SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
NEXTMEDIA INVESTORS LLC

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of NextMedia Investors LLC, a Delaware limited liability company (the "*Company*"), is made as of June 13, 2001 (the "*Effective Date*"), by and among 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 Original Members heretofore formed the Company pursuant to that certain Limited Liability Company Agreement dated as of February 28, 2000 (the "*LLC Agreement*"); and

WHEREAS, the Original Members entered into an amendment and restatement of the LLC Agreement dated as of April 17, 2000 (the "*Original Agreement*") providing for the admission of Alta Communications VIII, L.P., Alta Communications VIII-B, L.P. and Alta Associates VIII, LLC as new Class A Members in the Company and the creation of a new class of Membership Interests designated as "Class C Interests;" and

WHEREAS, the Members desire to amend and restate the Original Agreement to provide for the admission of GS Capital Partners 2000, L.P., GS Capital Partners 2000 Offshore, L.P., GS Capital Partners 2000 GmbH & Co. Beteiligungs KG, and GS Capital Partners 2000 Employee Fund, L.P. as new Class A Members; to reflect the prior admission of Alta-Comm VIII S by S, LLC, Thomas Weisel Capital Partners (Dutch), L.P., and Thomas Weisel Capital Partners (Dutch II), L.P. as Class A Members; to reflect changes to the Capital Commitments of certain of the Class A Members; to reflect the possible future admission of PNE Media LLC as a new Class A Member; to change the promote percentage to be received by holders of Class B Interests in order to reflect additional Capital Contributions that were not contemplated at the time of the Original Agreement; to reflect the simultaneous transfer of a portion of the originally issued Class B Units from the Management Members to certain individuals hired by NextMedia Outdoor, Inc. to assist in the operation and development of its traditional outdoor advertising business; to reflect the changes that have occurred in the Company's organizational structure; and to establish the respective rights and obligations of all Members with respect to the Company; and

WHEREAS, included as signatories to this Agreement are the Class C Members (whose names are set forth on Schedule A) who have previously become Members of the Company by executing joinder agreements to the Original Agreement; and

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 Original Members formed a limited liability company on January 24, 2000, pursuant to and in accordance with the provisions of the Delaware Limited Liability Company Act (such Act, or any successor law, as amended from time to time, the "*Act*"). The term of the Company commenced upon the filing of the certificate of formation (the "*Certificate*") with the Secretary of State of the State of Delaware 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 "NextMedia Investors 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 the State of Delaware an amendment to the Certificate reflecting such change of name.

Section 1.3 **Purpose**. The purpose of the Company shall be (i) to, directly or indirectly, purchase, hold, manage, sell, and exercise rights with respect to debt and equity investments ("*Investments*") for its own account in various media businesses, principally the Core Businesses primarily in the United States (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); *provided, however*, that, except in accordance with the provisions of Section 6.11(c), the Lines of Business shall not include any newspaper publishing or television broadcast and cable businesses.

Section 1.4 **Address** The address of the Company's initial principal place of business shall be 6312 Fiddler's Green Circle, Suite 360E, Englewood, Colorado 80011. 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 Delaware 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** The Persons whose names are set forth on Schedule A attached hereto under the headings "Class A Members", "Class B Members" and "Class C Members," 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.

ARTICLE 2
DEFINITIONS

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

"*Acceptance Notice*" shall have the meaning set forth in Section 3.2 of this Agreement.

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

"*Additional Capital Contributions*" shall have the meaning set forth in Section 3.1(b)(i) of this Agreement.

"*Additional Contributions*" shall mean any equity funding (including any New Contributions) received by the Company after the Effective Date (i.e. this includes, without limitation (i) any New Contributions for which there is a Capital Commitment on the Effective Date (ii) any New Contributions deemed contributed by PNE pursuant to the PNE Agreement and (iii) the amount of any Capital Contributions deemed made in accordance with clause (ii) of the definition of "*Capital Contribution*", but excludes any Existing Contributions).

"*Additional Employed Members*" shall mean those Persons (other than the Management Members) who are, or who become, employed by the Company or any Portfolio Company and are issued, or otherwise receive, Class B Units in the Company.

"*Additional Thomas Weisel Commitment*" shall mean the Capital Commitment for $25 million initially made on the Effective Date by TWCP, as set forth opposite the name "Additional Thomas Weisel Commitment" on Schedule A attached hereto, as such Capital Commitment may be amended in accordance with Section 3.1(b)(vi) 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.

"*Adjusted Capital Contribution*" shall mean, as of any date, a Class A Member's Capital Contributions or a Class C Member's Capital Contributions, as the case may be, adjusted as follows:

(a) Increased by the amount of any Company liabilities which, in connection with distributions in accordance with the provisions of Section 4.1(a), are assumed by such Class A Member or Class C Member, as the case may be, or are secured by any Company Assets distributed to such Class A Member or Class C Member, as the case may be;

(b) Reduced by the amount of cash and the fair market value of any Company Assets distributed to such Class A Member or Class C Member, as the case may be, in

accordance with the provisions of Section 4.1(a) and the amount of any liabilities of such Class A Member or Class C Member, as the case may be, assumed by the Company or which are secured by any property contributed by such Class A Member or Class C Member, as the case may be, to the Company; and

(c) In the event of a Transfer (other than the granting of security interests or other encumbrances) by any Class A Member or Class C Member, as the case may be, of all or any portion of such Member's Class A Interest or Class C Interest, as the case may be, in accordance with the provisions of this Agreement, the transferee shall succeed to the Adjusted Capital Contribution of such Class A Member or Class C Member, as the case may be, to the extent it relates to the transferred Class A Interest or Class C Interest, as the case may be.

"*Admission Date*" shall have the meaning set forth in Section 4.5(b) of this Agreement.

"*Affected Member*" shall mean any Member other than TWP, the GS Investors, Weston Presidio, the Management Members or the Additional Employed Members, owning or acquiring a Conflicting Attributable Interest or having levels of foreign ownership that, in the Board's determination based upon advice of nationally recognized 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 members of the family of any individual who is a Control Person;

(c) Entities that are Controlled by such family member; and

(d) Entities in which Control Persons have a material investment.

"*Agreement*" shall mean this Second Amended and Restated Limited Liability Company Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Agreed Gross Asset Value*" shall mean, $256,089,333.

"*Alta*" shall mean Alta Communications VIII, L.P., Alta Communications VIII-B, L.P. and Alta Associates VIII, LLC, and each of their respective transferees that are Affiliates thereof.

"*Alta Agreement*" shall mean that certain Alta Communications VIII, L.P. Limited Partnership Agreement, dated as of February 22, 2000, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Alta Member*" shall mean Alta and its successors and assigns.

"*Attributable Interest*" shall mean the types of managerial and ownership interests considered by the FCC under its rules and policies 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.

"*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.

"*Business Day*" shall mean a day which is not a Saturday or Sunday or a legal holiday and on which banks are not required or permitted by law or other governmental action to close in New York, New York, San Francisco, California or Denver, Colorado.

"*Capital Account*" shall have the meaning set forth in Section 5.1 of this Agreement.

"*Capital Commitment*" shall mean, as to any Class A Member, the amount of such Class A Member's commitment to make Capital Contributions from time to time, as set forth on Schedule A attached hereto.

"*Capital Contribution*" shall mean, with respect to any Class A Member or Class C 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 Class A Member or Class C Member or by an individual retirement account on behalf of a Class A Member or Class C Member; *provided, however*, that (i) with respect to certain Class C Members admitted prior to the Effective Date, the Board (in accordance with the definition of "Capital Contribution" set forth in the Original Agreement) determined that the amount of the Capital Contribution deemed to be made by such Class C Members was less than the amount of money or fair market value of any property contributed, and the Capital Contributions of such Class C Members contributed as an Existing Contribution shall be as set forth on Schedule A (regardless of the amount of money, or the value of property actually contributed); and (ii) if, after the Effective Date, the Company issues Membership Interests to Persons as a portion of the consideration to be paid in connection with an acquisition undertaken by the Company such that the Person is deemed to have made a Capital Contribution, the Board, in order to take into account the value of the Class C Interests at that time, may determine that the Capital Contribution credited to such Class C Member is an amount less than the fair market value of property contributed to the Company by such new Class C Member. It is understood that Capital Contributions made pursuant to a Capital Commitment made as of the Effective Date, or any

deemed Capital Contributions of PNE made pursuant to the PNE Agreement, shall not be subject to adjustment by the Board.

"*Cause*" shall mean, in respect of any Management Member or Additional Employed Member, (a) such Management Member's or Additional Employed Member's (i) conviction of, or plea of *nolo contendere* to, a felony, (ii) use of illegal drugs, (iii) fraud or dishonesty in connection with such Management Member's or Additional Employed Member's relationship with the Company or its Affiliates, (iv) competition with the Company or its Affiliates not otherwise permitted hereunder, (v) unauthorized use of any trade secret or other confidential information of the Company or its Affiliates (including a breach of Section 17.18 hereof) or (vi) continued gross neglect of such Management Member's or Additional Employed Member's duties or responsibilities under any agreement between such Management Member or Additional Employed Member and the Company or its Affiliates (including the agreements contained in Article 16 hereof), *provided* that the Company shall give such Management Member or Additional Employed Member written notice of any actions alleged to constitute Cause under this clause (vi) and such Management Member or Additional Employed Member shall have ten Business Days to cure any such alleged Cause, (b) the occurrence of any of the following in a Portfolio Company: (i) the material breach of any financial covenant in any contractual obligation of a Portfolio Company after the expiration of any grace or cure periods or waivers in respect thereof, (ii) the failure of such Portfolio Company to pay principal or interest or to make any required payment (regardless of amount) due in respect of any of its indebtedness when and as the same may become due and payable or (iii) the occurrence of any event or circumstance the effect of which would permit the holder or holders (or a trustee on its or their behalf) of any indebtedness of such Portfolio Company to cause or require such indebtedness to become due or to be redeemed or repurchased prior to its stated maturity (or to cause or require an offer to be made to effect such redemption or repurchase), or (c) the failure of the Company and its subsidiaries, taken together, to meet at least 90% of their budget in any given Fiscal Year, as such budget was recommended by the Chairman and approved by the Board.

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

"*Chairman*" shall have the meaning set forth in Section 6.14 of this Agreement.

"*Class A Interests*" shall mean all interests in the Company other than Class B Interests and the Class C Interests.

"*Class A Member*" shall mean a holder of Class A Interests.

"*Class B Interests*" shall mean certain of the interests in the Company issued to the Management Members or the Additional Employed Members and designated as "Class B Interests", as set forth on Schedule A attached hereto, as such schedule may be amended from time to time pursuant to the provisions of this Agreement. Class B Interests in the Company are divided into and comprised of units of equal value (each, a "*Class B Unit*"). Each Class B Unit shall be qualitatively identical in all economic respects, but, with respect to each Class B Member, shall be separate and distinct for purposes of determining each such Class B Member's Membership Interest in the Company. Subject to Section 3.1(a)(ii) of this Agreement, the Board (with the approval of a Majority in Interest of the Members holding Class B Interests) may revise

the total number of Class B Units outstanding at any time and from time to time, but (i) each Class B Unit shall always represent an equal economic interest in the Company and (ii) the aggregate Class B Units of all Class B Members shall in no event be entitled to a distribution of Distributable Property that is greater than that specified in clause (a) and clause (b) of Section 4.1.

"*Class B Member*" shall mean the Management Members or the Additional Employed Members that are the holders of Class B Interests.

"*Class B Percentage*" shall mean, as to any Class B Member, the result, expressed as a percentage, of (i) the number of issued and outstanding Class B Units owned by such Class B Member *divided by* (ii) the aggregate issued and outstanding Class B Units for all Class B Members. The initial and current Class B Percentages of the Class B Members are set forth on Schedule A hereto.

"*Class B Unit*" shall have the meaning set forth in the definition of "Class B Interests".

"*Class C Interests*" shall mean certain interests in the Company issued to the Class C Members and designated as "Class C Interests", as set forth on Schedule A attached hereto, as such schedule may be amended from time to time pursuant to the provisions of this Agreement.

"*Class C Member*" shall mean a holder of Class C Interests.

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

"*Commitment Period*" means, subject to Section 3.1(d)(iii), a period of five years from the Original Effective Date.

"*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.

"*Company Costs and Expenses*" shall mean all costs, expenses and other obligations incurred by or on behalf of the Company relating to the operations, business, or affairs of the Company, including (i) costs and expenses incurred in any litigation arising out of the operations, business, or affairs of the Company, indemnity obligations of the Company, and other non-recurring or extraordinary costs of any character whatsoever, (ii) all reasonable costs and expenses of the Members incurred in connection with the legal formation of the Portfolio Companies and the preparation, negotiation, execution and delivery of this Agreement and the employment agreements, including, without limitation, the fees and expenses of the legal counsel referenced in Section 17.19, and (iii) all costs and expenses incurred by or on behalf of the

Company in connection with the evaluation of Investments, including due diligence and monitoring meetings, postage and delivery charges, and reasonable fees and expenses of attorneys, accountants, and other professionals.

"*Company Media Enterprise*" shall have the meaning set forth in Section 9.3(a)(ii)(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).

"*Competitive Activities*" shall have the meaning set forth in Section 9.4(b) of this Agreement.

"*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.

"*Contribution Notice*" shall have the meaning set forth in Section 3.1(b)(ii) of this Agreement.

"*Contribution Right*" shall have the meaning set forth in Section 3.1(b)(v).

"*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.

"*Core Business*" means the radio broadcasting businesses (including related internet radio and online directories affiliated with radio stations), and indoor/outdoor advertising businesses currently engaged in by the Company, in each case if operating in the United States.

"*Debt Paydown and Payment of Costs and Expenses*" means a Capital Contribution required by the Company or any of its subsidiaries to pay Costs and Expenses or indebtedness; *provided, however*, that following any such Capital Contribution, the Maximum Total Leverage Ratio is not less than 6.0 to 1.

"*Default Amount*" shall have the meaning set forth in Section 3.1(c) of this Agreement.

"*Defaulting Member*" shall have the meaning set forth in Section 3.1(c) of this Agreement.

"*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)(B) hereof.

"*Distributable Property*" shall mean (i) the excess of any cash on hand constituting dividends, interest, proceeds from the repurchase, repayment, sale, refinancing, retirement, or other disposition of any Investment or other income on or in respect of any Investment over the amount that the Board determines is required to be retained as a reasonable reserve to meet any Company liabilities or proposed expenditures which are accrued or reasonably foreseeable or that the Board determines is reasonably necessary to be retained or (ii) any securities or other Company Assets that the Board unanimously determines should be distributed.

"*ECI*" shall mean "effectively connected income" as such term is defined in section 864 of the Code.

"*Effective Date*" shall have the meaning set forth in the preamble of this Agreement.

"*Engagement*" shall have the meaning set forth in Section 16.1 of this Agreement.

"*Engagement Term*" shall have the meaning set forth in Section 16.2 of this Agreement.

"*Existing Contributions*" shall mean any Capital Contributions made by the Class A Members and made or deemed made by the Class C Members prior to the Effective Date, which Capital Contributions are $220,766,667 in the aggregate, of which, $211,000,000 has been contributed by the Class A Members and $9,766,667 has been deemed contributed by the Class C Members.

"*Existing Contribution Percentage*" shall mean (x) the sum of (i) all Existing Contributions plus (ii) the Existing Contribution Premium, divided by (y) the Implied Investment Amount, expressed as a percentage and the "*Member's Existing Contribution Percentage*" shall mean the Existing Contribution Percentage times the quotient (expressed as a percentage) of (x) the Member's Existing Contributions, divided by (y) all Existing Contributions.

"*Existing Contribution Premium*" means $35,322,666.

"*Fair Interest Value*" shall have the meaning set forth in Section 14.4 of this Agreement.

"*Fair Market Value*" shall have the meaning set forth in Section 4.1 of this Agreement.

"*FCC*" means the Federal Communications Commission, or any successor agency

"*Fiscal Year*" shall have the meaning set forth in Section 1.5 of this Agreement.

"*Forfeiture Event*" shall have the meaning set forth in Section 4.5(d) of this Agreement.

"*Fully Contributed Profit Percentage*" means the Profit Percentage of each Class A Member and Class C Member, assuming that all Capital Commitments of such Class A Members have been contributed to the Company as set forth next to each Class A Member's and each Class C Member's name in the Column marked "Fully Contributed Profit Percentage" of Schedule A; provided that, to the extent that (i) any Class A Member or Class C Member other than any GS Investor has not contributed all of its Capital Commitment at the end of the Commitment Period, (ii) any GS Investor has not contributed all of its Capital Commitments at the later of the end of the Commitment Period and the date the Contribution Right set forth in Section 3.1(b)(v) is terminated in accordance with its terms, or (iii) the PNE Agreement is not consummated in accordance with its terms, or is consummated in a manner that results in PNE making a New Contribution of an amount different that $33 million, then, in each such case, the Fully Contributed Profit Percentages will be adjusted to reflect the actual Capital Contributions of such Class A Member or Class C Member.

"*Grantor*" shall have the meaning set forth in Section 14.1 of this Agreement.

"*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 Gross 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 gross 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 Gross 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 clause (i) or (ii) of paragraph (b) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profit or Net Loss.

"*GSCP*" shall mean GS Capital Partners 2000, L.P. and its successors and assigns.

"*GS Investors*" shall mean GS Capital Partners 2000, L.P., GS Capital Partners 2000 Offshore, L.P., GS Capital Partners 2000 GmbH & Co. Beteiligungs KG and GS Capital Partners 2000 Employee Fund, L.P, and each of their respective transferees that are Affiliates.

"*GS Member*" shall mean each GS Investor and their respective successors and assigns.

"*Hirsch*" shall mean Carl E. Hirsch, an individual.

"*HSR Act*" shall have the meaning set forth in Section 12.5(d).

"*Implied Investment Amount*" means the sum of (x) the New Contributions, (y) the Existing Contributions and (z) the Existing Contribution Premium.

"*Indemnified Party*" shall have the meaning set forth in Section 10.1 of this Agreement.

"*Initial Public Offering*" shall mean a firm commitment underwritten public offering by the Company of capital stock representing equity interests in the Company or any of its Subsidiaries pursuant to a registration statement under the Securities Act where upon consummation of such offering, the common stock is listed on the New York Stock Exchange or authorized to be quoted and/or listed on the Nasdaq National Market.

"*Investments*" shall have the meaning set forth in Section 1.3 of this Agreement.

"*Investor Members*" means each of (i) the TWP Members, (ii) the GS Members, (iii) the Alta Member, (iv) the Weston Presidio Member, (v) PNE (once PNE becomes a Member), and (vi) for the purposes of Section 12, any Class A Member (and then only to the extent of such Class A Member's Class A Interest) who is a Management Member, if the Engagement of such Class A Member is terminated in accordance with Section 16.5 and such termination is not a Forfeiture Event.

"*JDinetz*" shall mean Jeffrey Dinetz, an individual.

"*Joinder Agreement*" shall mean an agreement in form and substance satisfactory to the Board in its sole and absolute discretion, which shall be executed, by any new Class A Member, Class B Member or Class C Member (that is not already a signatory hereto) in order to join this Agreement.

"*Key Management Members*" shall mean Hirsch and SDinetz.

"*Lines of Business*" shall have the meaning set forth in Section 1.3 of this Agreement.

"*Look Back Interests*" shall have the meaning set forth in Section 14.3 of this Agreement.

"*Liquidity Event*" shall have the meaning set forth in Section 14.5(c) of this Agreement.

"*LLC Agreement*" shall have the meaning set forth on the recitals to this Agreement.

"*Major Decisions*" shall mean, as the context may require, a Majority Major Decision or a Unanimous Major Decision.

"*Majority in Interest of All Members*" shall mean Members holding not less than a majority in interest of the Company based on the Class A Members and the Class C Members being deemed to collectively hold an interest equal to (i) 100% less (ii) the Promote Percentage

in the Company and the Class B Members being deemed to collectively hold an interest in the Company equal to the Promote Percentage, and where (a) the interests of the Class A Members and the Class C Members in such deemed interest in the Company is determined based upon the Fully Contributed Profit Percentages of all of the holders of the Class A Interests and the Class C Interests, and (b) where the interest of the Class B Members in such deemed interest in the Company is based on the Class B Percentages.

"*Majority in Interest of the Class A Members*" shall mean Class A Members holding not less than a majority of the Fully Contributed Profit Percentages of all of the holders of the Class A Interests.

"*Majority in Interest of the Members*" shall mean, (i) in reference to a particular group of Members (other than the Class B Members), the Members holding in the aggregate not less than a majority of the Fully Contributed Profit Percentages of all of the holders of the group of Members referenced, and (ii) in the case of the Class B Members, the Class B Members holding the majority of the Class B Percentages.

"*Majority Major Decision*" shall have the meaning set forth in Section 6.11(b) of this Agreement.

"*Management Members*" shall mean, collectively, Hirsch, Stover, Weller, Smith, Allen Stieglitz, Matthew L. Leibowitz, JDinetz and SDinetz and "*Management Member*" shall mean any one of the foregoing.

Maximum Total Leverage Ratio" shall have the meaning set forth in the that certain Revolving Credit Agreement dated as of July 31, 2000, among NextMedia Group, Inc., NextMedia Operating, Inc. and Bankers Trust Company, as Administrative Agent for the various lenders thereunder, as amended by the First and Second Amendments dated December 13, 2000 and April ___, 2001 respectively in effect as at the Effective Date, whether or not such Credit Agreement is amended or terminated in accordance with its terms or otherwise.

"*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 and shall include any Person identified on the books and records of the Company as a Member. The term "*Member*" shall include all Class A Members, all Class B Members and all Class C Members.

"*Member Loans*" shall have the meaning set forth in Section 3.4 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 mean, collectively, the interests of the Members in the Company.

"*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.

"*New Contributions*" shall mean (x) any Capital Contributions made after the Effective Date (i) pursuant to a Capital Commitment existing as of the Effective Date or (ii) by PNE pursuant to the PNE Agreement, or (y) any other Capital Contribution made or deemed made after the Effective Date that implies a valuation of the Company's equity equal to the valuation of the Company's equity implied by the Capital Contributions referred to in clause (x) of this definition.

"*New Contribution Percentage*" shall mean (x) all New Contributions, divided by (y) the Implied Investment Amount and the "*Member's New Contribution Percentage*" shall mean the New Contribution Percentage times the quotient (expressed as a percentage) of (x) the Member's New Contributions, divided by (y) all New Contributions.

"*NMG*" means NextMedia Group, Inc., a Delaware corporation.

"*Non-Defaulting Members*" shall have the meaning set forth in Section 3.1(c) 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.

"*Original Agreement*" shall have the meaning set forth in the recitals to this Agreement.

"*Original Effective Date*" shall mean April 17, 2000.

"*Original Members*" shall mean the Class A Members and Class B Members who executed the LLC Agreement.

"*Other Members*" means the Class A Members other than the TWP Members and the Management Members.

"*Permanent Disability*" shall have the meaning set forth in Section 16.5(iii) of this Agreement.

"*Person*" shall mean any individual, partnership, corporation, limited liability company, trust or other entity.

"*PNE*" means PNE Media LLC.

"*PNE Agreement*" means the Contribution and Purchase and Sale Agreement dated as of June 13, 2001, among PNE, the Company and NextMedia Outdoor, Inc.

"*Portfolio Company*" shall mean and include NextMedia Group, Inc., and each of its direct or indirect subsidiaries, and any other entity in which the Company shall make an Investment.

"*Profit Percentage*" of any Class A Member or any Class C Member shall mean the sum of such Member's Existing Contribution Percentage (if any) and the Member's New Contribution Percentage (if any). For illustrative purposes, the Profit Percentages of the Class A Members as of the Effective Date hereof are set forth in the column headed "Current Profit Percentage" of Schedule A hereto and the Profit Percentages of the Class A Members and the Class C Members in the event that all Capital Commitments (as of the Effective Date) are contributed by the Class A Members and Class C Members the PNE Agreement is consummated in accordance with its terms and PNE is deemed to make a New Contribution of $33 million, are set forth next to each Class A Member's and Class C Member's name in the column headed "Fully Contributed Profit Percentage" of Schedule A hereto.

"*Promote Additional Contributions*" means any Additional Contributions, *provided, however*, that the Promote Additional Contributions will not exceed $200,000,000 (which amount shall include any Capital Contributions made pursuant to a Capital Commitment existing on the Effective Date and any deemed Capital Contribution by PNE pursuant to the PNE Agreement), and *provided further*, that solely as it applies to the determination of the Promote Percentage and for no other purpose, any equity funding, other than equity funding made pursuant to any Capital Commitment existing on the Effective Date and any Capital Contribution by PNE pursuant to the PNE Agreement, raised in connection with a Qualified IPO shall not be considered Promote Additional Contributions.

"*Promote Percentage*" means an amount equal to 13.767%; *provided, however*, that (i) if the Company receives any equity funding other than any New Contributions for which there is a Capital Commitment on the Effective Date, (ii) if the Company issues Membership Interests to Persons as a portion of the Consideration to be paid in connection with an acquisition undertaken by the Company, other than pursuant to the PNE Agreement, or (iii) if the transaction contemplated by the PNE Agreement is not consummated in accordance with its terms, or is consummated on terms under which PNE would be deemed to have made a New Contribution in an amount other than $33 million, then in each case, the Promote Percentage shall be adjusted to be equal to the percentage equal to the quotient of (A) the sum of (I) the product of (x) 16.34% times (y) $220,766,667 plus, (II) the product of (x) 9.5% times (y) any Promote Additional Contributions (as defined above), divided by (B) the sum of (I) $220,766,667, plus (II) any Additional Contributions.

"*Purchasable Interests*" shall have the meaning set forth in Section 14.1 of this Agreement.

"*Purchase Option*" shall have the meaning set forth in Section 14.1 of this Agreement.

"*Purchasing Members*" shall have the meaning set forth in Section 14.1 of this Agreement.

"*Qualified Appraiser*" shall have the meaning set forth in Section 14.4 of this Agreement.

"*Qualified IPO*" shall mean a firm commitment underwritten public offering by the Company of capital stock representing equity interests in the Company or any of its subsidiaries pursuant to a registration statement under the Securities Act where (i) the proceeds (prior to deducting any underwriters' discounts and commissions) equal or exceed Fifty Million Dollars ($50,000,000), (ii) based upon the valuation of the Company by virtue of such underwritten public offering, were there to be a distribution to the Members pursuant to Section 4.1 the Class A Members and Class C Members would receive a distribution of at least 150% of their Capital Contributions and (iii) upon consummation of such offering, the common stock is listed on the New York Stock Exchange or authorized to be quoted and/or listed on the Nasdaq National Market.

"*Recalculated Fair Interest Value*" shall have the meaning set forth in Section 14.5(a) of this Agreement.

"*Remaining Commitment Amount*" shall mean, as to any Class A Member on any date of determination, the Capital Commitment of such Class A Member *minus* the total Capital Contributions previously contributed to the Company by such Class A Member. Whenever this Agreement requires the computation of a Class A Member's Remaining Commitment Amount in order to allocate such Class A Member's obligations to make Additional Capital Contributions, such computation shall be made immediately prior to the date on which such Capital Contributions are finally determined and called by the Board.

"*Repurchase Notice*" shall have the meaning set forth in Section 14.2 of this Agreement.

"*Sale of the Company*" means any of the following: (i) the acquisition of all or substantially all of the equity of the Company by another Person (other than 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); (ii) a sale of all or substantially all of the assets of the Company (other than to an entity described in the parenthetical in clause (i) above); or (iii) any merger or consolidation involving the Company (unless a majority of the voting power of the surviving entity is held by Persons who, immediately prior to such transaction, held a majority of the voting power of the Company).

"*SDinetz*" shall mean Steven Dinetz, an individual.

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

"*Smith*" shall mean Steven Smith, an individual.

"*Stover*" shall mean Sean Stover, an individual.

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

"*Terminated Management/Employed Member*" shall have the meaning set forth in Section 14.1 of this Agreement.

"*Termination Notice*" shall have the meaning set forth in Section 16.5 of this Agreement.

"*Time Increment*" shall have the meaning set forth in Section 14.5(b) of this Agreement.

"*Transaction Value*" shall mean the aggregate market value of an Investment as determined by the Board in good faith.

"*Transactions*" shall have the meaning set forth in Section 17.19 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.

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

"*TWCP*" means, Thomas Weisel Capital Partners, L.P., a Delaware limited partnership.

"*TWP*" means, collectively, Thomas Weisel Partners Group LLC, a Delaware limited liability company, Thomas Weisel Capital Partners, L.P., a Delaware limited partnership, and each of their respective transferees that are Affiliates thereof.

"*TWP Agreement*" shall mean that certain Second Amended and Restated Agreement of Limited Partnership of Thomas Weisel Capital Partners, L.P., dated as of December 30, 1999, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*TWP Members*" shall mean TWP and their successors and assigns.

"*UBTI*" shall mean "unrelated business taxable income" as such term is defined in sections 512 and 514 of the Code.

"*Unanimous Major Decision*" shall have the meaning set forth in Section 6.11(c) of this Agreement.

"*VCOC*" shall mean "venture capital operating company" as such term is defined in the U.S. Department of Labor plan asset regulations, 29 C.F.R. § 2510.3-101.

"*Weller*" shall mean Samuel Weller, an individual.

"*Weston Presidio*" shall mean, collectively, Weston Presidio Capital III, L.P., a Delaware limited partnership and WPC Entrepreneur Fund, L.P., a Delaware limited partnership, and each of their respective transferees that are Affiliates thereof.

"*Weston Presidio Member*" shall mean Weston Presidio and its successors and assigns.

ARTICLE 3
CAPITAL CONTRIBUTIONS

Section 3.1 Capital Contributions by the Members

(a) Initial Capital Contributions.

(i) *Class A Interests*. Each of the Class A Members (as of the Effective Date) have contributed the amount set forth opposite such Class A Member's name under the heading "Current Capital Contribution" on Schedule A as in effect at the Effective Date and have received therefor a Class A Member's Class A Interest. Each of the Class A Members (as of the Effective Date) (a) have made a Capital Commitment to contribute, (b) in relation to Existing Contributions, have contributed or (c) in the case of PNE, will be deemed to have contributed upon the Consummation of the transaction contemplated by the PNE Agreement, in each case, the amount set forth opposite such Class A Member's name under the heading "Total Capital Commitment or Contribution" on Schedule A and have received therefor a Class A Member's Class A Interest, *provided, however*, that if the transaction contemplated by the PNE Agreement is (i) not consummated in accordance with its terms by July 31, 2001, or (ii) consummated prior to July 31, 2001 on terms materially different to the terms contained in the form of Agreement provided to the GS Investors on the Effective Date, including without limitation, by making any amendment that affects the economic terms therein as it relates to the Company (other than changes which are by their nature insignificant in relation to the size and nature of the transaction), then in each such case, the Capital Commitment of each Member shall, at the election of such Member, be deemed as of the Effective Date to be the Capital Contributions made by each such class A Member or Class C Member as of the Effective Date (i.e. the Remaining Capital Commitments of each Class A Member and Class C Member will be reduced to zero). To the extent the Capital Commitment of a Class A Member is reduced to zero, then, unless such Class A Member has previously made a Capital Contribution, such Class A Member shall cease to be a Class A Member and shall be released from any liabilities under this Agreement (other than any liability for any breach of this Agreement by such Class A Member prior to such cessation).

(ii) *Class B Interests*. The number of authorized Class B Units of Class B Interests shall be 100, of which 50 Class B Units were issued as of March 7, 2000 and of which 3.4850 Class B Units are being issued as of the Effective Date, in each case, allocated as set forth on Schedule A hereto. The Class B Members shall not be required to make any contributions of capital to the Company. Notwithstanding the foregoing, the Class B Members acknowledge that the engagement of quality management for the Company and the Portfolio Companies is essential to the continued success of the Company and agree to consent to the issuance of additional Class B Units of Class B Interests by the Company to new members of management (subject to the approval of the Board) to the extent reasonably necessary in the good faith judgment of the Management Members and the Board in order to recruit and retain such quality management, it being agreed that (i) under no circumstances shall the Class A Members be expected or required to create additional Class B Units of Class B Interests over the number of Class B Units

of Class B Interests authorized as of the Effective Date and (ii) in no event shall the aggregate Class B Units of Class B Interests be entitled to a percentage distribution greater than that specified in clause (a) and clause (b) of Section 4.1. To the extent that any Forfeiture Event occurs with respect to any Management Member or Additional Employed Member, the remaining Management Members and Additional Employed Members will use their reasonable efforts to recruit a replacement therefor to the extent reasonably necessary and advisable (subject, in each case, to the determination by the Board to hire any such replacement). Any future Class B Members shall join this Agreement by signing a Joinder Agreement, and Schedule A hereto will be updated to reflect such addition.

(iii) *Class C Interests*. Class C Members shall be credited with the amount set forth opposite such Class C Member's name under the heading Initial Capital Contribution on Schedule A (which was determined by the Board in accordance with the provisions of the Original Agreement) in exchange for the cash or property contributed (or sold in the case a Class C Member that has received Class C Interests in lieu of cash in connection with an acquisition by the Company or its Subsidiaries of stock or assets constituting an Investment). Under no circumstance shall a Class C Member be required or permitted to make Additional Capital Contributions. Any future Class C Members shall join this Agreement by signing a Joinder Agreement, and Schedule A hereto will be updated to reflect their investment.

(b) Additional Contribution Obligations.

(i) *Generally*. Subject to the limitations set forth in this Article 3 and, provided that no Capital Contributions shall be called by the Company prior to the Capital Contribution required to fund the transaction contemplated by the PNE Agreement, at the times during the Commitment Period, in the amounts, and as otherwise determined in accordance with this Article 3, each Class A Member shall make Capital Contributions to the Company to fund the purchase of Investments or to make Debt Paydown and Payment of Costs and Expenses from time to time made by the Company, in each case, when the Board determines to call for such Capital Contributions in accordance with this Agreement (collectively, the "*Additional Capital Contributions*. The Board must call for an Additional Contribution of the Additional Thomas Weisel Commitment in connection with the Investment contemplated by the PNE Agreement, if such Investment is consummated in accordance with its terms and thereafter the Board shall determine the aggregate amount of any and all Additional Capital Contributions remaining at any time to be made to the Company pursuant to this Agreement, which determination shall be conclusive in the absence of manifest error; *provided* that no Class A Member shall be required (without its consent) to make Additional Capital Contributions to the Company in an aggregate amount greater than the Remaining Commitment Amount of such Class A Member.

(ii) *Notice of Investments and Capital Contributions*. On each occasion that the Board calls pursuant to clause 3.1(b)(i) for the Class A Members to make Additional Capital Contributions to the Company, the Board shall give each such Class A Member a written notice (the "*Contribution Notice*") which shall include (a) a brief description of

the transaction or purpose for which such Additional Capital Contributions are required, (b) the aggregate amount of Additional Capital Contributions required and the respective Class A Member's share thereof (which shall be calculated assuming all Class A Members will participate fully), (c) the date by which such Additional Capital Contributions are required to be funded, and (d) the depositary institution and account into which such Additional Capital Contributions shall be made. Each such Class A Member shall deposit its required Additional Capital Contribution, by wire transfer of immediately available funds, to the designated depositary institution and account of the Company within twenty Business Days after the Contribution Notice is delivered pursuant to this Section 3.1(b)(ii).

(iii) *Proportion of Additional Capital Contributions*. Except as set forth in Section 3.1(d)(iv) below, all Additional Capital Contributions required to be made by the Class A Members shall be allocated in proportion to such Class A Member's respective Remaining Commitment Amounts.

(iv) *Non Pro-Rata Capital Contribution.* Upon the closing of the transactions contemplated by the PNE Agreement, PNE will be deemed to have made a Capital Contribution equal to $33 million (or, in certain circumstances as provided in the PNE Agreement, a reduced amount, but not less than $31.65 million). In addition, the Additional Capital Contributions required to be made to fund the Investment contemplated by the PNE Agreement, will be allocated first to the Additional Thomas Weisel Commitments (whether such commitment is then from TWCP or any other party pursuant to Section 3.1(b)(vi)) until all of the Additional Thomas Weisel Commitment has been fully contributed, and, thereafter, to the Class A Members in proportion to their Remaining Commitment Amounts.

(v) *Contribution Right*. Notwithstanding anything to the contrary herein, the Company hereby grants to the GS Investors a right (the "Contribution Right") to contribute any or all of its Remaining Commitment Amounts (whether or not the Commitment Period has expired) to the Company at any time prior to a Qualified IPO, dissolution or a sale of all of the assets or equity interests in the Company. The GS Investors may exercise the Contribution Right by delivering a written notice to the Company of the GS Investors' intent to make Capital Contributions in accordance with the terms of such notice. Delivery of such notice by the GS Investors to the Company in accordance with this Section 3.1(b)(v) will be deemed for the purposes of Section 3.1(b)(ii) to be a delivery of a Contribution Notice by the Company to the GS Investors for the amount specified in the notice. In order to give full effect to the Contribution Right, the Board will give the GS Investors twenty-five Business Days prior written notice of any Qualified IPO, dissolution of the Company, sale or Transfer of all or a substantial portion of the securities or assets constituting any Investment or the Company or any proposed distribution. In the event that the Company engages in any such transaction without providing such notice, the GS Investors shall hereinafter be entitled to contribute any or all of its Remaining Commitment Amount to the Company and shall be deemed to have made its Capital Contribution prior to such transaction. Any Capital Contributions made under this Section 3.1(b)(v) will be considered for all purposes a contribution of a portion equal to such Capital Contribution of the Capital

Commitment of the GS Investors, and shall reduce the Remaining Capital Commitments of the GS Investors by the amount of such Capital Contribution. Notwithstanding the termination of the Commitment Period pursuant to section 3.1(d)(ii) or otherwise, the Contribution Right set forth in Section 3.1(b)(v) shall not be terminated, unless it is terminated in accordance with its terms.

(vi) *Additional Thomas Weisel Commitment*. At the Effective Date, TWCP has made the Additional Thomas Weisel Commitment. If, prior to the consummation of the transactions contemplated by the PNE Agreement in accordance with its terms, TWCP agrees with another Member to assign a portion of the Additional Thomas Weisel Commitment to such Member or an Affiliate of such Member, then, upon the provision of such written assignment to the Company signed by TWCP and such Member, or Affiliate of such Member (and in the case of an Affiliate, upon the signing of a Joinder Agreement by that Affiliate), such Member or Affiliate will be deemed to have made a Capital Commitment with respect to that portion of the Additional Thomas Weisel Commitment in place of TWCP, subject to all of the terms of this Agreement, and Schedule A (together with corresponding amendments to Capital Commitments, Profit Percentages of such Members and Fully Contributed Profit Percentages) shall be amended to reflect such allocation.

(c) *Defaulting Member*. In the event that any Class A Member fails to make any Additional Capital Contribution required to be made by such Class A Member in accordance with the provisions of this Agreement and as set forth in the Contribution Notice within twenty Business Days after the Contribution Notice is given, each Class A Member so failing to make such required Additional Capital Contribution shall be a "*Defaulting Member*" (herein so called) and the non-defaulting Class A Member(s) (the "*Non-Defaulting Member(s)*") shall have the right, but not the obligation, to contribute to the Company the amount of the Additional Capital Contribution which such Defaulting Members fail to make (the "*Default Amount*"), *pro rata* in accordance with the Profit Percentages of the Non-Defaulting Member(s) electing to contribute the Default Amount.

(i) *Dilution Remedy*. If Non-Defaulting Members contribute to the Company their respective Additional Capital Contributions and their respective *pro rata* share of the Default Amount, then, effective as of the date of such contribution, the Profit Percentages of each Defaulting Member shall be adjusted by reducing the Profit Percentage of such Defaulting Member by, and by increasing the Profit Percentages of the Non-Defaulting Members by, an amount equal to the quotient of (i) 200% *multiplied by* the Default Amount *divided by* (ii) the aggregate Capital Contributions made by the Class A Members to the Company prior to the date of calculation (but not including any Non-Defaulting Member's Additional Capital Contributions of the Default Amount in question). If there is more than one Non-Defaulting Member, then any increase in the Profit Percentages of such Non-Defaulting Members shall be shared *pro rata* based on the relative amount of the Default Amount that each such Non-Defaulting Member contributed to the Company.

(ii) *Adjustment of Profit Percentages*. The new Profit Percentages computed in accordance with this Section 3.1(c) shall remain in effect under this Agreement unless

and until a subsequent adjustment to the Profit Percentages in connection with any subsequent capital call is required under this Section 3.1(c). Notwithstanding the foregoing, no Class A Member's Profit Percentage shall be reduced under any circumstance to less than zero, nor shall any Class A Member's Profit Percentage be increased under any circumstance to more than 100%.

(iii) *Remedies*. The Company may pursue and enforce all rights and remedies the Company may have against any Defaulting Member with respect thereto, including a lawsuit to collect the overdue amount and any other amount due to the Company with interest calculated thereon at a rate equal to the Base Rate plus six percentage points *per annum* (but not in excess of the highest rate per annum permitted by law).

(d) Miscellaneous.

(i) *Payment of Costs and Expenses*. If any Class A Member directly pays any Company Costs and Expenses for which Capital Contributions may be called pursuant to this Agreement, including documented out-of-pocket costs and expenses incurred by a Class A Member in connection with the origination, execution and completion of acquisitions made by such Class A Members that thereafter become Investments of the Company, the Company shall reimburse such Class A Member for such payment upon presentation of proper documentation therefor.

(ii) *Board's Computations Binding*. The Board's calculation of the amount the Class A Members are obligated to contribute to the capital of the Company from time to time under this Agreement shall be binding on all Members unless any such Class A Member objects to such calculation in writing delivered to the Board and such objection is not withdrawn or resolved, within ten Business Days after the applicable Capital Contribution is made to the Company; *provided, however*, that any such Class A Member's written objection shall not affect the obligation of any Class A Member to contribute the correct amount of capital to the Company in accordance with this Agreement.

(iii) *Early Termination of the Commitment Period*. The Commitment Period shall terminate upon the first to occur of the following:

(A) If either of the Key Management Members are no longer associated with the Company or its Portfolio Companies due to (x) the death or Permanent Disability of a Key Management Member, (y) the termination of the Engagement of a Key Management Member by the Company or (z) the termination of an employment agreement with a Key Management Member by a Portfolio Company; or

(B) The consummation of an Initial Public Offering.

On the date of the first to occur of the events described in subparagraphs (A) or (B) above, subject to Section 3.1(b)(v), the Capital Commitments shall terminate; *provided, however*, that in the case of the events described in subparagraph (A), the Capital Commitments shall not be cancelled if all Class A Members (other than the Management

Members) elect to continue the Commitment Period through the end of the fifth year after the Effective Date; *provided further, however*, that in the event of any early termination described in subparagraph (B) above, the Class A Members, and in the event of any early termination described in subparagraph (A) above, the Class A Members other than the Management Members, shall be released from the limitations set forth in Section 9.4(a) hereof.

Section 3.2 Further Contributions. Except as provided in Section 3.1, no further Capital Contributions (including any cash that may be required to pay Company Costs and Expenses) shall be required of any Class A Member. From time to time after all Capital Commitments have been (or have deemed pursuant to Section 3.1(b)(v) to have been) called by the Company as Capital Contributions pursuant to a Contribution Notice, the Board may accept, on behalf of the Company, additional Capital Contributions by existing or new Class A Members in addition to those required of the Class A Members under Section 3.1(b), *provided* that if the Board accepts such additional Capital Contributions, the Board shall give each Class A Member a written notice (an "*Acceptance Notice*") thereof at least ten days prior to the date of such acceptance pursuant to which each Class A Member may (but is not obligated to) make additional Capital Contributions such that such Class A Member retains its Fully Contributed Profit Percentage. The Board shall describe the procedures (which shall be determined by the Board in its sole and absolute discretion, except that such procedures will be equally applicable to all Class A Members) for exercising such right of the Class A Members to make additional Capital Contributions in the Acceptance Notice. Notwithstanding anything in this Agreement to the contrary, no capital called by the Company pursuant to any Contribution Notice or Acceptance Notice or otherwise shall be deemed an asset of, or contribution to, the Company for twenty (20) Business Days after receipt of such capital, unless and until such capital is released from custodial or escrow accounts by the Board and is (i) invested by and for the account of the Company in stock or other securities that the Board designates as Company portfolio assets or (ii) used for Company Costs and Expenses or other purposes that the Board expressly authorizes.

Section 3.3 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 3.4 Loans. Any Class A Member may (with the consent of the Board), but shall not be required to, make loans to the Company for any Company purpose (each, a "*Member Loan*" and collectively, the "*Member Loans*"). In respect of any such Member Loans, each lending Class A Member shall be treated as a creditor of the Company. Such Member Loans shall be repaid as and when the Company has funds available therefor, but prior to any further distributions to the Members, unless otherwise agreed by such lending Class A Members. Such Member Loans shall bear interest at a maximum rate of the Base Rate *plus* two percentage points *per annum* (but not in excess of the highest rate *per annum* permitted by law) and the principal and interest thereon shall constitute obligations of the Company. Any such Member Loans shall not increase such Class A Members' Capital Contributions or entitle such Class A Members to any increase in such Class A Member's share of the profits of the Company nor subject such Class A Members to any greater proportion of losses which it may sustain.

Section 3.5 **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 3.6 **Benefited Parties.** The foregoing Capital Contribution commitments of the Class A 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.** All Distributable Property shall be distributed to the Members as follows:

(a) **First**, 100% of all amounts available for distribution shall be allocated to the holders of Class A Interests, Class B Interests and Class C Interests, until such holders have been allocated pursuant to this Section 4.1 (taking into account such distribution and all amounts previously distributed under this Section 4.1) an amount equal to the Implied Investment Amount (the "*Initial Allocated Amount*"), which shall be distributed proportionately as set forth in Sections 4.1(a)(i) and (ii) below as follows:

(i) an amount equal to the product of (i) the Existing Contribution Percentage times (ii) the Initial Allocated Amount (such product referred to as the "*Initial Existing Contribution Allocated Amount*"), shall be distributed to the Class A Members and Class C Members who made Existing Contributions in proportion to the total of all Existing Contributions made by such Class A Members and such Class C Members; *provided, however,* that with respect to that portion, if any, of the Initial Existing Contribution Allocated Amount which exceeds the aggregate of all Existing Contributions, (x) the Promote Percentage of such excess shall be paid to the holders of Class B Interests in proportion to their Class B Percentages and (y) all remaining amounts shall be distributed to the holders of the Class A Interests and the Class C Interests in proportion to their Existing Contributions,

(ii) an amount equal to the product of (x) the New Contribution Percentage times (y) the Initial Allocated Amount shall be distributed to the Class A Members and Class C Members who made New Contributions in proportion to the total of all New Contributions made by such Class A Members and Class C Members.

(b) **Second**, thereafter (i) an amount equal to the product of (x) the Promote Percentage and (y) the amount available for distribution after the application of Section 4.1(a) shall be distributed to the holders of Class B Interests in proportion to their Class B Percentages and (ii) all remaining amounts shall be distributed to the holders of Class A Interests and Class C Interests in proportion to their Profit Percentages.

The amount of any non-cash Distributable Property to be distributed in accordance with this Section 4.1, if any, shall be its fair market value as determined by the Board in good faith (the "*Fair Market Value*"). In determining the Fair Market Value of any non-cash Distributable Property, all factors which the Board determines might reasonably affect such value shall be

taken into account without regard to any discounts for illiquidity or non-transferability; *provided, however,* that any non-cash Distributable Property that consists of securities or instruments of the type described below shall be valued as follows: any Investment of a class that is publicly traded shall be valued by reference to a distribution record date which shall be fixed by the Board as of a date not less than ten trading days before the proposed Company distribution of any such Investment and shall take into account the arithmetic average of the trading prices on such record date and on each of the ten trading days immediately preceding, and on each of the ten trading days immediately following, such record date. Such trading prices shall equal (A) the closing sale prices of such Investment as reported for each such trading day by the principal securities exchange or interdealer market system on which such Investment is then listed or authorized for trading, or (B) if not so listed or authorized, the average of the closing bid and asked quotations for each such trading day as reported by any interdealer quotation system on which such Investment is then authorized for trading, or (C) if not so authorized, the average of the closing bid and asked quotations for each such trading day as reported by any member firm of the NASD selected by the Board. Notwithstanding the preceding sentence, if the volume of trading or other aspects of the securities market on which the class of securities is traded are such that the Board reasonably determines that prices in such market may not accurately reflect the Fair Market Value of the Investment, then the Board shall not be required to value such Investment based solely on the formula set forth in this paragraph. In no event shall an Investment be valued at less than the price at which the Company can require a third Person to buy the Investment, taking into account the creditworthiness of the Person with such purchase obligation, the availability of any collateral for the obligation, and other factors that the Board deems appropriate.

Section 4.2 **Timing and Manner of Distributions.** Any distribution of cash or non-cash Distributable Property shall be made, in the case of each such cash amount and each such item of non-cash Distributable Property, among the Members as specified above. All Distributable Property that constitutes cash shall be distributed as soon as practicable following its receipt by the Company and in no event less frequently than quarterly. To the extent the Company receives proceeds from a disposition of any Company Assets, all Distributable Property that constitutes cash proceeds so received by the Company (net of the Company Costs and Expenses that are due and payable in connection with such distribution) shall be promptly distributed following the disposition. Notwithstanding the foregoing, the Board shall use its reasonable best efforts to refrain from distributing any non-cash Distributable Property (i) except upon a unanimous determination of the Board and (ii) except for any Investments that (A) have been registered under the Securities Act, or may be sold without regard to any volume limitations, by a Member pursuant to Rule 144 (or any successor provision) promulgated under the Securities Act, (B) are of the same Class as are listed or authorized for trading on any public securities exchange or market system or are authorized for quotation in any interdealer quotation system, and (C) are no longer subject to any holdback agreement.

Section 4.3 **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 (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 4.4 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.

Section 4.5 Forfeitability of Class B Interests.

(a) In the event a Forfeiture Event occurs before the fourth anniversary of February 28, 2000, the Management Member with respect to whom the Forfeiture Event occurs (and any transferee of such Management Member) shall forfeit 25% of such Management Member's Class B Interest (or such transferee's Class B Interest) for each full year by which the Forfeiture Event precedes such fourth anniversary of February 28, 2000, with such 25% to be *pro rated* in the case of a partial year; *provided, however*, that from and after the consummation of a Qualified IPO or a Sale of the Company the occurrence of a Forfeiture Event shall not result in a forfeiture of any Management Member's Class B Interests (or such transferee's Class B Interest).

(b) In the event a Forfeiture Event occurs before the fourth anniversary of the date that an Additional Employed Member became a Class B Member of the Company following the execution of a Joinder Agreement or otherwise (the "Admission Date"), the Additional Employed Member with respect to whom the Forfeiture Event occurs (and any transferee of such Additional Employed Member) shall forfeit 25% of such Additional Employed Member's Class B Interest (or such transferee's Class B Interest) for each full year by which the Forfeiture Event precedes such fourth anniversary of the Admission Date, with such 25% to be *pro rated* in the case of a partial year; *provided, however*, that from and after the consummation of a Qualified IPO or a Sale of the Company the occurrence of a Forfeiture Event shall not result in a forfeiture of any Additional Employed Member's Class B Interests (or such transferee's Class B Interest).

(c) Each Management Member and each Additional Employed Member (and any transferee therefrom) agrees to file timely elections under Section 83(b) of the Code with respect to such Person's Class B Interests.

(d) As used herein, "*Forfeiture Event*" means (i) a voluntary termination by such Management Member or Additional Employed Member (A) of the Engagement or (B) of such Management Member's or Additional Employed Member's employment agreements with all Portfolio Companies, in either case other than for "Good Reason" (as defined in such Management Member's or Additional Employed Member's employment agreement) or (ii) a termination (A) by the Company of the Engagement of such Management Member or Additional Employed Member or (B) by a Portfolio Company of the employment of such Management Member or Additional Employed Member, in either case for Cause.

(e) Upon the occurrence of any Forfeiture Event, (i) if at least two of the Management Members continue to be subject to the Engagement or remain employed by one or more Portfolio Companies, then a Majority in Interest of the Members who are Class B Members will determine the manner in which any Class B Interest that was forfeited by the Class B Member with respect to whom the Forfeiture Event occurred will be reallocated (among existing Class B Members and/or new management personnel hired as described in the penultimate

sentence of Section 3.1(a)(ii)); and (ii) if less than two of the Management Members continue to be subject to the Engagement or remain employed by one or more Portfolio Companies, then the Board will determine the manner in which any Class B Interest that was forfeited by the Class B Member with respect to whom the Forfeiture Event occurred will be reallocated (among existing Members of any class or classes as the Board may determine).

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.** 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.

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,

(A) 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.

(B) 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.

(C) 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 Employee Deductions. With regard to any Class B Interests granted or issued to a Class B Member as contemplated by Section 3.1(a)(ii) of this Agreement, the employer deductions (as described in Section 83(h) of the Code) corresponding to the inclusion in such grantee Class B Member's taxable income pursuant to Section 83(a) of the Code of all or a portion of such Class B Interest, shall be allocated entirely to such grantee Class B Member.

Section 5.9 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 Profit Percentage. In addition, the Members agree that, for purposes of Section 704(c) of the Code, the aggregate built in gain allocable to the Members that have made Existing Contributions shall be equal to the excess of the Agreed Gross Asset Value over the Company's aggregate tax basis in its assets.

ARTICLE 6
MANAGEMENT

Section 6.1 Board.

(a) The Members have established the Company as a "board of directors-managed" limited liability company under the Act, and have agreed to designate a Board (the "*Board*") of up to eight 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 making all Major Decisions and for managing all other 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).

(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; *provided, however,* that the Board may not delegate the right to make Major Decisions to any other Person. 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 not less than eight, and shall consist of "Place 1", "Place 2", "Place 3", "Place 4", "Place 5", "Place 6" "Place 7" and "Place 8" Board seats (collectively, the "*Board Seats*, and each, a "*Board Seat*"). The "Place 7" Board Seat and, subject to Sections 6.2(b) and 6.4, "Place 8" Board Seat shall be appointed by GSCP. The Board Members for each Board Seat on the Effective Date are set forth on Schedule B attached hereto.

(b) Replacement of Board Seats. The TWP Members may at any time designate replacements for the Place 1 and Place 2 Board Seats by delivering a written notice of such replacement to the Management Members and the Other Members. The Management Members may at any time designate replacements for the Place 3 and Place 4 Board Seats by delivering a written notice of such replacement to the TWP Members and the Other Members; *provided, however*, that notwithstanding the foregoing, the Key Management Members shall be the Board Members for the Management Members' Board Seats for so long as the Key Management Members are associated with the Company. The Weston Presidio Member may at any time designate a replacement for the Place 5 Board Seat and, the Alta Member may at any time designate a replacement for the Place 6 Board Seat and GSCP may at any time designate replacements for the Place 7 and Place 8 Board Seats by delivering a written notice of such replacement to the Management Members, the TWP Members and each Other Member (provided, however, that any replacement for the Place 8 Board Seat must be reasonably acceptable to a Majority in Interest of the Members holding Class B Interests, it being understood that GSCP will use commercially reasonable efforts to appoint such Place 8 Board Seat). The vote of a Majority in Interest of the Members entitled to representation by a specific Board Seat shall determine the replacement Board member for such Board Seat.

(c) Actions as a Group. The Members acknowledge and agree that it is intended that the TWP Members shall act as a group in taking any actions with respect to the Place 1 and Place 2 Board Seats, the Management Members shall act as a group in taking any actions with respect to the Place 3 and Place 4 Board Seats. To facilitate the process, however, each of the TWP Members, the Management Members, as applicable, shall each designate, in writing, one person to act on behalf of the Members in the applicable group in making any decisions, appointments or removals, or in taking any other actions under this Article 6 with respect to the applicable Board Seats controlled by such group of Members. If a particular group of Class A Members fails specifically to designate a Member to act on behalf of the other Members in the applicable

group, then the other Members of such group (other than any Defaulting Members or Management Members as to whom a Forfeiture Event has occurred) shall have the responsibility to act on behalf of the particular group of Members in making any decisions, appointments or removals, or taking any other actions under this Article 6 unless and until a specific Class A Member has been designated to represent such particular group, as evidenced by an instrument signed by a Majority in Interest of the Members of such group (other than any Defaulting Members or Management Members as to whom a Forfeiture Event has occurred).

Section 6.3 Vacancies.

(a) If a vacancy should ever occur in one or more of the Board Seats, the applicable Member or group of Members (*i.e.*, the TWP Members, the Management Members (in their capacities as Class A Members), the Weston Presidio Member, the Alta Member and GSCP, as the case may be) and the applicable designated person selected by a Class A Member within each such group (*i.e.*, initially Daniel S. Dross, Philip W. Halperin, Carl E. Hirsch, Brian W. McNeill and Doug Londal) shall be responsible for designating a replacement for such vacant Board Seats promptly and shall deliver written notice evidencing such replacement signed by a Majority in Interest of the Members of such group (other than any Defaulting Members or Management Members as to whom a Forfeiture Event has occurred).

(b) If at any time one group of Members notifies the other Members that any Board Member appointed by such group of Members is no longer to serve in such capacity, the Board Member designated in such notice shall, from and after the date on which the other Members receive such notice, be deemed to have resigned from the Board and shall have no authority, power, or capacity with respect to any matter whatsoever relating to the Board.

Section 6.4 Forfeiture of Right to Designate Board Members. The TWP Members, the Management Members and the Key Management Members (in their capacities as Class A Members), the Weston Presidio Member, the Alta Member and GSCP, as the case may be, shall lose their respective right to designate Board Members (and the Board Seat represented thereby): (i) in the case of the TWP Members, the Weston Presidio Member, the Alta Member or GSCP, respectively, any TWP Member, Weston Presidio Member, Alta Member or the GSCP, respectively, shall be a Defaulting Member, (ii) in the case of the Management Members, any Management Member shall be a Defaulting Member; *provided, however*, that in the event the Management Members as a group shall have made Additional Capital Contributions equal to not less than 90% of their required Additional Capital Contributions, the Management Members shall not lose their right to designate Board Members; *provided further, however*, that the Management Member that is the Defaulting Member shall lose its right to participate in the election of the Management Members' Board Members, or (iii) in the case of either of the Key Management Members, there shall occur a Forfeiture Event in respect of either of such Key Management Members. Upon the occurrence of such an event, any Board Members then serving at the request of the group of Members that includes the Defaulting Member shall immediately be deemed to have resigned from the Board. The applicable Members not in default (if any) shall then have the right to designate Board Members in the stead of the Defaulting Member (or Affiliate of a Defaulting Member); *provided, however*, that the Board Seat representing the Defaulting Member shall remain vacant (and the Board will act as though no such Board Seat exists) in the event the applicable Members not in default shall be unable to agree on a

replacement for the Board Member(s) representing the Defaulting Member (or Affiliate of a Defaulting Member).

Section 6.5 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 at least two Board Members on at least five Business Days prior written notice from such Board Members 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 shall be necessary and sufficient to constitute a quorum for the transaction of business; *provided, however*, that (i) during the period that the Place 8 Board Seat is vacant, the Place 7 Board Seat will be counted twice (and shall be treated like two Board Seats) for the purposes of calculating the quorum, and (ii) for the consideration of any Unanimous Major Decisions, the presence of all Board Members shall be required for a quorum. 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.

Section 6.6 Committees. The Board may create committees for such terms and with such powers and duties as the Board deems appropriate; *provided, however*, the Board may not delegate to any such committee the right to make a Major Decision. Each Investor Member shall have the right to designate one person to be a member of any committee so created.

Section 6.7 Voting.

(a) All Majority Major Decisions 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) *provided, however*, that during the period that the Place 8 Board Seat is vacant, the vote of the Place 7 Board Seat will be counted twice (and shall be treated like two Board Seats) for the purposes of calculating a majority of the Board Members.

(b) All Unanimous Major Decisions must be approved by all of the Board Members (not just all Board Members present at a particular meeting).

(c) For the avoidance of doubt, in determining whether Majority Major Decisions or Unanimous Major Decisions, as applicable, have been approved by the requisite number of Board Members, such determination will be made based on the number of affirmative votes required from the entire Board, not just the number of Board Members present and voting at a particular meeting.

Section 6.8 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 6.9 **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: (i) is signed by all of the Board Members, or (ii) with two Business Days prior notice to all Board Members, is signed by the requisite number of Board Members that must approve such action. "*Writing*" for these purposes includes any handwritten, typewritten, telegraphic, telexed, or telecopied communication.

Section 6.10 **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.

Section 6.11 **Major Decisions**.

(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 in respect of a Major Decision unless or until the same has been approved by the requisite number of Board Members pursuant to Section 6.7 hereof and this Section 6.11.

(b) The term "*Majority Major Decision*" means, in respect of any matter, action, and/or decision required to be taken by the Board pursuant to the terms of this Agreement, the following matters:[1]

(i) any commitment by the Company to make an Investment in, or otherwise undertake any contractual obligations in respect of, any matter and to call for Capital Contributions therefor;

(ii) approval of annual budgets and all Affiliate transactions;

(iii) approval of the annual federal income tax returns of the Company;

(iv) the initiation or settlement of litigation by the Company;

(v) any voluntary dissolution, liquidation, or termination of the Company pursuant to Section 13.1(c).

(vi) approval of ordinary cash distributions by the Company to the Members; and

(vii) any other matter, action and/or decision other than a Unanimous Major Decision.

[1] Discuss whether this list should be shortened.

(c) The term "*Unanimous Major Decision*" means, in respect of any matter, action, and/or decision required to be taken by the Board pursuant to the terms of this Agreement, the following matters:

(i) the admission of new Members or the Transfer of Membership Interest other than a Transfer or an admission of a New Member resulting from a Transfer, otherwise permitted herein, and other than the admission of PNE as contemplated herein;

(ii) the determination to distribute any non-cash Distributable Property;

(iii) the creation of any additional Class B Interests;

(iv) the incurrence of any indebtedness by the Company;

(v) the sale of all or substantially all of the Company Assets or a merger of the Company with another Person;

(vi) any change in the Lines of Business, investment objectives and purposes of the Company;

(vii) the initiation of any bankruptcy filings by the Company;

(viii) any voluntary dissolution, liquidation, or termination of the Company other than pursuant to Section 13.1(a) or Section 13.1(c); and

(ix) any redemption of Membership Interests in the Company.

(d) Notwithstanding anything to the contrary contained herein, the following matters, actions, and/or decisions may be taken only with the express prior written consent of TWP, the GS Investors and Alta (in the case of clause (i) below), and TWP, Weston Presidio, the GS Investors and Alta (in the case of clause (ii) below) in their sole discretion:

(i) causing the Company to engage or participate in any hostile takeover or other Investment that is not permitted under the terms of the TWP Agreement or the Alta Agreement, as applicable, including Investments affecting concentration limitations and opt-out rights thereunder; and

(ii) all structuring decisions relating to each of the Investments, and all issues relating to VCOC, UBTI and ECI (whether or not directly related to the Investments).

Section 6.12 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 6.13 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 6.14 Procedure. At meetings of the Board, business shall be transacted in such order as from time to time the Board may dettrmine. 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 6.15 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, however,* that nothing contained herein shall be construed to preclude any Board Member from serving the Company in any other capacity or (except as otherwise provided in Section 16.3) receiving compensation therefor.

Section 6.16 Devotion of Time. Subject to Section 6.17, 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; *provided* that nothing in this Agreement shall preclude the employment, at the expense of the Company, subject to Section 16.3, of any agent or third party to manage or provide other services in respect of the Company and/or its properties, subject to the control of the Board.

Section 6.17 Competitive Activities. Subject to the obligations of Management Members as provided in Article 16 and Section 9.4(b), (a) no 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, (b) such other business interests and activities may be of any nature or description, and may be engaged in independently or with others, (c) 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, shall not be deemed wrongful or improper.

Section 6.18 Transactions with Affiliates. Notwithstanding anything to the contrary contained herein, and 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 (and the Board has determined that the employment agreements listed on Schedule E, the form of which is attached hereto as Exhibit A, meet the foregoing criteria and are, therefore, approved).