

LIMITED LIABILITY COMPANY AGREEMENT

OF

ON TOP COMMUNICATIONS, LLC

THE INTERESTS REFERRED TO HEREIN (“INTERESTS”) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”). SUCH INTERESTS ARE BEING OFFERED AND SOLD UNDER THE EXEMPTION PROVIDED BY SECTION 4(2) OF THE SECURITIES ACT AND/OR PURSUANT TO RULE 506 THEREUNDER.

A PURCHASER OF ANY INTEREST MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME BECAUSE THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT AND, THEREFORE, CANNOT BE SOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THERE IS NO OBLIGATION OF THE ISSUER TO REGISTER THE INTERESTS UNDER THE SECURITIES ACT.

ARTICLE 12 OF THE LIMITED LIABILITY COMPANY AGREEMENT PROVIDES FOR FURTHER RESTRICTIONS ON TRANSFER OF THE INTERESTS. ACCORDINGLY, PURCHASE OF THE INTERESTS IS ONLY SUITABLE FOR INVESTORS WILLING AND ABLE TO ACCEPT THE ECONOMIC RISK OF THE INVESTMENT AND LACK OF LIQUIDITY.

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LIMITED LIABILITY COMPANY AGREEMENT

OF

ON TOP COMMUNICATIONS, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT is made and entered into as of _____, 2002 by and among On Top Communications, LLC, a Delaware limited liability company (the “Company”), and the several persons and entities whose names, addresses and Capital Contributions are set forth in Schedule 1 hereto and whose signatures appear on the counterpart signature pages attached hereto.

WITNESSETH

WHEREAS, the parties agree that their respective rights, powers, duties and obligations as members of the Company, and the management, operations and activities of the Company, shall be governed by this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 *Certain Definitions.* Capitalized terms used in this Agreement without other definition shall, unless expressly stated otherwise, have the meanings specified in this Section:

(a) “Act” means Title 6 Chapter 18 of the Delaware Code, as from time to time in effect in the State of Delaware, or any corresponding provision or provisions of any succeeding or successor law of such State; provided, however, that in the event that any amendment to the Act, or any succeeding or successor law, is applicable to the Company only if the Company has elected to be governed by the Act as so amended or by such succeeding or successor law, as the case may be, the term “Act” shall refer to the Act as so amended or to such succeeding or successor law only after the appropriate election by the Company, if made, has become effective.

(b) “*Actions Requiring Approval*” means the matters specified in Section 4.6(b) as requiring Member approval.

(c) “*Affiliate*” of a Member or Manager means any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member or Manager, as applicable. The term “control”, as used in the immediately preceding sentence, means with respect to a corporation, limited liability company, limited life company or limited duration company (collectively, “limited liability company”), the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company and, with respect to any

individual, partnership, trust, estate, association or other entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(d) “*Agreement*” means this Limited Liability Company Agreement, as originally executed and as amended, restated, modified or supplemented from time to time. Words such as “herein,” “hereinafter,” “hereof,” “hereto,” “hereby” and “hereunder”, when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

(e) “*Assignee*” means any transferee of a Member’s Interest who has not been admitted as a Member of the Company in accordance with Section 12.2.

(f) “*Bankruptcy*” means, with respect to a Member: such Member makes an assignment for the benefit of creditors; such Member files a voluntary petition in bankruptcy; such Member is adjudged a bankrupt or insolvent, or has entered against him or it an order for relief, in any bankruptcy, insolvency or suspension of payments proceeding; such Member files a petition or answer seeking for himself or itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, suspension of payments or similar relief under any statute, law or regulation; such Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or it in any proceeding of a nature described in this Section; such Member seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of his or its properties; or 120 days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, suspension of payments or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without the Member’s consent or acquiescence of a trustee, receiver or liquidator of the Member or of all or any substantial part of his or its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

(g) “*Business*” means the management and operation of radio stations KNOU in Louisiana, WWHV in Virginia, WRXZ in Georgia, WFFM in Georgia, and WRJH in Mississippi.

(h) “*Capital Account*” means an account established and maintained (in accordance with, and intended to comply with, Income Tax Regulations Section 1.704-1(b)) for each Member pursuant to Section 9.4 hereof.

(i) “*Capital Contributions*” means the contributions made by the Members to the Company pursuant to Sections 9.1 or 9.2 hereof and, in the case of all the Members, the aggregate of all such Capital Contributions.

(j) “*Certificate of Formation*” means the certificate of formation of this Company filed with the Secretary of State on April 9, 2002.

(k) “*Change of Control*” means the (i) merger, consolidation, reorganization (or similar transaction or series of related transactions) of the entity into or with another entity that results in the exchange of outstanding securities of the entity for securities or other consideration issued or paid or caused to be issued or paid by any such entity or affiliate thereof in which the security holders of the entity immediately prior to such transaction shall own less than fifty percent (50%) of the voting securities of the surviving or continuing entity (or its parent) immediately after such transaction, or (ii) sale, transfer or other disposition

(but not including a transfer of disposition by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the entity, provided that the exercise of the Warrants by the Investors or the Senior Lenders shall not be deemed to be a Change of Control.

(l) “*Code*” means the United States Internal Revenue Code of 1986, as amended, or any corresponding provision or provisions of any succeeding law and, to the extent applicable, the Income Tax Regulations.

(m) “*Common Units*” means a unit of ownership in a membership interest of the Common Members as described in Section 4.4.

(n) “*Company*” means On Top Communications, LLC, a Delaware limited liability company.

(o) “*Dissolution Event*” means, with respect to any Person, one or more of the following: the death, insanity, withdrawal, resignation, retirement, expulsion, Bankruptcy or dissolution of such Person.

(p) “*Income Tax Regulations*” means, unless the context clearly indicates otherwise, the regulations in force as final or temporary that have been issued by the U.S. Department of the Treasury pursuant to its authority under the Code, and any successor regulations.

(q) “*Interest*” means the entire ownership interest of a Member in the Company at any particular time, including, without limitation, the right of such Member to participate in the Company’s income, gain, loss, deduction, credit and similar items, and any and all rights and benefits to which a Member may be entitled pursuant to this Agreement and under the Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement and the Act.

(r) “*Investors*” means, collectively, MMG Ventures, L.P., OCP IV On Top, Inc., Opportunity Capital Corporation, The Bon Secours Community Investment Fund, L.P., Broadcast Capital, Inc., Milestone Growth Fund, Inc. and Community Development Ventures, Inc.

(s) “*Investors Warrants*” means those warrants to purchase Common Units issuable to the Investors pursuant to the Subordinated Debt Documents.

(t) “*Loan Agreement*” means the certain Loan Agreement, dated as of the date hereof, by and among the Senior Lenders and the Company and its subsidiaries.

(u) “*Majority in Interest*” means a majority of the Percentage Interests of the Members.

(v) “*Manager*” means a Person who is elected as a member of the Management Committee pursuant to Section 6.4 or 6.5 of this Agreement.

(w) “*Management Committee*” means the board of Managers of the Company as described in Article VI hereof.

(x) “*Member*” means any Person who is one of the original parties to this Agreement listed in Schedule 1, or has been admitted to the Company as a Member in accordance with the Act and this Agreement, and has not become the subject of a Dissolution Event or ceased to be a Member for any reason.

(y) “*Net Profits*” and “*Net Losses*” means the income, gain, loss, deductions, credits and similar items of the Company determined in accordance with the Company’s method of accounting at the close of each fiscal year (not including any amounts specially allocated under Sections 10.1(c) –10.1(l)).

(z) “*Percentage Interest*” means the allocable interest of each Member in the income, gain, loss, deduction or credit of the Company, as set forth in Schedule 2 hereto, as amended from time to time, which is determined by dividing the number of Units held by a Member by the total number of Units held by all Members.

(aa) “*Person*” means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, limited life company, limited duration company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity or any other entity.

(bb) “*Qualified Public Offering*” means a firm-commitment underwritten public offering of equity of an entity pursuant to an effective registration statement under the Securities Act, as amended, resulting in net gross proceeds to such entity of at least \$20,000,000 (before underwriting discounts and commissions and other offering expenses).

(cc) “*Secretary of State*” means the Secretary of State of the State of Delaware.

(dd) “*Senior Debt Documents*” means the Loan Agreement and all of the documents and agreements referred to therein to which the Senior Lenders are parties or beneficiaries.

(ee) “*Senior Lenders*” means, collectively, Power Equities, Inc. and Medallion Capital, Inc.

(ff) “*Senior Warrants*” means the Default Warrants issuable to the Senior Lenders pursuant to the Senior Debt Documents.

(gg) “*Subordinated Debt Documents*” means the Loan and Warrant Purchase Exchange Agreement dated as of the date hereof among the Company and the Investors and all of the documents and agreements referred to therein to which the Investors are parties or beneficiaries.

(hh) “*Tax Matters Member*” has the meaning set forth in Section 10.3(c) hereof.

(ii) “*Tax Distribution Amount*” for a Member is equal to the taxable income allocated to such Member under this Agreement for the year multiplied by forty-five percent (45%). However in the event a substantial portion of the taxable income of the Company is long term capital gain, as defined in Section 1222(3) of the Code, the percentage shall be appropriately adjusted to take into account the lower rate on capital gains and the overall tax burden on the Members, which determination shall be made by the Management Committee in good faith after due diligence.

(jj) “*Two-Thirds Interest*” means two-thirds of the Percentage Interests of Members.

(kk) “*Warrants*” means, collectively, (i) the Senior Warrants and (ii) the Investors Warrants.

(ll) “*Units*” means a unit of ownership in a membership interest as described in Section 4.4.

(mm) “Vote” includes written consent.

1.2 *Form of Pronouns; Number; Construction.* Unless the context otherwise requires, as used in this Agreement, the singular number includes the plural and the plural number may include the singular. The use of any gender shall be applicable to all genders. Unless otherwise specified, references to Sections or Articles are to the Sections or Articles in this Agreement. Unless the context otherwise requires, the term “including” shall mean “including, without limitation.

ARTICLE 2

THE COMPANY

2.1 *Name.* The name of the Company shall be On Top Communications, LLC.

2.2 *Purposes of the Company.*

(a) The purposes of the Company are to operate the Business and to engage in any and all activities related or incidental to the operation of the Business.

(b) The Company has the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or in furtherance of the purposes of the Company set forth in this Section 2.2, in the reasonable opinion of the Management Committee.

2.3 *Term.* Subject to earlier dissolution pursuant to the Act or Section 14.1 of this Agreement, this Company shall continue in existence perpetually.

ARTICLE 3

OFFICES

3.1 *Registered Office.* The registered office of the Company in Delaware required by the Act shall be as set forth in the Company’s Certificate of Formation until such time as the registered office is changed in accordance with the Act.

3.2 *Principal Executive Office.* The principal executive office for the transaction of the business of the Company shall be fixed by the Management Committee within or without the State of Delaware.

3.3 *Other Offices.* The Management Committee may at any time establish other business offices within or without the State of Delaware.

ARTICLE 4

INTERESTS OF MEMBERS

4.1 *Members.* Each of the parties to this Agreement, and each Person admitted as a Member of the Company pursuant to the Act and the terms of this Agreement shall be Members of the Company until they cease to be Members in accordance with the provisions of the Act, the Certificate of Formation or

this Agreement. Upon the admission of any new Member, Schedules 1, 2 and 3 hereto shall be amended accordingly.

4.2 *Limited Liability.* Except as expressly set forth in this Agreement or required by law, no Member shall be personally liable for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company.

4.3 *Nature of Membership Interest; Agreement Is Binding Upon Successors.* The Interests of Members in the Company constitute their personal estate. No Member has any interest in any specific asset or property of the Company.

In the event of the death or legal disability of any Member, the executor, trustee, administrator, guardian, conservator or other legal representative of such Member may exercise the rights and powers of that Member and shall be bound by the provisions of this Agreement, including without limitation, Sections 12.2 and 12.3. If a Member which is not a natural person is dissolved or terminated, the successor or legal representative of such Member may exercise the rights and powers of that Member and shall be bound by the provisions of this Agreement, including without limitation, Sections 12.2 and 12.3.

4.4 *Units of Membership Interests; Certificates Evidencing Interests.*

(a) The Company is authorized to issue a total of [10,000,000] Units, all of which are hereby designated as Common Units, [500,000] of which are hereby reserved for issuance as Profits Interests in accordance with Section 4.5(c) and [_____] of which are hereby reserved for issuance upon the exercise of the Warrants.

(b) The Company hereby issues (or has issued) to each Member listed on Schedule 2 the number of Units set forth thereon beside such Member's name in the column headed "Units". All of such issued Units are validly issued, fully paid and nonassessable.

4.5 *Classes of Members.*

(a) *General.* Subject to Sections 4.6 and 6.10, the Company shall have as many classes of members as the Management Committee and a Majority in Interest of the Members of all classes voting together as a single class shall determine. Initially, all members that are original signatories of this Agreement shall be Common Members. The Management Committee may reclassify unissued Common Units from time to time for issuance by the Company in accordance with the terms hereof. Each class of Members shall have the rights, powers, duties, obligations, preferences and privileges set forth in this Agreement which establishes the creation of each additional class. The names of the Common Members shall be set forth in Schedule 1 hereto.

(b) *Common Members.* The Management Committee shall have the right to issue unissued Common Units or securities convertible into Common Units to any Person. Such Persons shall be admitted as Common Members, and upon the execution by such Person of a written instrument agreeing to be bound by and confirming the obligations, representations and warranties contained in this Agreement, the following shall occur:

- (1) Such Person shall be admitted as a Common Member of the Company;

(2) The Percentage Interests of all Members shall automatically be adjusted to reflect such issuance of such Common Units; and

(3) The Capital Accounts of the Members shall be booked up to reflect the then fair market value of the Company's assets pursuant to Section 9.4(b). Each of the Common Members shall be entitled to share in the income, gain, loss, deduction and credit of the Company (and items thereof) as set forth in Article 10 and shall be entitled to a return of their positive Capital Account balances upon a dissolution and liquidation of the Company in accordance with Section 14.5.

(c) *Profits Interest Members.* The Management Committee shall have the right to issue Common Units representing an interest in the profits and losses of the Company (but not capital of the Company existing on the date of the grant) to officers, managers, employees or consultants of the Company or any subsidiary of the Company or to any other Person (each a "Profits Interest" and collectively, the "Profits Interests"). The Profits Interests when issued may (but are not required to) be subject to a vesting schedule which will be determined by the Management Committee. The Management Committee shall have the right to admit the holders of Profits Interests as Profits Interest Members, and upon the execution by such Person of a written instrument agreeing to be bound by and confirming the obligations, representations and warranties contained in this Agreement, the following shall occur:

(1) Such Person shall be admitted as a Profits Interest Member of the Company;

(2) The Percentage Interests of all Members shall automatically be adjusted to reflect such issuance of the Profits Interests; and

(3) The Capital Accounts of the Members (other than the Person receiving the Profits Interest) shall be booked up to reflect the then fair market value of the Company's assets pursuant to Section 9.4(b).

(d) *Additional Classes.* In the event additional classes are authorized in accordance with this Agreement, this Agreement shall be amended to set forth (i) such additional class, (ii) the rights, powers, duties, obligations, preferences and privileges of each such class in relation to each other class and (iii) the manner in which each Member of such additional class shall be entitled to share in the income, gain, loss, deduction and credit and the degree to which such class shall be entitled to share in the relevant class investments and in the investments of the Company as a whole.

4.6 *Voting Rights.*

(a) Except as may otherwise be provided in this Agreement or the Act or the Certificate of Formation, each of the Members hereby waives his or its right to vote on any matters other than as set forth in this Section 4.6.

(b) Subject to the Act and the Certificate of Formation, the approval of the Management Committee in accordance with Article VI hereof and the affirmative vote of a Majority in Interest of the Common Members shall be required to take any of the following actions:

(i) amend the Certificate of Formation;

- (ii) amend this Agreement (except for amendments resulting from operation of Section 4.1 and creating new classes of Interests having preferences or privileges senior to the Common Units);
- (iii) approve a voluntary dissolution of this Company pursuant to Section 14.1;
- (iv) approve a return of a Member's Capital Contribution in accordance with Section 9.2(b)(ii) or the repurchase or redemption of a Member's Interest, except pursuant to employment and like agreements or the Subordinated Debt Documents;
- (v) change the authorized number of Managers in accordance with Section 6.4; and
- (vi) undergo a Change of Control transaction.

The actions specified in clauses (i) through (vi) above are collectively referred to as the "Actions Requiring Approval".

(c) Unless a record date for voting purposes has been fixed as provided in Section 5.6 of this Agreement, only Persons whose names are listed as Members on the records of the Company at the close of business on the business day immediately preceding the day on which notice of the meeting is given or, if such notice is waived, at the close of business on the business day immediately preceding the day on which the meeting of Members is held (except that the record date for Members entitled to give consent to action without a meeting shall be determined in accordance with Section 5.5) shall be entitled to receive notice of and to vote at such meeting, and such day shall be the record date for such meeting. Any Member entitled to vote on any matter may cast part of the votes in favor of the proposal and refrain from exercising the remaining votes or vote against the proposal (other than for election or removal of a Manager), but if the Member fails to specify the number of votes such Member is exercising affirmatively, it will be conclusively presumed that the Member's approving vote is with respect to all votes such Member is entitled to cast. Such vote may be viva voce or by ballot; provided, however, that all votes for election or removal of a Manager must be by ballot upon demand made by a Member at any meeting at which such election or removal is to be considered and before the voting begins.

4.7 Resignation and Withdrawal of Members. No Member may resign or withdraw as a Member prior to the dissolution and winding up of the Company.

4.8 Other Activities. Subject to any contrary provisions contained in any agreement entered into by a Manager with the Company, the Managers and executive officers of the Company shall have the right to participate in other business ventures of every kind, whether or not such other business ventures compete with the Company. No Member, acting in the capacity of a Member, shall be obligated to offer to the Company or to the other Members any opportunity to participate in any such other business venture. Neither the Company nor the other Members shall have any right to any income or profit derived from any such other business venture of a Member.

4.9 Members Are Not Agents. Pursuant to Section 6.1 of this Agreement, the management of the Company is vested in the Management Committee. The Members shall have no power to participate in the management of the Company except as expressly authorized by the Act, this Agreement or the Certificate of Formation. No Member, acting solely in the capacity of a Member, is an agent of the

Company nor does any Member, unless expressly and duly authorized in writing to do so by the Management Committee, have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf or to render it liable for any purpose.

4.10 *Transactions of Members with the Company.* Subject to any limitations set forth in this Agreement and with the prior approval of the Management Committee, a Member may lend money to, and transact other business with, the Company. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.11 *Loans by Members to the Company.* Without limiting Section 4.10 or 6.10, no Member shall be obligated to lend money to the Company. No Member may lend money to the Company without the prior approval of the Management Committee. Any loan by a Member to the Company with the required approval of the Management Committee shall be separately entered on the books of the Company as a loan to the Company and not as a Capital Contribution, shall bear interest at such rate as may be agreed upon by the lending Member and the Management Committee, shall be on terms that are fair and reasonable and no less favorable to the Company than it would obtain in a comparable arm's length transaction with an unaffiliated third party and shall be evidenced by a promissory note duly executed by at least two Managers on behalf of the Company and delivered to the lending Member.

ARTICLE 5

MEETINGS OF MEMBERS

5.1 *Place of Meeting.* All meetings of the Members shall be held at any place within or without the State of Delaware which may be designated by the Management Committee. In the absence of such designation, Members' meetings shall be held at the principal executive office of the Company.

5.2 *Meetings of Members.* Meetings of the Members for the purpose of taking any action permitted to be taken by the Members may be called by any Manager, or by Members entitled to cast not less than ten percent (10%) of the votes at the meeting. Upon request in writing that a meeting of Members be called for any proper purpose, the secretary forthwith shall cause notice to be given to the Members entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than ten (10) nor more than sixty (60) days after receipt of the request. Except in special cases where other express provision is made by statute, written notice of such meetings shall be given to each Member entitled to vote not less than ten (10) nor more than sixty (60) days before the meeting. Such notices shall state:

- (a) The place, date and hour of the meeting; and
- (b) Those matters which the Managers, at the time of the mailing of the notice, intend to present for action by the Members.

5.3 *Quorum.* The presence at any meeting in person or by proxy of a Majority in Interest of Members entitled to vote at such meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a

quorum, if any action taken (other than adjournment) is approved by at least a majority of the votes required to constitute a quorum.

5.4 *Waiver of Notice.* The actions of any meeting of Members, however called and noticed, and wherever held, shall be as valid as if taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice, consent or approval need not specify either the business to be transacted or the purpose of any regular or special meeting of Members, except that if action is taken or proposed to be taken for approval of any of those matters specified in subsection (b) of Section 4.6 of this Agreement, the waiver of notice, consent or approval shall state the general nature of such proposal. All such waivers, consents or approvals shall be filed with the Company's records and made a part of the minutes of the meeting.

Attendance of a Member at a meeting shall also constitute a waiver of notice of and presence at such meeting, except when the Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice but not so included, if such objection is expressly made at the meeting.

5.5 *Action by Members Without a Meeting.* Any action which, under any provision of the Act or the Certificate of Formation or this Agreement, may be taken at a meeting of the Members, may be taken without a meeting, and without notice except as hereinafter set forth, if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. All such consents shall be filed with the secretary of the Company and shall be maintained in the Company's records.

Unless the consents of all Members entitled to vote have been solicited in writing, prompt notice shall be given of the taking of any other action approved by Members without a meeting by less than unanimous written consent to those Members entitled to vote who have not consented in writing.

Any Member giving a written consent, or the Member's proxyholders, or a personal representative of the Member or their respective proxyholders, may revoke the consent by a writing received by the secretary prior to the time that written consents of the number of votes required to authorize the proposed action have been filed with the secretary, but may not do so thereafter. Such revocation is effective upon its receipt by the secretary or, if there shall be no person then holding such office, upon its receipt by any other officer or Manager of the Company.

5.6 *Record Date.* Subject to the obligations of the Company under the Warrants, the Management Committee may fix a time in the future as a record date for the determination of the Members entitled to notice of and to vote at any meeting of Members or entitled to give consent to action by the Company in writing without a meeting, to receive any report, to receive any dividend or distribution, or any allotment of rights, or to exercise rights with respect to any change, conversion or exchange of interests. The record date so fixed shall be not more than sixty (60) days nor less than ten (10) days prior to the date of any meeting, nor more than sixty (60) days prior to any other event for the purposes of which it is fixed. When a record date is so fixed, subject to the obligations of the Company under the

Warrants, only Members of record at the close of business on that date are entitled to notice of and to vote at any such meeting, to give consent without a meeting, to receive any report, to receive a dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any interests on the books of the Company after the record date, except as otherwise provided by statute or in the Certificate of Formation or this Agreement.

If the Management Committee does not so fix a record date:

(a) The record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day immediately preceding the day on which notice is given or, if notice is waived, at the close of business on the business day immediately preceding the day on which the meeting is held; and

(b) The record date for determining Members entitled to give consent to Company action in writing without a meeting shall be the day on which the first written consent is given.

ARTICLE 6

MANAGEMENT OF THE COMPANY

6.1 *Management Committee.* Subject to the provisions of the Act and any limitations in the Certificate of Formation and this Agreement as to action required to be authorized or approved by the Members and certain Managers pursuant to Section 6.10, the business and affairs of the Company shall be managed and all its powers shall be exercised by or under the direction of a Management Committee, which shall be comprised of all of the Managers of the Company. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Management Committee shall have the following powers:

(a) To conduct, manage and control the business and affairs of the Company and to make such rules and regulations therefor not inconsistent with law or with the Certificate of Formation or with this Agreement, as the Management Committee shall deem to be in the best interests of the Company;

(b) To appoint and remove at pleasure the officers, agents and employees of the Company, prescribe their duties and fix their compensation;

(c) To borrow money and incur indebtedness for the purposes of the Company and to cause to be executed and delivered therefor, in the Company's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation's or other evidences of debt and securities therefor;

(d) To designate an executive, audit, compensation and/or other committees and sub-committees, each consisting of three or more Managers, to serve at the pleasure of the Management Committee, and to prescribe the manner in which proceedings of such committees shall be conducted;

(e) To acquire real and personal property, arrange financing and enter into contracts;

(f) To sell, transfer, lease or convey any assets of the Company and file any forms or applications incident thereto with applicable governmental authorities; and

(g) To continue the business of the Company after a Dissolution Event specified in Section 14.1.

6.2 *Limited Liability.* Except as expressly set forth in this Agreement or required by law, no Manager shall be personally liable for any debt, obligation, or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Manager of the Company.

6.3 *Number and Qualifications of Managers .* The authorized number of Managers which shall constitute the Management Committee shall initially be five (5). Subject to the provisions of the Act, any limitations in the Certificate of Formation and Sections 4.6, 6.4 and 6.10, the authorized number of Managers may be changed from time to time by the affirmative vote of a Two-Thirds Interest of the Members of all classes voting together as a single class.

6.4 Election and Removal of Managers.

(a) Subject to the provisions of Section 6.4(b) below,

(i) each Manager shall be elected by the vote of a Majority in Interest of all of the Members at any meeting of Members, or by written consent of a Majority in Interest of the Members pursuant to Section 5.5 of this Agreement. Except as otherwise provided by the Act or the Certificate of Formation, each Manager, including a Manager elected to fill a vacancy, shall hold office until his or her death, Bankruptcy, mental incompetence, resignation or removal.

(ii) Any Manager may be removed, with or without cause, by the vote of a Majority in Interest of the Members represented and voting at a duly held meeting at which a quorum is present (which Members voting affirmatively also constitute at least a majority of the required quorum), or by written consent of a Majority in Interest of the Members pursuant to Section 5.5 of this Agreement.

(b) In any and all elections of Managers (whether at a meeting or by written consent in lieu of a meeting), the Company shall nominate and each Member shall vote or cause to be voted all Units owned by him or it, or over which he or it has voting control, and otherwise use his or its respective best efforts, so as to fix the number of Managers at five and to cause and maintain the election to the Management Committee:

(i) three designated representatives of the Investors (individually, an “Investor Manager” and collectively, the “Investor Managers”);

(ii) one designated representative elected by the vote of a Majority in Interest of all of the Members other than the Investors and the Senior Lenders (the “Common Manager”); and

(iii) until such time as the principal and all related interest, charges and other amounts due and payable under the Loan Agreement are repaid in full, one representative of the Senior Lenders (the “Senior Manager”); provided however if the Senior Lenders waive their right or fail to designate a Senior Manager, then an additional Common Manager shall be selected as provided in Section 6.4(b)(ii) above until such time as the Senior Lenders exercise their right to designate a Senior Manager.

6.5 Vacancies; Resignations.

(a) A vacancy shall be deemed to exist in case of the death, Bankruptcy, mental incompetence, resignation or removal of any Manager, if the authorized number of Managers be increased, or if a class of Members fail, at any meeting of Members at which any Manager or Managers are to be elected, to elect the full authorized number of Managers to be voted for at that meeting by such Members.

(b) (i) The Members shall vote all of their Interests to cause each Investor Manager to be removed during his term of office when, and only when, they are so directed in writing by the Investors.

(ii) Until such time as the principal and all related interest, charges and other amounts due and payable under the Loan Agreement are repaid in full, the Members shall vote all of their Interests to cause the Senior Manager to be removed during his term of office, when, and only when, they are so directed in writing by the Senior Lenders.

(iii) If a vacancy occurs in the position of any of the Managers elected pursuant to Section 6.4(b), the Company agrees to promptly nominate, and the Members agree to promptly vote their Interests, to elect such person as has been nominated to fill such position by the respective groups set forth in Section 6.4(b).

(c) Any Manager may resign effective upon giving thirty (30) days written notice to the Members of the Company, unless the notice specifies a later time for the effectiveness of such resignation.

6.6 *Initial Managers.* The initial Manager of the Company shall be Steve Hegwood who shall serve in such capacity until the earlier of (i) the election of his successor in accordance with Section 6.4(a) and (ii) the consummation of the transactions contemplated by the Senior Debt Documents and the Subordinated Debt Documents and the election of the Management Committee in accordance with Section 6.4(b). Upon the consummation of the transactions contemplated by the Senior Debt Documents and the Subordinated Debt Documents, the names and addresses of the Managers, to hold office from and after the date of this Agreement until their respective successors are elected and qualified or until their earlier resignation or removal, are as set forth in Schedule 3.

6.7 *Compensation of Managers.* Managers of the Company shall be entitled to such fees for their services as Managers as shall be approved by a Majority in Interest of the Percentage Interests. All usual and reasonable expenses relating to the Managers' membership on the Company's Management Committee shall be borne by the Company, including transportation and lodging expenses, if applicable.

6.8 *Managers Engaging in Other Activities.* Except as otherwise set forth in contractual arrangements between the Company and a Manager, the Managers are not obligated to devote all of their time or business to the affairs of the Company. The Managers shall devote whatever time, effort and skill as they deem appropriate for the operation of the Company.

6.9 *Transactions of Managers with the Company.* Subject to any limitations set forth in this Agreement and with the prior approval of a majority of disinterested Managers, a Manager may lend money to and transact other business with the Company, provided that any such loan or transaction shall be on terms that are fair and reasonable and no less favorable to the Company than it would obtain in a comparable arm's length transaction with an unaffiliated third party. Subject to other applicable law, such Manager has the same rights and obligations with respect thereto as a Person who is not a Member or Manager. The Members hereby acknowledge that the Loan Agreement, the Subordinated Debt Documents and the respective transactions contemplated thereby are fair and reasonable to the Company.

6.10 *Required Vote.* The Company will not take any of the following actions without the affirmative vote or written consent of a majority of the Management Committee (including at least two out of three of the Investor Managers):

- (i) Actions Requiring Approval;
- (ii) any change in the primary business strategy or business plan of the Company as it is presently conducted or currently proposed to be conducted;
- (iii) adoption of any annual or quarterly budget;
- (iv) issuance of any securities, or options, warrants or other rights to acquire securities of the Company to a strategic partner as an equity incentive;
- (v) issuance of any options, warrants or other rights to acquire securities of the Company to banks, lenders, suppliers, equipment lessors or other persons in connection with any debt financings, purchases or equipment leases;
- (vi) issuance of any options, warrants or other rights to acquire securities of the Company (including Profits Interests) to employees, officers, managers or consultants of the Company; and
- (vii) any amendment of Section 6.4(b) hereof.

6.11 *Restrictions on Actions.* Notwithstanding anything herein to the contrary, the Company shall not at any time, whether through action of the Members, Managers or Management Committee, take any action which would otherwise be prohibited by, or in contravention of, the terms and conditions of the Loan Agreement or the Subordinated Debt Documents.

ARTICLE 7

MEETINGS OF MANAGEMENT COMMITTEE

7.1 *Place of Meetings.* Meetings of the Management Committee shall be held at any place within or without the State of Delaware that has been designated from time to time by the Management Committee. In the absence of such designation, meetings of the Management Committee shall be held at the principal executive office of the Company.

7.2 *Meetings of Managers.* Meetings of the Management Committee for any purpose or purposes may be called at any time by any Manager. Notice of the time and place of meetings shall be delivered personally or by telephone to each Manager, or sent by electronic mail, by facsimile transmission, by first-class mail, international overnight air courier or by telegram transmission, charges prepaid, addressed to such Manager at his or her address as it appears upon the records of the Company or, if it is not so shown on the records and is not readily ascertainable, at the place at which the meetings of the Management Committee are regularly held. In case such notice is mailed, it shall be deposited in the United States mail at least ten (10) days prior to the time of the holding of the meeting. In case such notice is telegraphed or sent by electronic mail or facsimile transmission, it shall be delivered to a common carrier for transmission to the Manager or actually transmitted by the person giving the notice by electronic means to the Manager at least five (5) days prior to the time of the holding of the meeting. In case such notice is delivered personally or by telephone as above provided, it shall be so delivered at least five (5) days prior to the time of the holding of the meeting. Any notice given personally or by telephone must be communicated directly to the Manager. Such deposit in the mail, delivery to a common carrier,

transmission by electronic means or delivery, personally or by telephone, as above provided, shall be due, legal and personal notice to such Managers. The notice need not specify the purpose of the meeting.

7.3 Quorum; Participation in Meetings by Conference Telephone Permitted; Vote Required for Action. Presence of a majority of the authorized number of Managers at a meeting of the Management Committee constitutes a quorum for the transaction of business. Managers may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Managers participating in such meeting can communicate with and hear one another. Every act or decision done or made by a majority of the Managers shall be regarded as the act of the Management Committee. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Managers, provided that any action taken is approved by at least a majority of the Managers. A majority of the Managers present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place (other than adjournments until the time fixed for the next regular meeting of the Management Committee, as to which no notice is required) shall be given prior to the time of the adjourned meeting to the Managers who were not present at the time of the adjournment.

7.4 Waiver of Notice; Consent to Meeting. Notice of a meeting need not be given to any Manager who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Manager. All such waivers, consents and approvals shall be filed with the Company's records and made a part of the minutes of the meeting.

7.5 Action by Management Committee Without a Meeting. Any action required or permitted to be taken by the Management Committee may be taken without a meeting if all the Managers shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Management Committee. Such action by written consent shall have the same force and effect as a unanimous vote of the Management Committee.

7.6 Committees and Subcommittees. The Management Committee may designate an Audit Committee, Compensation Committee and any other committee or sub-committee that the Management Committee creates. A committee shall consist of three (3) or more members. Special meetings of a committee or subcommittee may also be called at any time by any two members of the committee or subcommittee. For such purpose, references to the Management Committee shall be deemed to refer to each such committee or subcommittee, and references to "Managers" shall be deemed to refer to members of the committee or subcommittee. Committees and sub-committees shall only have the power to make recommendations to the Management Committee.

ARTICLE 8

OFFICERS

8.1 General. Subject to the provisions of the Act and the Certificate of Formation, the Management Committee may determine from time to time to appoint one or more individuals as officers of the Company. Every officer must be at least 18 years of age. An officer need not be a Member or Manager of the Company, and any number of offices may be held by the same person. The officers of

the Company shall be a president, a secretary, and a treasurer, who shall also be the chief financial officer of the Company. The Company may also have, at the discretion of the Management Committee, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be designated from time to time by the Management Committee.

8.2 *Appointment and Removal.* The officers shall be appointed by the Management Committee. Each officer, including an officer elected to fill a vacancy, shall hold office at the pleasure of the Management Committee until his or her successor is elected, except as otherwise provided by the Act. Any officer may be removed, with or without cause, at any time by the affirmative vote of a majority of the Managers then in office, unless there are only two Managers in which case unanimity shall be required.

8.3 *President.* The president shall be the chief executive officer of the Company and shall, subject to the control of the Management Committee, have general supervision, direction and control of the business and affairs of the Company. The president shall preside at all meetings of the Members, shall have all of the powers which are ordinarily inherent in the office of the president of a corporation, and shall have such further powers and shall perform such further duties as may be prescribed from time to time by the Management Committee.

8.4 *Vice Presidents.* In the absence or disability or refusal to act of the president, the vice presidents in order of their rank as fixed by the president, or, if not ranked, the vice president designated by the president, shall perform all of the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them, respectively, by the president or by this Agreement or by the Management Committee.

8.5 *Secretary.* The secretary shall keep or cause to be kept at the principal executive office of the Company, or such other place as the president may order, a book of minutes of all proceedings of the Members and of the Management Committee, with the time and place of holding, whether regular or special, and if special how authorized, the notice thereof given, the names of those present and the number of votes present or represented at Members' or Management Committee meetings. The secretary or an assistant secretary, or, if they are absent or unable or refuse to act, any other officer of the Company, shall give or cause to be given notice of all the meetings of the Members required by the Agreement or by law to be given, shall keep the seal of the Company, if any, in safe custody, and shall have such other powers and perform such other duties as may be prescribed from time to time by the president or by this Agreement or by the Management Committee.

8.6 *Assistant Secretaries.* It shall be the duty of the assistant secretaries to assist the secretary in the performance of his or her duties and generally to perform such other duties as may be delegated to them by the president or by this Agreement or by the Management Committee.

8.7 *Treasurer.* The treasurer shall be the chief financial officer of the Company and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account of the Company. The treasurer shall keep or cause to be kept at the principal executive office of the Company a record of Members showing the names of the Members and their addresses, their Capital Contributions, and their respective Percentage Interests from time to time. The treasurer shall receive and deposit all moneys and other valuables belonging to the Company in the name and to the credit of the

Company and shall disburse the same only in such manner as the president or the Management Committee may from time to time determine, shall render to the president or the Management Committee, whenever requested, an account of all his or her transactions as treasurer and of the financial condition of the Company, and shall perform such further duties as the president or this Agreement or the Management Committee may prescribe from time to time.

8.8 *Assistant Treasurers.* It shall be the duty of the assistant treasurers to assist the treasurer in the performance of his or her duties and generally to perform such other duties as may be delegated to them by the president or by this Agreement or by the Management Committee.

ARTICLE 9

CAPITAL CONTRIBUTIONS

9.1 *Capital Contributions.*

(a) On the date hereof, each Member has made a Capital Contribution to the Company in kind equal to the value of each Member's initial Capital Account. Upon receipt of each such Capital Contribution the Company shall credit each Member's Capital Account with the amount of such Member's Capital Contribution.

(b) As contemplated by the Senior Debt Documents, the Senior Lenders may be granted, under certain conditions, the Senior Warrants. Upon exercise of the Senior Warrants, if any, the holders thereof shall be admitted as Members. Moreover, upon the exercise of a Senior Warrant, a holder of a Unit or Units received upon such exercise shall have a Capital Account attributable to such Unit(s) equal to the fair market value of the Company at the time of such exercise multiplied by a fraction, the numerator of which is the total number of Units of the Company received by such holder upon such exercise and the denominator of which is the total number of outstanding Units of the Company immediately after such exercise. The Members' Capital Accounts (other than the Capital Account credited to such holder of a Senior Warrant upon such exercise) shall be reduced pro rata in proportion to their Percentage Interests to reflect the credit given to such holder of the Senior Warrant(s). A holder of Units received upon exercise of a Senior Warrant shall have a Percentage Interest in the Company attributable to such Units which shall be determined by dividing the number of Units received by such holder upon such exercise by the total number of outstanding Units of the Company at the time of such exercise.

(c) As contemplated by the Subordinated Debt Documents, the Investors have been granted the Investors Warrants. Upon exercise of the Investors Warrants, the holders thereof shall be admitted as Members. Moreover, upon the exercise of an Investor Warrant, a holder of a Unit or Units received upon such exercise shall have a Capital Account attributable to such Unit(s) equal to the fair market value of the Company at the time of such exercise multiplied by a fraction, the numerator of which is the total number of Units received by such holder upon such exercise and the denominator of which is the total number of outstanding Units of the Company immediately after such exercise. The Members' Capital Accounts (other than the Capital Account credited to such holder of an Investor Warrant upon such exercise) shall be reduced pro rata in proportion to their Percentage Interests to reflect the credit given to such holder of the Investor Warrant(s). A holder of Units received upon exercise of an Investor Warrant shall have a Percentage Interest in the Company attributable to such Units which shall be determined by

dividing the number of Units received by such holder upon such exercise by the total number of outstanding Units of the Company at the time of such exercise.

9.2 *Withdrawal or Reduction of Capital Contributions.*

(a) Except as expressly provided in this Agreement, no Member shall have the right to withdraw from the Company all or any part of his or its Capital Contribution prior to the dissolution and winding up of the Company.

(b) Without limiting the generality of Section 9.2(a), no Member shall receive any part of his or its Capital Contribution until:

(i) all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them;

(ii) unless the return of the Capital Contribution may be rightfully demanded under the Act or other applicable law; or

(iii) the Certificate of Formation or this Agreement is cancelled or so amended as to permit the withdrawal or reduction of Capital Contributions by Members.

9.3 *No Interest Payable on Capital Contributions.* No interest shall be payable on or with respect to the Capital Contributions or Capital Accounts of Members.

9.4 *Capital Accounts.*

(a) A single Capital Account shall be maintained for each Member (regardless of the class of Interests owned by such Member and regardless of the time or manner in which such Interests were acquired) in accordance with the capital accounting rules of Section 704(b) of the Code, and the regulations thereunder (including without limitation Section 1.704-1(b)(2)(iv) of the Income Tax Regulations). In general, under such rules, a Member's Capital Account shall be:

(i) increased by (A) the amount of money contributed by the Member to the Company (including the amount of any Company liabilities that are assumed by such Member other than in connection with distribution of Company property), (B) the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that under Section 752 of the Code the Company is considered to assume or take subject to), and (C) allocations to the Member of Company income and gain (or item thereof), including income and gain exempt from tax; and

(ii) decreased by (A) the amount of money distributed to the Member by the Company (including the amount of such Member's individual liabilities that are assumed by the Company other than in connection with contribution of property to the Company), (B) the fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that under Section 752 of the Code such Member is considered to assume or take subject to), (C) allocations to the Member of expenditures of the Company not deductible in computing its

taxable income and not properly chargeable to the Capital Account, and (D) allocations to the Member of Company loss and deduction (or item thereof).

(b) Immediately prior to the issuance of Units to any new or existing Member in exchange for services, cash or property, the Capital Accounts of Members shall be adjusted in accordance with the principles of the Income Tax Regulations Section 1.704-1(b)(2)(iv)(f). Where Section 704(c) of the Code applies to Company property or where Company property is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Income Tax Regulations, each Member's Capital Account shall be adjusted in accordance with Section 1.704-1(b)(2)(iv)(g) of the Income Tax Regulations as to allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes with respect to such property.

(c) When Company property is distributed in kind (whether in connection with liquidation and dissolution or otherwise), the Capital Accounts of the Members shall first be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property (that has not been reflected in the Capital Account previously) would be allocated among the Members if there were a taxable disposition of such property for the fair market value of such property (taking into account Section 7701(g) of the Code) on the date of distribution.

(d) The Members shall direct the Company's accountants to make all necessary adjustments in each Member's Capital Account as required by the capital accounting rules of Section 704(b) of the Code and the regulations thereunder.

(e) For the purposes of this Article 9, fair market value shall be determined by the Management Committee.

ARTICLE 10

ALLOCATION OF PROFITS AND LOSSES;

TAX AND ACCOUNTING MATTERS

10.1 *Allocations.* Except as otherwise provided in this Article 10, Net Profit and Net Loss of the Company shall be allocated among the Members in accordance with the following provisions.

(a) *Allocations of Losses.* All Net Losses shall be allocated among the Members as follows:

(i) First, to those Members who were previously allocated Net Profits pursuant to Section 10.1(b)(ii), in proportion to the amounts so allocated, up to an amount equal to (x) the amount of Net Profits previously so allocated, (y) reduced by the amounts previously distributed pursuant to Section 11.1 and (z) further reduced by the amount of Net Losses previously allocated pursuant to this Section 10.1(a)(i); and

(ii) Second, pro rata in proportion to the Capital Accounts of such Members (after adjusting such capital accounts to reflect allocations pursuant to Section 10.1(a)(i)).

(b) *Allocations of Profits.* All Net Profits shall be allocated among the Members as follows:

(i) First, to those Members who were previously allocated Net Losses pursuant to Section 10.1(a)(ii), in proportion to the Net Losses previously allocated pursuant to Section 10.1(a)(ii), until all such Net Losses previously allocated pursuant to Section 10.1(a)(ii) are reduced to zero; and

(ii) Second, to all Members in proportion to their Membership Interests.

(c) *Allocations With Respect to Property.* Solely for tax purposes, in determining each Member's allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to revalued property where the Company's property is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Income Tax Regulations, shall be allocated to the Members in the manner (as to revaluations, in the same manner as) provided in Section 704(c) of the Code. The allocation shall take into account, to the full extent required or permitted by the Code, the difference between the adjusted basis of the property to the Member contributing it (or, with respect to property which has been revalued, the adjusted basis of the property to the Company) and the fair market value of the property determined by the Management Committee at the time of its contribution or revaluation, as the case may be.

(d) *Minimum Gain Chargeback.* Notwithstanding anything to the contrary in this Section 10.1, if there is a net decrease in Company Minimum Gain or Company Nonrecourse Debt Minimum Gain (as such terms are defined in Sections 1.704-2(b) and 1.704-2(i)(2) of the Income Tax Regulations, but substituting the term "Company" for the term "Partnership" as the context requires) during a Company taxable year, then each Member shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) in the manner provided in Section 1.704-2 of the Income Tax Regulations.

This provision is intended to be a "minimum gain chargeback" within the meaning of Sections 1.704-2(f) and 1.704-2(i)(4) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

(e) *Qualified Income Offset.* Subject to the provisions of Section 10.1(d), but otherwise notwithstanding anything to the contrary in this Section 10.1, if any Member's Capital Account has a deficit balance, computed in accordance with the rules of Section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations, then sufficient amounts of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be allocated to such Member in an amount and manner sufficient to eliminate such deficit as quickly as possible.

This provision is intended to be a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

(f) *Depreciation Recapture.* Subject to the provisions of Section 704(c) of the Code and Sections 10.1(c) through (e) hereof, gain recognized (or deemed recognized under the provisions hereof) upon the sale or other disposition of Company property, which is subject to depreciation recapture, shall be allocated to the Member who was entitled to deduct such depreciation.

(g) *Loans.* If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the

Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and Sections 10.1(c) through (e) hereof, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.

(h) *Tax Credits.* Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.

(i) *Change of Pro Rata Interests.* Except as provided in Sections 10.1(g) and (h) hereof or as otherwise required by law, if the proportionate interests of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in Section 10.1(a) and (b) during each such portion of the taxable year in question.

(j) *Effect of Special Allocations on Subsequent Allocations.* Any special allocation of income or gain pursuant to Section 10.1(d) or (e) hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 10.1 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 10.1 if such special allocations of income or gain under Section 10.1(d) or (e) hereof had not occurred.

(k) *Nonrecourse and Recourse Debt.* Items of deduction and loss attributable to nonrecourse deductions of the Company as defined in Section 1.704-2(b)(1) of the Income Tax Regulations shall be allocated to the Members in accordance with their Percentage Interests. Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.704-2(b)(4) of the Income Tax Regulations shall be allocated to the Members bearing the economic risk of loss with respect to such debt in accordance with Section 1.704-2(i)(1) of the Income Tax Regulations. Items of deduction and loss attributable to recourse liabilities of the Company, within the meaning of Section 1.752-2 of the Income Tax Regulations, shall be allocated among the Members in accordance with the ratio in which the Members share the economic risk of loss for such liabilities.

(l) *State and Local Items.* Items of income, gain, loss, deduction, credit and tax preference for state and local income tax purposes shall be allocated to and among the Members in a manner consistent with the allocation of such items for federal income tax purposes in accordance with the foregoing provisions of this Section 10.1.

10.2 *Accounting Matters.* The Management Committee shall cause to be maintained complete books and records accurately reflecting the accounts, business and transactions of the Company on a calendar-year basis and using such cash, accrual, or hybrid method of accounting as in the judgment of the

Management Committee is most appropriate; provided, however, that books and records with respect to the Company's Capital Accounts and allocations of income, gain, loss, deduction or credit (or item thereof) shall be kept under U.S. federal income tax accounting principles as applied to partnerships.

10.3 *Tax Status and Returns.*

(a) Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company is subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.

(b) The Treasurer shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within ninety (90) days after the end of each calendar year, the Treasurer shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.

(c) Unless otherwise provided by the Code or the Income Tax Regulations thereunder, the Treasurer or, if no Treasurer shall have been appointed, any Manager so designated by the Management Committee shall be deemed to be the "Tax Matters Partner" for U.S. federal income tax purposes.

ARTICLE 11

DISTRIBUTIONS

11.1 *Distributions.*

(a) Subject to the reasonably anticipated business needs and opportunities of the Company, taking into account all debts, liabilities and obligations of the Company then due, working capital and other amounts which the Management Committee deems necessary for the Company's business or to place into reserves for customary and usual claims with respect to such business, and subject also to any restrictions under applicable law, the Senior Debt Documents or the Subordinated Debt Documents (including, without limitation, any obligation to withhold and remit any amounts to any governmental authority), the Management Committee may resolve to distribute cash from operations of the Company or stock of any of its subsidiaries ("Distributable Cash") to the Members (unless otherwise provided herein), at such intervals as the Management Committee shall determine from time to time. Such distributions shall be made to the Members in proportion to their respective Percentage Interests.

(b) Notwithstanding anything to the contrary contained in this Section 11.1, distributions shall be made to each Member every year in an amount equal to the Tax Distribution Amount of such Member for the year ("Tax Distribution"). The Company shall calculate the Tax Distribution Amount on a quarterly basis based on a reasonable estimate of the Company's income for the year, and distributions pursuant to this Section 11.1(b) shall be made in four installments ("Quarterly Installments") throughout the year (to be made not later than April 1, June 1, September 1 and December 1). In the event that the sum of the Member's Quarterly Installments for the year is less than such Member's Tax Distribution

Amount based upon the actual income of the Company for such year, additional cash will promptly be distributed to such Member in an amount which, when taken together with such Member's Quarterly Installments, equals such Member's Tax Distribution Amount based upon the actual income of the Company for the tax year. Any distributions made to a Member under this Section shall be credited against any other distribution to which a member is entitled under this Agreement.

11.2 Form of Distributions.

(a) Except as otherwise provided herein, (i) no Member, regardless of the nature of the Member's Capital Contribution, has any right to demand and receive any distribution from the Company in any form other than money and (ii) no Member may be compelled to accept from the Company a distribution of any asset in kind.

(b) Without limiting the generality of Section 11.2(a), the Management Committee may, with the consent of the Member receiving the distribution and a Majority in Interest of the other Members of all classes voting together as single class and with any other consents required by Sections 4.6 and 6.10, distribute specific property or assets of the Company to one or more Members.

11.3 Restriction on Distributions.

(a) No distribution shall be made if, after giving effect to the distribution:

(i) The Company would not be able to pay its debts as they become due in the usual course of business; or

(ii) The Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

(b) The Managers may base a determination that a distribution is not prohibited on any of the following:

(i) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;

(ii) A fair valuation; or

(iii) Any other method that is reasonable in the circumstances.

The effect of a distribution is to be measured as of the date the distribution is authorized if the payment is to occur within one hundred twenty (120) days after the date of authorization, or the date payment is made if it is to occur more than one hundred twenty (120) days after the date of authorization.

11.4 Return of Distributions. Members and Assignees who receive distributions made in violation of the Act or this Agreement shall return such distributions to the Company. Except for those distributions made in violation of the Act or this Agreement, no Member or Assignee shall be obligated to return any

distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Assignee or paid by a Member or Assignee for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Assignee.

11.5 *Withholding from Distributions.* To the extent that the Company is required by law to withhold or to make tax or other payments on behalf of or with respect to any Member, the Company may withhold such amounts from any distribution and make such payments as so required. For purposes of this Agreement, any such payments or withholdings shall be treated as a distribution to the Member on behalf of whom the withholding or payment was made.

11.6 *754 Election.* In the event of a distribution of property to a Member, the death of an individual Member or a transfer of any interest in the Company permitted under the Act or this Agreement, the Company may, in the discretion of the Management Committee upon the written request of the transferor or transferee, file a timely election under Section 754 of the Code and the Income Tax Regulations thereunder to adjust the basis of the Company's assets under Section 734(b) or 743(b) of the Code and a corresponding election under the applicable provisions of state and local law, and the person making such request shall pay all costs incurred by the Company in connection therewith, including reasonable attorneys' and accountants' fees.

ARTICLE 12

TRANSFER OF INTERESTS; ADMISSION OF MEMBERS; OPTION TO PURCHASE INTEREST OF DECEASED OR DISSOLVED MEMBER; RIGHT OF FIRST REFUSAL

12.1 *Transfer of Interest*

(a) No Member may transfer his or its Units or other Interest in the Company to any Person, except another Member, and no transferee of a Member's Interest may be admitted as a Member, except (i) a Member may transfer his or its Interest in the Company to his or its general partners, limited partners, retired partners, members or stockholders, or the estates, family members, trusts or affiliates of such persons or entities; and (ii) in accordance with this Agreement and any Right of First Refusal and Co-Sale Agreement or similar agreement between the Company and the transferring Member (a 'Right of First Refusal Agreement').

(b) Any transferee of a Member's Interest who fails to comply with subsection (a) of this Section 12.1 shall have no right to vote or otherwise participate in the business and affairs of the Company or to become a Member; provided, however, that if the transferee is already a Member, then such transferee Member shall be entitled to vote all the Interests then held by such Member.

(c) Any transferee of a Member's Interest who fails to comply with subsection (a) of this Section 12.1 shall only be entitled to receive the share of profits or other compensation by way of income and the return of Capital Contributions, if any, to which the transferring Member would otherwise be entitled.

12.2 *Admission of New Members*

(a) No Person shall be admitted as a Member of the Company except in accordance with this Agreement.

(b) Upon the admission of a new Member in accordance with the Act and this Agreement (other than the admission of a Profits Interest Member), there shall be a special closing of the books solely for the purpose of determining the value of the Company's investments on such date by whatever method the Management Committee, in its sole and absolute discretion, considers reasonable, and the Capital Accounts of the existing Members shall be adjusted accordingly. After such adjustment, the Management Committee shall establish a Capital Account which shall be credited with the Capital Contribution of the new Member, or reflect the new Capital Contributions made in different proportions than the Percentage Interests of the Members, and Schedules 1 and 2 shall be adjusted accordingly.

12.3 Right of First Refusal for Sales of Interests by Members. Subject to Sections 12.1 and 12.2 and the Act, in the event that any Member (sometimes referred hereinafter as an "Offering Member") wishes to sell, exchange, transfer, assign, make a gift of, pledge, encumber, hypothecate or alienate (hereinafter collectively referred to as a "transfer") any or all of his or its Units in or other Interest in the Company (the "Offered Interest"), such Offering Member shall first offer to sell such Offered Interest to the Company at the price, upon the terms and conditions and in the manner herein provided. If the Company elects not to purchase all of such Offered Interest, such Offering Member shall then offer to sell such Offered Interest to each of the other Members in accordance with the terms of any applicable Right of First Refusal Agreement.

12.4 Procedure for Right of First Refusal.

(a) In the event the Offering Member shall desire to transfer any Offered Interest, the Offering Member shall give notice (for purposes of this Section 12.4, the "Notice") in writing to the Company (and each of the other Members as required in any applicable Right of First Refusal Agreement), stating his or its bona fide intention to transfer such Offered Interest, the name of the prospective transferee, the Offered Interest to be sold or transferred, and the purchase price at or consideration for which such Offered Interest is proposed to be transferred.

(b) Upon receipt of the Notice, the Company shall have the first right and option to agree to purchase all (subject to Section 12.4(d) hereof) of the Offered Interest transferred or proposed to be transferred, at the price determined by the Notice, exercisable for a period of thirty (30) days from the date of receipt of the Notice. If the Company elects not to purchase all of the Offered Interest, the Offering Member shall offer to sell the Offered Interest to other Members in accordance with any applicable Right of First Refusal Agreement.

(c) Failure by the Company to respond to the notice with the thirty (30) day period (or by all or any of the other Members to respond to any notice required under an applicable Right of First Refusal Agreement with the time period specified therein) shall be deemed to constitute a notification to the Offering Member of the decision of the Company and the non-responding Members not to exercise the first right and option to purchase the Offered Interest under this Section. Upon the decision and notice by the Company (and the other Members, if applicable) to purchase all the Offered Interest, the parties to such purchase shall close such purchase within the earlier of (i) thirty (30) days thereafter (and any additional time period provided under any applicable Right of First Refusal Agreement and (ii) five (5) days after receipt of the required approvals from the Federal Communications Commission.

(d) Unless all of the Offered Interest referred to in the Notice is purchased in accordance with this Section 12.4, none of such Interest may be purchased, any payment submitted by the Company and the other Members shall be returned to them, and written Notice shall be given to the Offering Member (or his or its successor) and the transferee of the Offering Member, that the options hereunder have not been exercised with respect to all of the Offered Interest. If options to purchase all of such Offered Interest are effectively exercised hereunder, the Company shall notify the Offering Member (or his or its successor) and the transferee of the Offering Member, of the fact. Immediately upon receipt of notice that all the Offered Interest is to be purchased, the Offering Member (or his or its successor) or the transferee of the Offering Member, shall deliver to the Company and purchasing Member, if any, a proper assignment in blank for such Offered Interest with signatures properly guaranteed and with such other documents as may be required by the secretary of the Company to provide reasonable assurance that each necessary endorsement is genuine and effective, in exchange for payment as provided for in Section 12.5 by the Company and purchasing Member representing the total purchase price. Any Interest acquired by the purchasing Member pursuant to this Section 12.4 shall be subject to the provisions and restrictions of this Agreement.

(e) Subject always to Sections 12.1 and 12.2, if the options specified herein are not exercised with respect to all of the Offered Interest referred to in the Notice, then, within 90 days after written notice is given by the Company that the options have not been exercised (the "Transfer Period"), the Offering Member may transfer all or any part of such Interest referred to in the Notice to any person or persons named as transferees, in the manner described; provided, however, that the Offering Member shall not transfer such Interest on terms more favorable to the purchaser than those specified in said Notice; and provided further, that any Interest disposed of and sold to such transferees shall remain subject to the provisions and restrictions of this Agreement. If the Offering Member does not make such transfer in accordance with the Notice within such 90 days, he or it shall be required again to comply with the provisions of this Section 12.4 before he or it may transfer any Interest in the Company. Notwithstanding anything to the contrary contained herein, no transfer shall be completed unless and until all required approvals from the Federal Communications Commission have been received. The Transfer Period shall be extended to accommodate any delays in the transfer experienced solely as a result of any delay in the receipt of any such required approvals from the Federal Communications Commission.

12.5 Payment of Purchase Price. The payment of the purchase price shall be in cash.

12.6 Senior Lenders. The Members of the Company have pledged their Interests in the Company to Senior Lenders to secure their obligations under the Senior Debt Documents. Notwithstanding anything to the contrary in this Agreement, the following rules shall apply with respect to such pledged Interests:

(a) The Members and the Managers shall be deemed to have consented to the admission of the Senior Lenders or any Person designated by the Senior Lenders as Members of the Company upon foreclosure of any Interest pledged to the Senior Lenders.

(b) The Rights of First Refusal set forth in Sections 12.3 through 12.5 or elsewhere in this Agreement or in any Right of First Refusal Agreements with respect to Interests shall not be applicable in connection with a transfer (as defined in Section 12.3) which may occur as a result of foreclosure of the Interests of any Member(s) pledged by such Member(s) to the Senior Lenders.

12.7 *Investors.* The Members of the Company have pledged their Interests in the Company to Investors to secure their obligations under the Subordinated Debt Documents. Notwithstanding anything to the contrary in this Agreement, the following rules shall apply with respect to such pledged Interests:

(a) The Members and the Managers shall be deemed to have consented to the admission of the Investors or any Person designated by the Investors as Members of the Company upon foreclosure of any Interest pledged to the Investors.

(b) The Rights of First Refusal set forth in Sections 12.3 through 12.5 or elsewhere in this Agreement or in any Right of First Refusal Agreements with respect to Interests shall not be applicable in connection with a transfer (as defined in Section 12.3) which may occur as a result of foreclosure of the Interests of any Member(s) pledged by such Member(s) to the Investors.

ARTICLE 13

ACCOUNTING, RECORDS, REPORTING TO AND BY MEMBERS

13.1 *Books and Records.* The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for United States federal income tax purposes. The books and records of the Company shall reflect all the Company's transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office all of the following:

(a) A current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Accounts, and Percentage Interests of each Member or Assignee;

(b) A current list of the full name and business or residence address of each Manager;

(c) A copy of the Certificate of Formation and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Certificate or any amendments thereto have been executed;

(d) Copies of the Company's U.S. federal, state and local income tax or information returns and reports, if any, and any tax returns or reports filed by or on behalf of the Company in any other jurisdiction, for the six (6) most recent taxable years;

(e) A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

(f) Copies of the financial statements of the Company, if any, for the three (3) most recent fiscal years; and

(g) The Company's books and records as they relate to the internal affairs of the Company for at least the current and the past three (3) fiscal years.

13.2 *Delivery to Members and Inspection.*

(a) Upon the request of any Member for purposes reasonably related to the interest of that Person as a Member, the Managers shall promptly deliver to the requesting Member, at the expense of the Company, a copy of the information required to be maintained under Sections 13.1(a), 13.1(b) and 13.1(d), and a copy of this Agreement.

(b) Each Member and Manager has the right, upon reasonable request for purposes reasonably related to the interest of the Person as Member or Manager, to:

(i) inspect and copy during normal business hours any of the Company records described in Sections 13.1(a) through 13.1(g); and

(ii) obtain from the Management Committee, promptly after their becoming available, a copy of the Company's U.S. federal, state and local income tax or information returns and reports and any tax returns and reports filed in any other jurisdiction for each fiscal year of the Company.

(c) The Management Committee shall be responsible for the preparation of financial reports of the Company and for the coordination of financial matters of the Company with the Company's accountants. Within ninety (90) days after the end of each fiscal year and within sixty (60) days of the end of each fiscal quarter, the Management Committee shall cause each Member to be furnished with a copy of the balance sheet of the Company as of the last day of the applicable period, a statement of income or loss for the Company for such period and a statement of year-to-date results through such period. Annual statements shall also include a statement showing any item of income, gain, deduction, credit or loss allocable for U.S. federal income tax purposes pursuant to the terms of this Agreement. Annual statements shall be reviewed by the Company's accountants.

(d) Any inspection or copying by a Member under this Section 13.2 may be made by that Person or that Person's agent or attorney.

13.3 *Filings.* The Managers, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Managers, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to or restatements of, the Certificate of Formation and all reports required to be filed by the Company with those entities under the Act or other then-current applicable laws, rules and regulations. If a Manager required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Managers or Member may prepare, execute and file that document with the Secretary of State.

13.4 *Bank Accounts.* The Management Committee shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

13.5 *Accounting Decisions and Reliance on Others.* All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Management Committee. The Management Committee may rely upon the advice of the Company's accountants as to whether such decisions are in accordance with accounting methods followed for U.S. federal income tax purposes.

ARTICLE 14

DISSOLUTION AND LIQUIDATION

14.1 *Dissolution.* The Company shall be dissolved and its affairs wound up upon the first to occur of the following:

- (a) At the time specified in the Certificate of Formation, or upon the expiration of the term specified in Section 2.3 of this Agreement; or
- (b) The written consent of a Majority in Interest of the Members; or
- (c) A final court order or arbitration award; or
- (d) The written consent or affirmative vote of a majority of the Managers of the Management Committee.

14.2 *Liquidation.*

(a) Upon the occurrence of any of the events of dissolution as set forth in Section 14.1 of this Agreement, the Company shall cease to engage in any further business, except to the extent necessary to perform existing obligations, and shall wind up its affairs and liquidate its assets. The Management Committee, or if there be no Managers then in office the Members (by a vote of a Two-Thirds Interest of the Members of all classes voting together as a single class), shall appoint a liquidating trustee (who may, but need not, be a Member) who shall have sole authority and control over the winding up and liquidation of the Company's business and affairs and shall diligently pursue the winding up and liquidation of the Company in accordance with the Act. As soon as practicable after his or her appointment, the liquidating trustee shall cause to be filed a statement of intent to dissolve as required by Section 18-203 of the Act.

(b) During the course of liquidation, the Members shall continue to share profits and losses as provided in Section 11.1 of this Agreement, but there shall be no cash distributions to the Members until the Distribution Date (as defined in Section 14.3).

14.3 *Liabilities.* Liquidation shall continue until the Company's affairs are in such condition that there can be a final accounting, showing that all fixed or liquidated obligations and liabilities of the Company are satisfied or can be adequately provided for under this Agreement. The assumption or guarantee in good faith by one or more financially responsible Persons shall be deemed to be an adequate means of providing for such obligations and liabilities. When the liquidating trustee has determined that there can be a final accounting, the liquidating trustee shall establish a date (not to be later than the end of the taxable year of the liquidation, i.e., the time at which the Company ceases to be a going concern as provided in Section 1.704-1(b)(2)(ii)(g) of the Income Tax Regulations, or, if later, ninety (90) days after the date of such liquidation) for the distribution of the proceeds of liquidation of the Company (the "Distribution Date"). The net proceeds of liquidation of the Company shall be distributed to the Members as provided in Section 14.5 hereof not later than the Distribution Date.

14.4 *Settling of Accounts.* Subject to Section 18-804 of the Act, upon the dissolution and liquidation of the Company, the proceeds of liquidation shall be applied as follows:

- (i) First, to pay all expenses of liquidation and winding up;

(ii) Second, to pay all debts, obligations and liabilities of the Company, in the order of priority as provided by law, other than debts owing to the Members or on account of Members' Capital Contributions;

(iii) Third, to pay all debts of the Company owing to a Member; and

(iv) Fourth, to establish reasonable reserves for any remaining contingent or unforeseen liabilities of the Company not otherwise provided for, which reserves shall be maintained by the liquidating trustee on behalf of the Company in a regular interest-bearing trust account for a reasonable period of time as determined by the liquidating trustee. If any excess funds remain in such reserves at the end of such reasonable time, then such remaining funds shall be distributed by the Company to the Members pursuant to Section 14.5 hereof.

14.5 *Distribution of Proceeds*. Subject to Section 18-804 of the Act, upon final liquidation of the Company but not later than the Distribution Date, the net proceeds of liquidation shall be distributed in the following order of priority:

(a) First, to creditors, including Members and Managers who are creditors, to the extent of any unpaid expenses or any outstanding loan or advance;

(b) Second, to the Members and Managers in respect of the costs of winding up the affairs of the Company, discharging the liabilities of the Company, distributing the assets of the Company and dissolving the Company in accordance with this Article 14; and

(c) Third, to all the Members in the proportion of their respective positive Capital Accounts, as those accounts are determined after all adjustments to such accounts for the taxable year of the Company during which the liquidation occurs as are required by this Agreement and Income Tax Regulations Section 1.704-1(b), such adjustments to be made within the time specified in such Income Tax Regulations.

14.6 *Certificate of Cancellation*. Upon dissolution and liquidation of the Company, the liquidating trustee shall cause to be executed and filed with the Secretary of State a certificate of cancellation in accordance with Section 18-203 of the Act.

ARTICLE 15

INDEMNIFICATION AND INSURANCE

15.1 *Indemnification: Proceeding Other Than by Company*. The Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Company, by reason of the fact that he or she is or was a Manager, Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, director, officer, employee or agent of any other Person, joint venture or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe

his or her conduct was unlawful. The Company shall indemnify any Member made party to any action, suit or proceeding of the type described in the immediately preceding sentence if such Member is made party thereto solely as a result of his or her status as a Member. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was unlawful.

15.2 Indemnification: Proceeding by Company. The Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he or she is or was a Manager, Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, director, officer, employee or agent of any other Person, joint venture or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

15.3 Mandatory Indemnification. To the extent that a Manager, Member, officer, employee or agent of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Sections 15.1 and 15.2, or in defense of any claim, issue or matter therein, he or she must be indemnified by the Company against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense.

15.4 Authorization of Indemnification. Any indemnification under Sections 15.1 and 15.2, unless ordered by a court or advanced pursuant to Section 15.5, may be made by the Company only as authorized in the specific case upon a determination that indemnification of the Manager, Member, officer, employee or agent is proper in the circumstances. The determination must be made:

- (a) By a Majority in Interest of the Members of all classes voting together as a single class (if at any time there are multiple classes of interests), excluding any Member seeking indemnification; or
- (b) By a majority of the Managers if the person seeking indemnity is not a Manager; or
- (c) If Members owning more than fifty percent (50%) of the Percentage Interests so order, by independent legal counsel in a written opinion; or
- (d) If a quorum of Members who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

15.5 Mandatory Advancement of Expenses. The expenses of Managers, Members and officers incurred in defending a civil or criminal action, suit or proceeding must be paid by the Company as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the Manager, Member or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Company. The provisions of this Section do not affect any rights to advancement of expenses to which personnel of the Company other than Managers, Members or officers may be entitled under any contract or otherwise.

15.6 Effect and Continuation. The indemnification and advancement of expenses authorized in or ordered by a court pursuant to Section 15.1 to Section 15.5, inclusive:

(a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Certificate of Formation or any limited liability company agreement, vote of Members or disinterested Managers, if any, or otherwise, for either an action in his or her official capacity or an action in another capacity while holding his or her office, except that indemnification, unless ordered by a court pursuant to Section 15.2 or for the advancement of expenses made pursuant to Section 15.5, may not be made to or on behalf of any Member, Manager or officer if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.

(b) Continues for a person who has ceased to be a Member, Manager, officer, employee or agent and inures to the benefit of his or her heirs, executors and administrators.

15.7 Insurance and Other Financial Arrangements.

(a) The Company may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a Member, Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, director, officer, employee or agent of any other Person, joint venture or other enterprise for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a manager, member, director, officer, employee or agent, or arising out of his or her status as such, whether or not the Company has the authority to indemnify him or her against such liability and expenses.

(b) The other financial arrangements made by the Company pursuant to subsection (a) of this Section 15.7 may include:

- (i) The creation of a trust fund.
- (ii) The establishment of a program of self-insurance.
- (iii) The establishment of a letter of credit, guaranty or surety.

No financial arrangement made pursuant to this subsection (b) of this Section 15.7 may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud or a knowing violation of law, except with respect to the advancement of expenses or indemnification ordered by a court.

(c) In the absence of fraud:

(i) The decision of the Company as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to subsections (a) and (b) of this Section 15.7 and the choice of the person to provide the insurance or other financial arrangement is conclusive; and

(ii) The insurance or other financial arrangement:

(1) Is not void or voidable; and

(2) Does not subject any Manager or Member approving it to personal liability for his or her action,

even if a Manager or Member approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

15.8 *Notice of Indemnification and Advancement.* Any indemnification of, or advancement of expenses to, a Manager, Member or officer in accordance with this Article, if arising out of a proceeding by or on behalf of the Company, shall be reported in writing to the Members with or before the notice of the next Members' meeting.

15.9 *Repeal or Modification.* Any repeal or modification of this Article by the Members of the Company shall not adversely affect any right of a Manager, Member or officer of the Company existing hereunder at the time of such repeal or modification.

ARTICLE 16

SEAL

16.1 *Seal.* The Management Committee may adopt a seal of the Company in such form as the Management Committee shall decide.

ARTICLE 17

INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION

Each Member, by his or its execution of this Agreement, hereby represents and warrants to, and agrees with, the Managers, the other Members and the Company as follows:

17.1 *Pre-existing Relationship or Experience.* Such Member has a pre-existing personal or business relationship with the Company or one or more of its officers or control persons or by reason of his or its business or financial experience, or by reason of the business or financial experience of his or its financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, such Member is capable of evaluating the risks and merits of an investment in the Company and of protecting his or its own interests in connection with this investment.

17.2 *No Advertising.* Such Member has not seen, received, been presented with or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the offer or sale of Interests in the Company.

17.3 *Investment Intent.* Such Member is acquiring the Interest for investment purposes for his or its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Interest.

17.4 *Economic Risk* Such Member is financially able to bear the economic risk of his or its investment in the Company, including the total loss thereof.

17.5 *No Registration of Units.* Such Member acknowledges that the Interests have not been registered under the Securities Act, or qualified under any state securities law or under the laws of any other jurisdiction, in reliance, in part, on such Member's representations, warranties and agreements herein.

17.6 *No Obligation to Register.* Such Member represents, warrants and agrees that the Company and the Managers are under no obligation to register or qualify the Interests under the Securities Act or under any state securities law or under the laws of any other jurisdiction, or to assist such Member in complying with any exemption from registration and qualification.

17.7 *No Disposition in Violation of Law.* Without limiting the representations set forth above, and without limiting Article 12 of this Agreement, such Member will not make any disposition of all or any part of the Interests which will result in the violation by such Member or by the Company of the Securities Act or any other applicable securities laws. Without limiting the foregoing, each Member agrees not to make any disposition of all or any part of the Interests unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or

(b) Such Member has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the Management Committee, such Member has furnished the Company with a written opinion of legal counsel, reasonably satisfactory to the Company, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law or under the laws of any other jurisdiction.

ARTICLE 18

COMPANY LOANS AND GUARANTEES

18.1 *General.* The provisions contained in this Article set forth the terms and conditions by which the Company may make a loan or guarantee to the Managers or officers of the Company except as otherwise permitted or limited by the Act or any other applicable law.

18.2 *Members' Approval Required.* The Company shall not make any loan of money or property to, or guarantee the obligation of, any Manager of the Company, unless the transaction or an employee benefit plan authorizing such loans or guarantees, after disclosure of the right under such a plan to include Managers, is approved by a Majority in Interest of the Members, with the Managers then eligible to participate in such plan not being entitled to vote thereon.

18.3 *Loans Generally Not to be Secured upon Interests in the Company.* The Company shall not make any loan of money or property to, or guarantee the obligation of, any person upon the security of Interests in the Company, unless the loan or guarantee is (i) otherwise adequately secured, (ii) made pursuant to an employee benefit plan permitted by law, and (iii) approved by a Majority in Interest of the Members (with the borrower not entitled to vote).

18.4 *Advances for Expenses of Managers and Officers.* Notwithstanding anything to the contrary contained in Section 18.2 hereof, the Company may advance money to any Manager or officer of the Company for any expenses reasonably anticipated to be incurred in the performance of the duties of such Manager or officer, provided that in the absence of such advance such Manager or officer would be entitled to be reimbursed for such expenses by this Company or any subsidiary of this Company.

18.5 *Life Insurance Premiums.* The provisions of Section 18.2 of this Agreement do not apply to the payment of premiums in whole or in part by the Company on a life insurance policy on the life of a Manager or officer of the Company so long as repayment to the Company of the amount paid by it is secured by the proceeds of the policy and its cash surrender value.

ARTICLE 19

DEFAULTS AND REMEDIES

19.1 *Defaults.* If a Member materially defaults in the performance of his or its obligations under this Agreement, and such default is not cured with ten (10) days after the effectiveness of written notice of such default is given by a Manager to the defaulting Member for a default that can be cured by the payment of money, or within thirty (30) days after the effectiveness of written notice of such default is given by a Manager to the defaulting Member for any other default, then the non-defaulting Members shall have the rights and remedies described in Section 19.2 hereunder in respect of the default.

19.2 *Remedies.* If a Member fails to perform his or its obligations under this Agreement, the Company and such other Member shall have the right, in addition to all other rights and remedies provided herein, on behalf of himself or itself, the Company or the Members, to bring the matter to arbitration pursuant to Section 20.8. The award of the arbitrator in such a proceeding may include an order for specific performance by the defaulting Member of his or its obligations under this Agreement, or an award for damages for payment of sums due to the Company or to a Member.

ARTICLE 20

MISCELLANEOUS

20.1 *Entire Agreement.* This Agreement, and the schedules hereto, constitutes the entire agreement among the Members with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No party hereto shall be

liable or bound to the other in any manner by any warranties, representations or covenants with respect to the subject matter hereof except as specifically set forth herein.

20.2 Amendments.

(a) This Agreement may be amended only in accordance with Sections 4.6 and 6.10, except clerical or ministerial amendments, which may be approved by a Majority in Interest of the Members of all classes voting together as a single class. All amendments shall be in writing duly executed by all the Members, except in the case of clerical or administrative amendments, which may be executed by not less than a Majority in Interest of the Members of all classes voting together as a single class.

(b) The Certificate of Formation may only be amended in accordance with Sections 4.6 and 6.10 and with the affirmative vote of a Two-thirds Interest of the Members of all classes voting together as a single class. Any such amendment shall be in writing, and shall be executed and filed in accordance with Section 18-202 of the Act.

(c) Until the principal and all related interest, charges and other amounts due and payable under the Loan Agreement and the Subordinated Debt Documents are repaid in full, unless the Senior Lenders and the Investors shall otherwise consent in writing, neither this Agreement nor the Certificate of Formation may be amended or modified in a manner adverse to the Senior Lenders or the Investors.

20.3 No Waiver. No consent or waiver, express or implied, by the Company or a Member to or of any breach or default by any Member in the performance by such Member of his or its obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by that or any other Member. Failure by the Company or a Member to complain of any act or omission to act by any Member, or to declare such Member in default, irrespective of how long such failure continues, shall not constitute a waiver by the Company or such Member of his or its rights under this Agreement.

20.4 Representation of Shares of Companies or Interests in Other Entities. Any Manager, the president, any vice president or the secretary or any assistant secretary of this Company is authorized to vote, represent and exercise on behalf of this Company all rights incident to any and all shares of any other company or companies, or any interests in any other Person, standing in the name of this Company. The authority herein granted to said Managers or officers to vote or represent on behalf of this Company any and all shares held by this Company in any other company or companies, or any interests in any other Person, may be exercised either by such Managers or officers in person or by any other person authorized so to do by proxy or power of attorney duly executed by said Managers or officers.

In the event of any inconsistency in the actions taken by any Manager or by the president (or vice president) and secretary (or assistant secretary), the decision or action of a Manager shall prevail over any decision or action of an officer, and the decision or action of the president shall prevail over that of any other officer.

20.5 Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto, and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

20.6 *Severability.* If one or more provisions of this Agreement are held by a proper court to be unenforceable under applicable law, portions of such provisions, or such provisions in their entirety, to the extent necessary and permitted by law, shall be severed herefrom, and the balance of this Agreement shall be enforceable in accordance with its terms.

20.7 *Governing Law.* This Agreement shall be governed by and construed under the substantive laws of the State of Delaware, without regard to Delaware choice of law principles.

20.8 *Arbitration.* Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be settled by arbitration under the Rules of the American Arbitration Association for Commercial Disputes (the “Rules”) (as modified by this Section 20.8). The number of arbitrators shall be one (1) if all parties to the dispute agree on the arbitrator. If there is a disagreement on selection of a sole arbitrator, the number of arbitrators then shall be three (3), with the arbitrators to be appointed in accordance with the Rules from a panel of arbitrators in Washington, DC. Absent agreement to the contrary, the place of arbitration shall be Washington, DC. The arbitration proceedings shall be conducted in the English language, and the arbitral award shall be rendered in writing in the English language and shall state the reasons for the award. Judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, and shall be binding on the parties hereto. The costs of arbitration, including reasonable legal fees and costs, shall be borne by either or both of the parties in whatever proportion as the arbitrator or arbitrators may award.

20.9 *Notices.* Unless otherwise provided in this Agreement, any notice or other communication herein required or permitted to be given shall be in writing and shall be given by electronic communication, hand delivery or courier service regularly providing proof of delivery, addressed to the party hereto as provided as follows:

(a) All communications intended for the Company shall be sent to its principal executive office to the attention of the president (with a copy to the secretary); and

(b) All communications intended for a Member shall be sent to the address of such Member set forth in Schedule 1 to this Agreement, or such other address as such Member shall have provided for such purpose.

All notices shall be sent as aforesaid or at any other address of which any of the foregoing shall have notified the others in any manner prescribed in this Section 20.9.

For all purposes of this Agreement, a notice or communication will be deemed effective:

(a) if delivered by hand or sent by a recognized international courier, on the day it is delivered unless that day is not a day upon which commercial banks are open for business in the city specified (a “Local Business Day”) in the address for notice provided by the recipient, or if delivered after the close of business on a Local Business Day, then on the next succeeding Local Business Day, and

(b) if sent by facsimile transmission, on the date transmitted, provided oral or written confirmation of receipt is obtained by the sender, unless the transmission and confirmation date is not a Local Business Day, in which case on the next succeeding Local Business Day.

20.10 *Titles and Subtitles.* The titles of the sections and paragraphs of this Agreement are for convenience only and are not to be considered in construing this Agreement.

20.11 *Currency.* Unless otherwise specified, all currency amounts in this Agreement refer to the lawful currency of the United States of America.

20.12 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when there exist copies hereof which, when taken together, bear the authorized signatures of each of the parties hereto. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

[Signatures on the following page.]

IN WITNESS WHEREOF, the Company and each of its Members hereby execute this Limited Liability Company Agreement as of the date first written above.

ON TOP COMMUNICATIONS, LLC

Steve Hegwood, Manager

Steve Hegwood

Wes Johnson

Frank Johnson

Levi Willis

Joey Bonner

Manny Bella

Bobby Lewis

James Wright

Ken Wilson

SCHEDULE 1

Names, Addresses and Capital Contribution of Members

Name and Address of Member	Capital Contribution
Craig Steven Hegwood 4922 Rees Lane Bowie, MD, 20720	\$4,630,760
Wesley Johnson 18970 S.W. Street Miramar, FL 33029	\$902,780
Frank W. Johnson 1110 Lake Shore Overlook Alpharetta, GA 30005	\$499,760
Virginia Faith Broadcasting, Inc. 645 Church Street Suite 600 Norfolk, VA 23510 ATTN: Levi E. Willis	\$110,000
Target Music, Inc. 126 5 th Avenue, 2 nd Floor New York, NY 10011 ATTN: Joseph Bonner & Manuel Bella	\$178,500
Bobby Edward Lewis 1 Margo Court Airmount, NY 10901	\$79,800
James Wright 256 Walker Street, Suite 100 Atlanta, GA 30313	\$84,000
Karl Ken Wilson 745 5 th Avenue 6 th Floor New York, NY 10151	\$134,400
Total	\$ 6,620,000

SCHEDULE 2

Membership Interests; Number of Units

Common Members	Membership Interest	Number of Units
Craig Steven Hegwood	53.06%	530,550
Wesley Johnson	22.17%	221,670
Frank W. Johnson	6.80%	67,950
Virginia Faith Broadcasting, Inc.	1.49%	14,940
Target Music, Inc	2.43%	24,300
Bobby Edward Lewis	1.09%	10,890
James Wright	1.14%	11,430
Karl Ken Wilson	1.83%	18,270
Leonard Conwell Rayford	10%	
		100,000
Total	100.00%	1,000,000

SCHEDULE 3

Managers

The Investor Managers shall be J. Peter Thompson, Anthony Williams and Gwendolyn Smith Iloani.

The Common Manager shall be Steve Hegwood.

The Senior Manager shall be designated by Common Members until such time as the Senior Manager elects to appoint a Manager.

Appendix I:

Capital Contributions relating to Warrants