days after receipt of notice of the Board's determination to purchase the Affected Member's Membership Interest and receipt of the Repurchase Senior Note, the Affected Member shall convey its Membership Interests to the Company free and clear of all liens and encumbrances except for (y) any security interest securing the Company's indebtedness and (z) a security interest securing the Repurchase Senior Note contemplated in this subsection.

(vii) the restrictions in (i) through (vi) above shall be in addition to the restrictions set forth in Section 9.4 below.

(b) Before the Company makes an offer or enters into an agreement for an Investment in any Company Media Enterprise, each Member, at the request of the Company, shall provide an opinion of counsel or a certificate to the Company stating whether the Member has a Conflicting Attributable Interest with respect to the proposed Investment of the Company.

(c) Each Member shall use reasonable efforts to cooperate with the Board to ensure the Company's compliance with the applicable provisions of any material federal or state law (including the rules and regulations of the FCC) and shall provide the Board with such information as the Board may reasonably request to enable the Board to cause the Company to comply with the applicable provisions of any material federal or state law or regulation (including the rules and regulations of the FCC).

**Section 9.4 Multiple Ownership Rules.** If any Member (other than an Affected Member) becomes aware that a Person holding an Attributable Interest in the Company through that Member also holds Attributable Interests that, when held in conjunction with the Company Media Enterprises, violate the Multiple Ownership Rules, then such Member will expeditiously take such action as is reasonably necessary to remedy such violation of the FCC's Multiple Ownership Rules with respect to the Company.

**Section 9.5 Transactions Requiring FCC Approval.**

(a) If the admission of a new Member to the Company or the exercise of Membership Interest voting rights by a Member would, in the written opinion of FCC Counsel result in the transfer of control of an FCC license authorized to be held by the Company (as defined by FCC rules and regulations), then such new Member shall not be admitted to the Company or such voting rights shall not be exercised without prior application to and approval by the FCC.

(b) Notwithstanding subsection (a) above, a new Member may be admitted to the Company as an insulated Member prior to obtaining such FCC approval if the new Member, or such voting rights may be exercised if the Member desiring to exercise such rights, agrees to be subject to the provisions of Section 9.3(a)(i)-(iv) to the same extent as if it were an Affected Member during the pendency of such application.

**Section 9.6 Regulatory Filing; Further Assurances.** If any approval or consent of, or filing of any notice, application, request, petition or other instrument with, the FCC (collectively, "FCC Approvals") is required for any Member to terminate any restriction on the full enjoyment of all rights of such Member's Membership Interest, including, without limitation, those restrictions set forth in this Article IX, the Company shall, promptly upon such Member's request, use its best efforts to obtain such FCC Approvals and each Member shall cooperate therein by providing such information and making such filings as may be reasonably requested by the Company's FCC Counsel, and such FCC Approvals shall be prosecuted diligently and promptly so as to be obtained in the shortest time commercially practicable.



## **ARTICLE 10**

### **EXCULPATION AND INDEMNIFICATION**

**Section 10.1 Exculpation.** No Board Member, nor any Member, nor any Affiliate of any Board Member or any Member, nor any officer, director, member, stockholder, employee or agent of any Board Member or any Member or any of their respective Affiliates (collectively, the *Indemnified Parties*) and each, an “*Indemnified Party*”), shall be liable, responsible, or accountable in damages or otherwise to the Company or to any Member by reason of, arising from, or relating to the operations, business, or affairs of the Company, or any act or failure to act on behalf of the Company by such Indemnified Party except to the extent that any of the foregoing is determined, by a final, nonappealable order of a court of competent jurisdiction, to have been primarily caused by the gross negligence, willful misconduct, or criminal activity of a person claiming exculpation.

**Section 10.2 Indemnity.** To the fullest extent permitted by law, the Company shall indemnify each Indemnified Party against any claim, loss, damage, liability, or expense, including reasonable attorney’s fees, court costs, and costs of investigation, suffered or incurred by any such Indemnified Party by reason of, arising from, or relating to the operations, business, or affairs of or any act or failure to act on behalf of the Company, any Board Member or any Member, or any of their respective Affiliates, except to the extent that any of the foregoing is determined by final, nonappealable order of a court of competent jurisdiction to have been primarily caused by the gross negligence, bad faith or willful misconduct or criminal activity of such Indemnified Party. **IT IS THE EXPRESS INTENT OF THE COMPANY THAT THE FOREGOING INDEMNITY SHALL BE APPLICABLE TO ANY CLAIM, LOSS, DAMAGE, LIABILITY, OR EXPENSE THAT HAS RESULTED FROM OR IS ALLEGED TO HAVE RESULTED FROM THE ACTIVE OR PASSIVE OR THE SOLE, JOINT, CONCURRENT ORDINARY NEGLIGENCE OF SUCH INDEMNIFIED PARTY.** Unless a determination has been made (by final, nonappealable order of a court of competent jurisdiction) that indemnification is not required, the Company shall, upon the request of any Indemnified Party, advance or promptly reimburse such Indemnified Party’s reasonable costs of investigation, litigation, or appeal, including reasonable attorneys’ fees; *provided, however,* that the affected Indemnified Party shall, as a condition of such Indemnified Party’s right to receive such advances and reimbursements, undertake in writing to repay promptly the Company for all such advancements or reimbursements if a court of competent jurisdiction determines that such Indemnified Party is not then entitled to indemnification under this Section 10.2.

## **ARTICLE 11**

### **FINANCIAL ACCOUNTING AND TAX MATTERS**

**Section 11.1 Books and Records.** The Company shall keep or cause to be kept complete and appropriate records and books of account in which shall be entered all such transactions and other matters relative to the Company’s business as are usually entered into records and books of account maintained by persons engaged in businesses of like character or which are required by the Act. The Company shall maintain such books and records in accordance with the basis utilized in preparing the Company’s United States federal income tax returns, which returns, if allowed by applicable law, may in the discretion of the Board be

prepared on either a cash basis or accrual basis. The books and records shall be maintained at the principal place of business of the Company, and all such books and records shall be available for inspection and copying at the request, and at the expense, of any Member during the ordinary business hours of the Company.

**Section 11.2 Tax Information.** As soon as practicable, but no later than 90 days after the end of each Company Fiscal Year, the Company shall cause to be prepared and mailed to each Member all necessary tax reporting information.

**Section 11.3 Tax Matters Member.** Pursuant to Section 6231(a)(7)(A) of the Code, Robert Behar shall be the tax matters Member of the Company (the “*Tax Matters Member*”). Except as otherwise provided herein, all elections relating to tax matters shall be made by the Tax Matters Member (upon advice of the Company’s outside tax counsel). To the maximum extent permitted by applicable law and without limiting Article 10, the Company shall indemnify and reimburse the Tax Matters Member for all expenses (including reasonable legal and accounting fees) and any other liabilities of whatever nature incurred as a Tax Matters Member pursuant to this Article 11 in connection with any administrative or judicial proceeding with respect to the tax liability of the Members, so long as the Board has determined in good faith that the Tax Matters Member’s course of conduct was in, or not opposed to, the best interest of the Company. The taking of any action and the incurring of any expense by the Tax Matters Member in connection with any such proceeding, except to the extent provided herein or required by law, is a matter in the sole discretion of the Tax Matters Member.

**Section 11.4 Audit.** The books of account and records of the Company shall be examined by and reported upon as of the end of each Company Fiscal Year by the External Auditor selected by the Board.

**Section 11.5 Banking.**

(a) Demand Deposits. All funds of every kind and nature received by the Company, including Capital Contributions, loan proceeds and operating receipts, shall be deposited in such bank accounts opened in the name of the Company as shall be determined by the Board. Signatories shall be as designated from time to time by the Board.

(b) Investments in Cash and Cash Equivalents. The Company may make such investments of the Company’s working capital in cash and cash equivalents as the Board deems appropriate in the ordinary course of business; *provided*, that such investments in cash and cash equivalents shall not preclude timely distributions as set forth in Article 4, and *provided, further*, that any such investments in cash and cash equivalents shall not preclude the timely payment of Company obligations when and as due.

**Section 11.6 Accounting Decisions.** All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Board; *provided* that such decisions must be acceptable to the Company’s External Auditor.

**Section 11.7 Financial Reports.**

(a) Annual Statements. Within one hundred twenty days after the close of each Fiscal Year of the Company, commencing with the Fiscal Year ending on December 31, 2003, the Company shall deliver to the Members audited consolidated and consolidating balance sheets and statements of income and retained earnings and of cash flows of the Company and its Subsidiaries audited or reviewed by its External Auditor, which annual financial statements shall show the financial condition of the Company as of the close of such Fiscal Year and the results of the Company's operations during such Fiscal Year. Each of the financial statements delivered hereunder shall be certified without qualification by such accounting firm to have been prepared in accordance with GAAP consistently applied, except as specifically disclosed therein.

(b) Monthly and Quarterly Statements. Within thirty (30) days after the end of each month or quarter, the Company will deliver to the Members (i) consolidated and consolidating unaudited balance sheets and statements of income and retained earnings and of cash flows for the Company and its Subsidiaries as of the end of such month or quarter and (ii) sales reports, financial plans, budget reports and such other information as may be reasonably requested by a Member.

(c) Officer's Certificate and Other Information. In addition to the delivery of the foregoing information, in connection with the Company's monthly, quarterly and annual financial statements, the Company shall deliver to the Members a certificate of the President or Chief Financial Officer of the Company, certifying (i) that, except as may otherwise be indicated therein or provided for in this Agreement, to the best of his or her knowledge, such statements have been prepared in accordance with GAAP consistently applied and present fairly the consolidated and consolidating financial position of the Company and its subsidiaries as of the dates specified and the results of their respective operations and changes in financial position with respect to the periods specified (subject in the case of interim financial statements only to normal year-end audit adjustments described in reasonable detail) and (ii) to the effect that such officer has caused the provisions of this Agreement to be reviewed and has no knowledge of the breach of any covenant or noncompliance with any term of this Agreement.

(d) Inspection Rights. Each Member shall be entitled to the same rights to inspect the books and records of the Company and its Subsidiaries as if the Company and its Subsidiaries were a corporation organized under the laws of the State of Florida.

## **ARTICLE 12**

### **TRANSFERS OF MEMBERSHIP INTERESTS**

**Section 12.1 Compliance with Securities Laws; Assignments.** Each Member represents that it has acquired its Membership Interest for its own account and not with a view to distribution thereof within the meaning of the Securities Act. **MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR UNDER THE SECURITIES LAWS OF ANY APPLICABLE JURISDICTION, AND MAY NOT BE OFFERED OR SOLD UNLESS SUCH MEMBERSHIP INTERESTS HAVE BEEN SO REGISTERED OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.** No Member shall voluntarily or involuntarily make or suffer any Transfer of any Membership Interest (other than a Transfer effected in strict compliance with this Article 12) without the prior unanimous written consent of the Board, which will not be unreasonably

withheld, or if it would cause an Event of Default (as defined in the Senior Note) under the Senior Notes. Any purported Transfer in violation of this Article 12 shall be void *ab initio* and of no force or effect whatsoever.

#### **Section 12.2 Transfer by Members.**

(a) Subject to Section 12.3, a Member's Membership Interest may be transferred to any Affiliate of such Member.

(b) Subject to Section 12.3, any individual holder of a Membership Interest, including any individual who acquired a Membership Interest from a Member pursuant to Section 12.2(a), may Transfer any or all of his Membership Interest (x) during his lifetime to a trust (of which he or a responsible financial institution is the sole or managing trustee) or to another entity which he directly or indirectly controls, in any such case, for the primary benefit of such Member, a Family Member of such Member or a charity, and (y) upon his death, to such a trust or entity or to such Member's estate.

(c) Notwithstanding anything contained herein to the contrary, the holder of the Series B Preferred Membership Interest shall not Transfer such Membership Interest without the prior written consent of the entire Board (inclusive of the Place 4 and Place 5 Board Seats).

**Section 12.3 Other Restrictions on Transfer.** Notwithstanding the provisions of Sections 12.1, 12.2, and 12.5 no person shall make or suffer any Transfer of its, his or her Membership Interest if such Transfer would (i) affect the classification of the Company for income tax purposes or have other adverse tax consequences to the Company or any Members, (ii) cause the Company or any Member to become subject to regulation under either the Investment Company Act of 1940, as amended, or the Investment Advisers Act of 1940, as amended, (iii) violate the registration provisions of the Securities Act or the registration or qualification provisions of any applicable securities law or (iv) violate or cause the Company to violate the Communications Act or the rules and regulations of the FCC. No Transfer to a Foreign Person shall be permitted hereunder without the written opinion of the Company's FCC Counsel indicating that such Transfer shall not violate the Communications Act or the rules and regulations of the FCC.

#### **Section 12.4 Reserved.**

**Section 12.5 Admission of Members.** Subject to Sections 1.6, 9.5, 12.2 and 12.3, upon any Transfer permitted under this Agreement, each transferee shall automatically be admitted as a new Member. Upon such Transfer, the Member shall be released from any liabilities under this Agreement or relating to the Membership Interest so transferred (other than any liability for any breach of this Agreement by such Member prior to such Transfer). The Members hereto agree that the Board may from time to time amend and restate Schedule "A" of this Agreement to reflect any changes in the identity of the Members resulting from such Transfer.

### **ARTICLE 13 DISSOLUTION AND WINDING UP**

**Section 13.1 Dissolution.** The Company shall dissolve upon the first to occur of any of the following events (and upon any such dissolution, the Board shall file the notice of dissolution required by the Act):

(a) the election of the Board to dissolve the Company at any time with the consent of Members then representing a majority-in-interest of all Members (subject to Section 6.10) following the sale, distribution to the Members, or other disposition of all or substantially all of the assets of the Company; or

(b) as required by applicable law.

**Section 13.2 Accounting on Dissolution.** Following the dissolution of the Company (without reconstitution) pursuant to Section 13.1, the books of the Company shall be closed, and a proper accounting of Company Assets, the Company's liabilities and its operations shall be made by the Board, all as of the most recent practicable date. Subject to any rights of a Member or a creditor to apply to a court of competent jurisdiction in respect of the dissolution of the Company under the Act, the Board shall serve as the liquidator of the Company. The liquidator shall have all rights and powers that the Act confers on any person serving in such a capacity.

**Section 13.3 Termination.** As expeditiously as practicable, but in no event later than six months (except as may be necessary to realize upon any material amount of property that may be illiquid), after the dissolution of the Company (without reconstitution) pursuant to Section 13.1, the liquidator shall cause the Company (i) to pay and discharge the liabilities of the Company (other than those to the Members) and to establish a reserve fund (which may be in the form of cash or other property, as the liquidator shall determine) for any and all other liabilities, including contingent liabilities, of the Company in a reasonable amount determined by the liquidator to be necessary for such purposes or otherwise to make adequate provision for such other liabilities and (ii) to distribute proceeds to the Members in accordance with Section 4.1. At the time final distributions are made in accordance with clause (ii) above or as otherwise provided in this Section 13.3, all required filings shall be made in accordance with law, and the legal existence of the Company shall terminate; *provided, however*, that if at any time thereafter any reserved cash or property is released because in the judgment of the liquidator the need for such reserve has ended, then such cash or property shall be distributed in accordance with clause (ii) above or as otherwise provided in this Section 13.3.

**Section 13.4 No Negative Capital Account Obligation.** Notwithstanding any other provision of this Agreement, in no event shall any Member who has a negative Capital Account upon final distribution of all cash and other property of the Company be required to restore such negative account to zero.

**Section 13.5 No Other Cause of Dissolution.** The Company shall not be dissolved, or its legal existence terminated, for any reason whatsoever except as expressly provided in this Article 13.

**Section 13.6 No Obligation to Make Further Contributions.** The Members shall look solely to the Company Assets for the return of their Capital Contributions, and if the funds remaining after the payment or discharge of the debts and liabilities of the Company pursuant to

this Article 13 are insufficient to return such Capital Contributions, no Member shall have any recourse against any other Member for that purpose.

## **ARTICLE 14**

### **POWER OF ATTORNEY**

**Section 14.1 Grant.** Each Member has irrevocably constituted, appointed and empowered the Board and its designees with full power of substitution, as the true and lawful attorney-in-fact of such Member, with full power and authority in such Member's name, place and stead and for such Member's use or benefit, to make, execute, sign, acknowledge, certify, publish, consent to, record or file with respect to the Company:

(a) Amendments. All instruments or documents that the Board deems appropriate or necessary to reflect any amendment, change or modification to this Agreement which has been approved by the requisite parties pursuant to the terms of this Agreement;

(b) Dissolution, Amendment or Termination. All conveyances and other instruments or documents that the Board deems appropriate or necessary to effectuate or reflect the dissolution, termination and liquidation of the Company pursuant to the terms of this Agreement;

(c) Encumbrances. Any and all financing statements, continuation statements, or other documents necessary to grant or perfect for creditors of the Company a security interest, mortgage, pledge or lien on all or any of the Company Assets pursuant to the terms of this Agreement;

(d) Continuation of Business. All instruments or documents required to continue the business of the Company; and

(e) Admission of Members. All instruments or documents relating to the admission of any Member pursuant to the terms of this Agreement.

**Section 14.2 Authorization of Execution and Delivery.** Nothing in this Agreement shall be construed as authorizing any Person acting as attorney-in-fact for any Member to increase in any way the liability of Members beyond the liability expressly set forth in this Agreement or to amend this Agreement except in accordance with the provisions of Section 15.6.

**Section 14.3 Scope of Power.** The grant of authority in Section 14.1:

(a) is a special power of attorney coupled with an interest, is irrevocable and shall survive the death, incapacity, disability, bankruptcy, incompetency, termination or dissolution of any Member;

(b) may be exercised by the Board or its designee for each Member by a facsimile signature or by listing all of the Members executing any instrument with the Board's signature as attorney-in-fact for all of them; and

(c) shall extend to the Members' heirs, successors and assigns.

## **ARTICLE 15**

### **MISCELLANEOUS**

**Section 15.1 Specific Performance.** Each Member acknowledges that damages are not necessarily an adequate remedy for the breach by any Member of this Agreement and that the non-breaching Member shall be entitled to specific performance, injunction, and other appropriate equitable remedies, without the posting of any bond.

**Section 15.2 Authority.** Each Member hereby represents and warrants that it, he or she has all requisite power and authority to enter into this Agreement and to perform its, his or her obligations hereunder, that this Agreement constitutes a legal, valid, and binding obligation of such Member, enforceable against such Member in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and similar laws affecting creditors rights and remedies generally and further subject, as to enforceability, to general principles of equity, and that the execution, delivery, and performance by such Member of this Agreement does not violate any law, rule, regulation, injunction or other order of any court or governmental authority, or any agreement or other instrument to which such Member is a party or by which it, he or she is bound.

**Section 15.3 Waiver of Partition.** Each Member hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any Company Assets.

**Section 15.4 Waivers.** Neither the waiver by a Member of a breach of or a default under any of the provisions of this Agreement nor the failure of a Member, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy or privilege under this Agreement shall be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights, remedies or privileges.

**Section 15.5 Amendments.** Amendments to this Agreement may be proposed by the Board. The Board shall submit in writing the text of any such amendment to all Members and all Senior Holders and shall seek the written consents of the Members and the Senior Holders with respect to the proposed amendment. Such proposed amendment shall become effective as of the date specified in such proposal if approved by the Board and a majority-in-interest of the Senior Holders and, to the extent that any such class or series is adversely affected by the proposed amendment, by a majority-in-interest of any of the holders of Common Membership Interests and the holders of Preferred Membership Interests so affected; *provided, however*, that in the case of any provision of this Agreement which requires the action, approval or consent of Members holding a specified interest in the Company, such provision may not be amended without the consent of Members holding such specified interest. The Board shall notify all Members upon the final adoption or rejection of any proposed amendment.

**Section 15.6 Amendment by the Board.** The Board (pursuant to the powers of attorney from the Members granted as provided in Article 15), without the consent or approval at the time of any Member (each Member, by acquiring a Membership Interest, being deemed to consent to any such amendment), may amend any provision of this Agreement or the Certificate, and may execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection therewith, to reflect:

(a) Change in Name or Location. A change in the name of the Company or the location of the principal place of business of the Company;

(b) Change of Members. The admission, dilution, substitution, termination or withdrawal of any Member in accordance with the provisions of this Agreement or the Transfer of any Membership Interest in accordance with the provisions of this Agreement;

(c) Qualification to Do Business. A change that is necessary to qualify the Company as a limited liability company or a company in which the Members have limited liability;

(d) Changes Which are Inconsequential, Curative, or Required. A change that is:

(i) Of an inconsequential nature and does not adversely affect any Member in any material respect;

(ii) Necessary or desirable to cure any ambiguity or to correct or supplement any provisions of this Agreement;

(iii) Required or specifically contemplated by this Agreement; or

(iv) Necessary to reflect the current Membership Interests of the Members from time to time as contemplated by this Agreement; and

(e) Changes Under Applicable Law. A change in any provision of this Agreement which requires any action to be taken by or on behalf of the Board or the Company pursuant to the requirements of the Act or any other applicable law if the provisions of applicable law are amended, modified, or revoked so that the taking of such action is no longer required.

## **Section 15.7 Notices.**

(a) Procedure For Giving Notice. All notices or other communications required or permitted to be given pursuant to this Agreement to a Member shall be given in writing and shall be considered as properly given or made if sent by a recognized overnight courier (such as Federal Express) or if sent by facsimile, and addressed, in the case of a Member, to such Member's address and/or facsimile number for notices as it appears on the records of the Company and, in the case of the Board, to the Board at the Company's principal office.

(b) Change of Address. Any Member may change such Member's address or facsimile number for notices by giving notice in writing to the Board, stating the new address or facsimile number for notices. Commencing on the tenth day after the giving of such notice, such newly designated address shall be such Member's address for the purpose of all notices or other communication required or permitted to be given pursuant to this Agreement.

(c) Delivery. Any notice or other communication shall be deemed to have been given as of the second Business Day after deposit with a recognized overnight courier or, if sent by facsimile, the Business Day after which the facsimile confirmation is received.



**Section 15.8 Other Terms.** All references to “Articles” and “Sections” contained in this Agreement are, unless specifically indicated otherwise, references to articles, sections, subsections, and paragraphs of this Agreement. Whenever in this Agreement the singular number is used, the same shall include the plural where appropriate (and *vice versa*), and words of any gender shall include each other gender where appropriate. As used in this Agreement, the following words or phrases all have the meanings indicated: (a) “or” shall mean “and/or”; (b) “day” shall mean a calendar day; (c) “including” or “include” shall mean “including without limitation” where appropriate; and (d) “law” or “laws” shall mean statutes, regulations, rules, judicial orders, and other legal pronouncements having the effect of law. Whenever any provision of this Agreement requires or permits the Board to take or omit to take any action, or make or omit to make any decision, unless the context clearly requires otherwise, such provision shall be interpreted to authorize an action taken or omitted, or a decision made or omitted, by the Board acting alone and in good faith.

**Section 15.9 Entire Agreement.** This Agreement, the Senior Notes and the Purchase Agreement constitute the entire agreement of the Members with respect to the matters provided for in this Agreement and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for in this Agreement.

**Section 15.10 Execution in Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

**Section 15.11 Binding Effect.** Subject to the restrictions on Transfers set forth in Article 12, this Agreement shall be binding upon and shall inure to the benefit of the Board and the Members and their heirs, devisees, executors, administrators, legal representatives, successors and assigns.

**Section 15.12 Governing Law.** This Agreement, the rights and obligations of the parties hereto and any claims or disputes relating thereto, shall be governed by and construed and enforced in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws).

**Section 15.13 Severability.** The invalidity of any one or more provisions of this Agreement or any instrument given in connection herewith shall not affect the remaining provisions of this Agreement or any other agreement or instrument, all of which are used subject to the condition of their being held valid at law. In the event that one or more of the provisions of this Agreement should be invalid, or should operate to render this Agreement or any other agreement or instrument invalid, this Agreement and such other agreements and instruments shall be construed as if such invalid provisions had not been included in this Agreement.

**Section 15.14 Compliance with Certain Laws.** It is the intention of the Members to comply with applicable usury laws and no provision of this Agreement is intended or shall be construed to permit the charging or receipt of any amount which may be characterized as interest in excess of the maximum rate or amount permitted by applicable law.

**Section 15.15 Representations and Covenants.**

(a) Each of the Members hereby (i) represents and warrants that such Member is an “accredited investor,” as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act, and that the investment made by such Member in the Company is for such Member’s own account for investment and (ii) covenants that such Member shall not sell, Transfer, hypothecate or assign such Member’s interest in the Company in contravention of the Securities Act, or any securities laws of any applicable jurisdiction.

(b) Each Member acknowledges and agrees that such Member has been provided, to such Member’s full satisfaction, with the opportunity to ask questions concerning the terms and conditions of an investment in the Company and has knowingly and voluntarily elected instead to rely solely on such Member’s own investigation. No Member has relied upon any representation or warranty of any kind by the Board regarding the interests in the Company or the business to be conducted thereby, and each Member acknowledges that such Member is not relying on the Board’s advice or expertise in entering into or managing this investment. Each Member represents and warrants to the Board that such Member is capable of bearing the economic risks of the investment in the Company and is able to bear a complete loss of such Member’s investment in the Company.

(c) Each Member hereby represents and warrants that as of the Effective Date (i) such Member owns Attributable Interests in the Media Enterprises listed for such Member on Schedule “D” attached hereto; and (ii) that any agreements contain the necessary terms and conditions to insulate such Member pursuant to FCC rules and regulations. Each Member agrees: (i) to notify the Board prior to making any investment in any Media Enterprise other than through the Company or Bela; and (ii) not to make any investment in any Media Enterprise if the Company, following such notification, reasonably informs such Member that consummation of such investment would place the Company in violation of the FCC’s Multiple Ownership Rules.

(d) Each Member hereby represents and warrants that Schedule “E” attached hereto sets forth the percentage of foreign ownership of such Member as of the Effective Date. Each Member agrees: (i) to notify the Board prior to increasing its percentage of foreign ownership above the level specified in Schedule “E”; and (ii) not to increase its foreign ownership if the Company, following such notification, based on the written opinion of FCC Counsel reasonably informs such Member that such increase of foreign ownership would place the Company in violation of Section 310(b) of the Communications Act.

(e) Each Member hereby warrants that (i) the execution, delivery and performance of this Agreement constitutes a legal, valid and binding obligation of each Member, enforceable against each Member in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors’ rights generally and general principles of equity, and (ii) the execution, delivery and performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby, do not (A) violate any provision of law, statute, rule or regulation, and (B) conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute (with due notice or lapse of time, or both) a default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of any encumbrance upon any of the properties or assets of the Company.

(f) Each Member hereby warrants that it has consulted its own tax, legal, financial and other advisors with respect to its investment in the Company and acknowledges that it is not being represented by counsel to the Company with respect to its investment in the Company.

**Section 15.16 Public Announcements.** No Member will issue any public announcements or disseminate any advertising or marketing material concerning the existence, or terms of, this Agreement or without the prior written approval of all of the other Members, except, in the case of an announcement, where such announcement is required by law. If a public announcement is required by law, the Members will consult with each other before making the public announcement. To the extent any announcement or any advertising or marketing material permitted under this Section 15.16 expressly refers to any Member or their Affiliates, such Member shall, in its sole discretion, have the right to revise such announcement or advertising or marketing material prior to granting such written approval.

**Section 15.17 Reliance on Agreement.** NOTWITHSTANDING ANY PROVISION TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, TO THE EXTENT THAT, AT LAW OR IN EQUITY, THE BOARD OR ANY MEMBER HAS ANY DUTIES (FIDUCIARY OR OTHERWISE) AND LIABILITIES RELATING THERETO TO THE COMPANY OR ANOTHER MEMBER OF THE COMPANY, NEITHER THE BOARD NOR ANY MEMBER SHALL BE LIABLE TO THE COMPANY OR THE OTHER MEMBERS FOR ACTIONS TAKEN BY THE BOARD, ANY MEMBER OR ANY OF THEIR AFFILIATES IN RELIANCE UPON THE PROVISIONS OF THIS AGREEMENT.

**Section 15.18 Confidentiality.** Each Member will refrain from disclosing to any other Person or entity (a) any confidential documents or confidential information concerning the Company or its Affiliates furnished to it in connection with this Agreement, and (b) any confidential documents or confidential information concerning the Company (“Confidential Information”). The term “Confidential Information” does not include any information which (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of its disclosure by a Member in breach of this Agreement), (ii) was available to a Member on a non-confidential basis prior to disclosure, (iii) was, is, or becomes available to a Member on a non-confidential basis from a Person who, to the Member’s knowledge, is not otherwise bound by a confidentiality agreement or is not otherwise prohibited from transmitting the information to the Member, or (iv) is required by law or order to be disclosed. In the event that a Member is required by law, judicial or governmental order, discovery request, or other legal process, or a Member deems it advisable (upon written advice of legal counsel to the Member) to disclose any Confidential Information, such Member will notify the Company reasonably promptly so that the Company may seek a protective order or other appropriate remedy and /or waive compliance with this Section. Any Member may disclose Confidential Information to its employees, officers, directors, attorneys, accountants, advisors or agents with a need to know, provided that such employees, officers, directors, attorneys, accountants, advisors or agents agree to be bound by the same restrictions on disclosure as set forth herein.

**Section 15.19 Senior Holders as Third-Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person other than

the Senior Holders, each of whom shall be deemed an intended third-party beneficiary of this Agreement with respect to any right herein specific to the Senior Holders or any individual Senior Holder. Upon conversion of any Senior Note, such Senior Holder shall agree to be bound by the terms of this Agreement, in substantially the form as it exists on the Effective Date, or as amended pursuant to Sections 15.5 or 15.6.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the date first above written.

**Company**

**PHOENIX 6 BROADCASTING LLC**, a Florida limited liability company

By: \_\_\_\_\_

Name: Robert Behar

Title: Initial Manager

**Common Members:**

**STAR STUDIOS, LLC**, a Florida limited liability company

By: \_\_\_\_\_

Name: Robert Behar

Title: Manager

\_\_\_\_\_  
**MATTHEW L. LEIBOWITZ**

**BENJAMIN J. JESSELSON 12/18/80 TRUST**

By: \_\_\_\_\_

Name:

Title:

**Series A Preferred Members:**

None

**Series B Preferred Member:**

**BELA BROADCASTING LLC**, a Florida limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**Schedule A**  
**Members and Interests**  
**as of August 31, 2004**

<b><u>Common Members</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Membership Interest Within Series<sup>1</sup></u></b>
Star Studios, LLC 7500 Northwest 72 <sup>nd</sup> Street Miami, Florida 33166	\$51.00	51%
Matthew L. Leibowitz One Southeast Third Avenue Suite 1450 Miami, Florida 33131	\$24.50	24.5%
Benjamin J. Jesselson 12/18/80 Trust	\$24.50	24.5%
<b>Total Common Members</b>	<b>\$100.00</b>	<b>100%</b>

<b><u>Series A Preferred Members</u></b>		
None		
<b>Total</b>	<b>--</b>	<b>--</b>

<b><u>Series B Preferred Member</u></b>		
Bela Broadcasting LLC	\$1,700,000	100%

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<sup>1</sup> The percentages represent the Membership Interest for each member identified within his or her class as of the date of this Schedule "A."

**Schedule B**  
**Director Candidates**

Joseph Kavana  
Yakov Friedman



## **Schedule C**

### **Officers**

#### **Officer**

Robert Behar

Robert Behar

Matt Leibowitz

#### **Office**

Chairman

President and Chief  
Executive Officer

Secretary

**Schedule D**

**Attributable Interests in Media Enterprises**

**Matthew L. Leibowitz:**      **NextMedia Group, Inc. and Bela Broadcasting LLC**

**Robert Behar:**      **Bela Broadcasting LLC**

**Schedule E**  
**Foreign Ownership**

<b><u>Member</u></b>	<b><u>Percentage of Foreign Ownership<sup>2</sup></u></b>
Pan-Atlantic Bank & Trust	0% <sup>3</sup>

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<sup>2</sup> Subject to Section 1.7(c) hereof.

<sup>3</sup> Holder of certain Senior Notes issued by the Company. As holder of said Senior Notes, such entity has the option of converting the Senior Notes into equity of the Company upon the occurrence of certain events. Such foreign entities currently may not purchase more than 25% of the Membership Interests in the Company.

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# **PHOENIX 6 BROADCASTING LLC**

## **LIMITED LIABILITY COMPANY AGREEMENT**

**Dated as of August 31, 2004**

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**MEMBERSHIP INTERESTS ARE SUBJECT TO TRANSFER RESTRICTIONS.**

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