

6.24 Sample Joint Venture Agreement: Limited Liability Company Form

LIMITED LIABILITY COMPANY AGREEMENT OF VENTURE COMPANY L.L.C.

THIS LIMITED LIABILITY COMPANY AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_, 19\_\_\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ corporation ("Member A") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Member B"). Member A and Member B and any other persons or entities who shall in the future execute and deliver this Agreement pursuant to the provisions hereof shall hereinafter collectively be referred to as the "Members."

Member A and Member B propose to form a joint venture to engage in the business of [brief description of business]. Member A and Member B further propose that the joint venture take the form of a limited liability company organized pursuant to the provisions of the Delaware Limited Liability Company Act (the "Delaware LLC Act") under the name "Venture Company L.L.C." (the "LLC").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Members hereby agree as follows:

ARTICLE I  
CERTAIN DEFINITIONS

Unless the context otherwise specifies, any capitalized term used herein shall have the respective meanings assigned thereto. Additionally, all terms defined here to and incorporated herein by reference, for all purposes of this Agreement. The provisions of this Agreement shall be equally applicable to both the singular and the plural forms of the terms defined herein. Unless otherwise specified, all references herein to Articles or Sections shall refer to Articles or Sections of this Agreement.

ARTICLE II  
FORMATION (NAME: PLACE OF BUSINESS)

2.01 Formation of LLC, Certificate of Formation

The Members of the LLC hereby:

(a) authorize the formation of the LLC by the Members as a limited liability company pursuant to the Delaware LLC Act, and further authorize the filing of the Certificate with the Recording Office as required under the Delaware LLC Act;

(b) confirm and agree to their status as Members of the LLC;

(c) execute this Agreement for the purpose of confirming the existence of the LLC and establishing the rights, duties and relationship of the Members; and

(d) (i) agree that if the laws of any jurisdiction in which the LLC transacts business so require, the Board of Managers also shall file, with the appropriate office in that jurisdiction, any documents necessary for the LLC to qualify to transact business under such laws; and (ii) agree to

execute, acknowledge, and cause to be filed, in the place or places and manner prescribed by law, any amendments to the Certificate as may be required, either by the Delaware LLC Act, by the laws of any jurisdiction in which the LLC transacts business or by this Agreement, to reflect changes in the information contained therein or otherwise to comply with the requirements of law for the continuation, preservation, and operation of the LLC as a limited liability company under the Delaware LLC Act.

## 2.02 Name of LLC

The name under which the LLC shall conduct its business is "Venture Company L.L.C." The business of the LLC may be conducted under any other name permitted by the Delaware LLC Act that is selected by the Board of Managers, in its sole and absolute discretion. The Board of Managers promptly shall execute, file, and record any assumed or fictitious name certificates required by the laws of the State of Delaware or any state in which the LLC conducts business.

## 2.03 Place of Business

The location of the principal place of business of the LLC shall be as determined by the Board of Managers. The Board of Managers may change the principal place of business of the LLC to such other place or places within the United States as the Board of Managers may from time to time determine, in its sole and absolute discretion, provided that the Board of Managers shall give written notice of the change to the Members within thirty days after the effective date of the change and, if necessary, the Board of Managers shall amend the Certificate in accordance with the applicable requirements of the Delaware LLC Act. The Board of Managers may, in its sole and absolute discretion, establish and maintain one or more offices and additional places of business of the LLC, either within or without the State of Delaware, as it deems appropriate.

## 2.04 Registered Office and Registered Agent

The address of the initial registered office of the LLC shall be \_\_\_\_\_ [city], Delaware [zip code], and the LLC's registered agent at such address shall be \_\_\_\_\_ [name] [city], Delaware [zip code] [agent for service of process].

# ARTICLE III

## PURPOSES AND POWERS OF LLC

### 3.01 Purposes

The purposes of the LLC shall be:

- (a) to engage in the business of [describe venturers' intended business];
- (b) to acquire, hold, own, operate, manage, finance, encumber, sell, or otherwise dispose of and otherwise use the LLC Assets; and

(c) to enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes and as may be necessary, incidental or convenient to carry out the business of the LLC as contemplated by this Agreement.

### 3.02 Powers

The LLC shall have the power to do any and all acts and things necessary, appropriate, advisable, or convenient for the furtherance and accomplishment of the purposes of the LLC, including, without limitation, to engage in any kind of activity and to enter into and perform obligations of any kind necessary to or in connection with, or incidental to, the accomplishment of the purposes of the LLC, so long as said activities and obligations may be lawfully engaged in or performed by a limited liability company under the Delaware LLC Act.

## ARTICLE IV TERM OF LLC

The LLC commenced on the date upon which the Certificate was duly filed with the Recording Office and shall continue for thirty (30) years, unless dissolved and liquidated before the Termination Date in accordance with the provisions of Article V.

## ARTICLE V CAPITAL

### 5.01 Initial Capital Contributions of the Members

Concurrently with the execution of this Agreement, Member A shall contribute [\$ \_\_\_\_\_] in cash to the LLC and Member B shall contribute [\$ \_\_\_\_\_] in cash (each such contribution an "Initial Capital Contribution"). The Initial Capital Contribution of each Member shall be made immediately available wire transfer payable to the order of the LLC or its designated agent. No Member shall be required to make any Capital Contributions to the LLC other than as set forth in this Section 5.01 or in Section 5.02.

### 5.02 Additional Capital Contributions of the Members

Upon the agreement of all of the Members, a Member may make an additional Capital Contribution (an "Additional Capital Contributions"). Any Additional Capital Contributions to the LLC shall be made by the Members by immediately available wire transfer payable to the order of the LLC or its designated agent. The Percentage Interests of the Members shall be adjusted to reflect any Additional Capital Contribution at the time it is made.

### 5.03 Capital Accounts

A separate capital account (a "Capital Account") shall be established and maintained for each Member. The Capital Account of each Member shall be (a) increased by the amount of any contributions made to the LLC by the Member, (b) increased or decreased by items of Net Income

or Net Loss allocated to the Member pursuant to Article VI, and (c) decreased by any distributions made to the LLC by the Member.

#### 5.04 No Interest on Capital Contributions or Capital Accounts

No Member shall be entitled to receive any interest on its Capital Contributions or its outstanding Capital Account balance.

#### 5.05 Advances to LLC

No Member shall advance funds or make loans to the LLC in excess of the amounts required hereunder to be contributed by it to the capital of the LLC without the express written consent of the other Member. Any such approved advances or loans by a Member shall not result in any increase in the amount of such Member's Capital Account or entitle it to any increase in its Percentage Interest. The amounts of such advances or loans shall be a debt of the LLC to such Member and shall be payable or collectible only out of the LLC Assets in accordance with the terms and conditions agreed upon by all Members.

#### 5.06 Liability of Members and the Board of Managers

Except as otherwise provided in the Delaware LLC Act, the debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and none of the Members or Managers shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member or a Manager. The failure of the LLC to observe any formal requirements relating to the exercise of its powers or management of its business or affairs under the Delaware LLC Act or this Agreement shall not be grounds for imposing personal liability on the Members or the Managers for liabilities of the LLC.

#### 5.07 Return of Capital

Except upon the dissolution of the LLC or as may be specifically provided in this Agreement, no Member shall have the right to demand or to receive the return of all or any part of its Capital Account or its Capital Contributions to the LLC.

### ARTICLE VI

#### ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS; TAXES

##### 6.01 Allocation of Net Income or Net Loss

Except as otherwise provided in Section 6.04, the Net Income or Net Loss, other items of income, gains, losses, deductions and credits, and the taxable income, gains, losses, deductions and credits of the LLC, if any, for each Fiscal Year (or portion thereof) shall be allocated to the Members in proportion to their Percentage Interests.

##### 6.02 Allocation of Income and Loss With Respect to LLC Interests Transferred

If any LLC Interest is transferred during any Fiscal Year, the Net Income or Net Loss (and other items referred to in Section 6.01) attributable to such LLC Interest for such Fiscal Year shall be allocated between the transferor and the transferee by closing the books of the LLC as of the date of the transfer.

### 6.03 Distributions

Distributions to the Members may be made at times and in amounts as are determined by the Board of Managers. Distributions shall be made to the Members in proportion to their Percentage Interests. Distributions may be made in cash or by distributing property in kind.

### 6.04 Taxes

(a) Reports. As soon as practicable after the end of each Fiscal Year, the LLC shall prepare and mail to each Member a report containing all information necessary for the Member to include its share of taxable income or loss (or items thereof) in its income tax return.

(b) Nonrecourse Loans.

(i) For Federal income tax purposes, any loss attributable to a nonrecourse loan made to the LLC by a Member (i.e., any loss that would be economically borne by such Member in his capacity as lender) shall be allocated to such Member in accordance with Treas. Reg.  $\square$  1.704-1(b)(4)(iv)(g). If any allocation of loss is made pursuant to the preceding sentence, subsequent income and gain of the LLC shall be allocated to such Member until the amount of income and gain so allocated equals the amount of loss previously allocated to the Member pursuant to the preceding sentence.

(ii) For Federal income tax purposes, any loss attributable to a nonrecourse loan made to the LLC by a Member shall be allocated pursuant to Treas. Reg.  $\square$  1.704-1(b)(4)(iv) according to the Member's interests in the Percentage Interests in the LLC.

(c) Contributions of Property. In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, depreciation, amortization, gain and loss, as determined for tax purposes, with respect to any contributed property the book value of which differs from its adjusted basis for federal income tax purposes, shall, for tax purposes, be allocated between the Members so as to take account of any variation between the adjusted basis of such property to the LLC for federal income tax purposes and its book value.

(d) Purpose of Tax Allocations. Allocations pursuant to this Section 6.04 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the capital account of any Member or such Member's share of profit, loss, other items, or distributions pursuant to any provision of this Agreement. The provisions of this Section 6.04 relating to federal income tax treatment of an item shall apply for state and local income tax purposes to the extent permitted under applicable law. Any elections or other decisions

relating to such allocations shall be made by the Board of Managers pursuant to Section 7.01(d) of this Agreement.

(e) Tax Matters Partner. The "Tax Matters Partner" of the LLC shall be designated from time to time by the Board of Managers. The Tax Matters Partner shall not extend the statute of limitations on behalf of the LLC, submit any written material to any taxing authority, settle or offer to settle any controversy, select the LLC's choice of litigation forum in a tax controversy, or take any other action in its capacity as Tax Matters Partner without the consent of the Board of Managers. The Tax Matters Partner shall keep the Board of Managers fully advised of the progress of any audit and shall supply the Board of Managers with copies of any written communications received from the Internal Revenue Service or other taxing authority relating to any audit within ten (10) days of receipt thereof, and shall at least ten (10) business days prior to submitting any materials to the Internal Revenue Service, or other taxing authority, provide such materials to the Board of Managers. The Tax Matters Partner shall be reimbursed by the LLC for any reasonable expenses incurred in its capacity as Tax Matters Partner.

(f) Modifications. If the Board of Managers determines that any of the provisions of this Section 6.04 do not comply with the rules of Treas. Reg. § 1.701-1(b)(3) for allocating income, gain, loss, and deductions of the Venture in accordance with the Member's interests in the LLC, the Board of Managers may make any modifications required by such rules to comply with such rules.

## ARTICLE VII MANAGEMENT

### 7.01 Management of the LLC by the Board of Managers

The management of the business and affairs of the LLC shall be managed by the Board of Managers. The Members hereby unanimously agree that the responsibility for management of the business and affairs of the LLC shall be delegated to the Board of Managers pursuant to Section 18-402 of the Delaware LLC Act (the "Board of Managers"), subject to the limitations set forth in Section 7.04.

#### (b) Composition of Board Managers; Appointment and Removal

(i) The Board of Managers shall at all times be composed of four (4) Managers (each, a "Manager").

(ii) Each Member shall appoint two individuals to serve as its initial representatives on the Board of Managers. Each such individual shall serve until such time as he or she resigns, retires, dies or is removed. Any Manager may be removed with or without cause by the Member who appointed such Manager. Upon the resignation, retirement, death or removal of any Manager, the Member who appointed such Manager shall designate the replacement Manager.

#### (c) Meetings and Actions

(i) The Board of Managers shall meet (w) at least once each Fiscal Quarter at the principal offices of the LLC or at such other place as may be agreed upon from time to time by the Board of Managers (unless such meeting shall be waived by all of the Managers); (x) at such other times as may be determined by the Board of Managers; (y) upon the request of at least two Managers or the President upon ten (10) days' notice to all Managers; or (z) in accordance with Section 8.01, following a failure by the Board of Managers to adopt or reject a proposal for action presented to it. Meetings may be held by telephone if at least one Manager appointed by each Member so consents. The Board of Managers shall cause written minutes to be prepared of all actions taken by the Board of Managers and shall cause a copy thereof to be delivered to each Manager within fifteen (15) days thereof.

(ii) No action may be taken at a meeting of the Board of Managers unless a quorum consisting of at least one Manager appointed by each member is present.

(iii) Each Manager shall be entitled to cast one vote with respect to any decision made by the Board of Managers, except with respect to a determination of indemnification pursuant to Section 7.05 hereof, in which event a Manager seeking indemnification hereunder shall have no vote with respect to his indemnification. Any action to be taken by the Board of Managers shall require at least three affirmative votes, except that any determination to grant indemnification to a Manager pursuant to Section 7.05 hereof shall require two (2) affirmative votes. Approval or action by the Board of Managers shall constitute approval or action by the LLC and shall be binding on the Member. A Manager may grant a proxy entitling the other Manager appointed by the same Member to exercise all voting rights. Such proxy shall be in writing and shall specify a termination date. The Manager appointed by the other Member shall be entitled to inspect the proxy on demand.

(iv) Resolutions to be taken by the Board of Managers may be taken without a meeting if confirmed in writing and the action so taken are signed by at least three Managers.

(d) Subcommittees. The Board of Managers may designate a subcommittee consisting of at least one Manager appointed by each Member. Any subcommittee, to the extent provided by the Board of Managers, shall have and may exercise all the power and authority of the Board of Managers.

(e) Power and Authority of the Board of Managers. The Board of Managers (acting on behalf of the LLC), by its own action, or by action of a subcommittee of the Board of Managers, but not by delegation to officers or other employees of the Venture, shall have the right, power and authority to take the following actions, and no such action will be taken without the approval of the Board of Managers.

(i) making overall policy decisions with respect to the business and affairs of the Venture;

(ii) reviewing and approving annual budgets and operating guidelines;

(iii) approving any contract, agreement and commitment with a value in excess of \$50,000 or a term longer than six (6) months (or a group of related contracts, agreements and commitments with an aggregate value in excess of \$50,000);

(iv) approving the choice of bank depositories, and approving arrangements relating to signatories on bank accounts; (v) approving the choice of the LLC's attorneys, independent accounts, and any other consultants, including but not limited to market consultants, leasing agents, management agents, and advertising and public relations agents, where it is contemplated that such consultants will provide services with a value in excess of \$50,000, or for a period longer than six (6) months;

(vi) approving all contracts that are proposed to be entered into between the LLC and any Member or Affiliate of a Member, in accordance with the criteria set forth in Section 7.04;

(vii) approving any change of the LLC's fiscal year;

(viii) approving all distributions to the Member;

(ix) approving the conveyance, transfer, assignment, mortgage, encumbrance, or disposal of, or the granting of a security interest, in any real estate owned by the LLC;

(x) approving the entry into by the LLC of any other partnership or joint venture;

(xi) approving in the name of the LLC, or loaning any sum or extending credit to any Person in an amount in excess of \$50,000, or for a period in excess of six (6) months;

(xii) guaranteeing any indebtedness of any other Person in any amount in excess of \$50,000 or for a period in excess of six (6) months, or guaranteeing any contractual obligations of any other Person with a value in excess of \$50,000 or for a period in excess of six (6) months;

(xiii) entering into any real estate lease with a value in excess of \$50,000 or a term greater than six (6) months, or the acquisition by the LLC of any real estate with a value in excess of \$100,000;

(xiv) authorizing any Member to act for or to assume any obligation or responsibility on behalf of the LLC;

(xv) employing, appointing and removing of any LLC employee who will be involved in the day to day management of the business of the LLC, and who will receive compensation in excess of \$50,000 per year;

(xvi) changing any accounting principles used by the LLC, except to the extent required by generally accepted accounting principles;



(xvii) approving any tax elections of the LLC;

(xviii) conducting litigation to which the LLC is a party;

(xix) approving the acquisition of any business or a business division from any Person, whether by asset purchase, stock purchase, merger or other business combination; and

(xx) approving the transfer of any assets of the LLC, or any interest therein, other than in the ordinary course of business, the fair market value of which may reasonably be expected to exceed \$250,000.

(f) Third Party Reliance. Third parties dealing with the LLC shall be entitled to rely conclusively upon the power and authority of the Board of Managers and the officers of the LLC as set forth herein.

(g) Fiduciary Relationship. No Manager shall be liable to the LLC or its Members for monetary damages for breach of fiduciary duty as a Manager or otherwise liable to the LLC or accountable to the LLC or its Members for monetary damages or otherwise for any act performed, or for any failure to act; provided, however, that this provision shall not be construed to limit the liability of a Manager (i) for any breach of the Manager's duty of loyalty to the LLC or its Members, (ii) for acts or omissions which involve intentional or knowing violation of law, or (iii) for any transaction from which the Manager received any improper personal benefit.

(h) Reimbursement. All reasonable expenses incurred by a Manager with respect to the organization, operation, and management of the LLC shall be reimbursed by the LLC. The Managers shall be entitled to reimbursement from the LLC for all direct expenses allocable to the organization, operation, and management of the LLC. None of the Managers, in their capacity as such, shall be entitled to any fees for services rendered for or on behalf of the LLC.

(i) No Individual Authority. Except as otherwise expressly provided in this Agreement, no Manager acting alone, shall have any obligation to act for, or undertake or assume any obligation or responsibility on behalf of, the other Member or the LLC.

## 7.02 Officers

(a) President. The Board of Managers shall appoint a president of the LLC (the "President"). Subject to the supervision and authority of the Board of Managers, the President (i) shall be the chief executive officer of the LLC, (ii) shall have responsibility and authority for management of the day-to-day operations of the LLC, and (iii) may execute agreements and contracts on behalf of the LLC.

(b) Secretary. The Board of Managers shall appoint a secretary of the LLC (the "Secretary"). The Secretary, at the direction of the Board of Managers, shall prepare and distribute to each Manager an agenda in advance of each meeting and shall prepare and distribute promptly to each Manager written minutes of all meetings of the Board of Managers. The Secretary shall also

be responsible for preparing and distributing to the Managers any notices received by the LLC or otherwise called for by this Agreement to be given by the LLC.

(c) Other Officers. The Board of Managers may appoint other officers of the LLC (including, but not limited to, one or more vice presidents, a treasurer and an assistant secretary) upon terms and conditions the Board of Managers deems necessary and appropriate. Any officer shall hold his or her respective office unless and until such officer is removed by the Board of Managers.

#### 7.03 Other Activities of Members or Affiliates; Restrictions on Competition

Any Member or any Affiliate thereof may have other business interests or may engage in other business ventures of any nature or description whatsoever, whether currently existing or hereafter created, and may compete, directly or indirectly, with the business of the LLC provided, however, that [limits on competition with joint venture] No Member or Affiliate thereof shall incur any liability to the LLC as a result of its pursuit of such other permitted business interests, ventures and competitive activity, and neither the LLC nor the other Members shall have any right to participate in such other business ventures or to receive or share in any income or profits therefrom.

#### 7.04 Certain Transactions

The LLC is expressly permitted in the normal course of its business to enter into transactions with any or all Members or any Affiliate of the LLC or all Members provided that the price and other terms of such transactions are fair to the LLC and that the price and other terms of such transactions are not less favorable to the LLC than those generally prevailing with respect to comparable transactions between unrelated parties.

#### 7.05 Indemnification of Members, Managers, Officers and any Affiliate

(a) Right of Indemnification. In accordance with Section 18-108 of the Delaware LLC Act, the LLC shall indemnify and hold harmless any Member, Manager, officer, and Affiliate thereof (individually, in each case, an "Indemnitee") to the fullest extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities joint or several), expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which the Indemnitee may be involved or threatened to be involved, as a party or otherwise, arising out of or incidental to the business or activities of or relating to the LLC, regardless of whether the Indemnitee continues to be a Member, a Manager, an officer or any Affiliate thereof at the time any such liability or expense is paid or incurred; provided, however, that this provision shall not eliminate or limit the liability of an Indemnitee (i) for any breach of the Indemnitee's duty of loyalty to the LLC or its Members, (ii) for acts or omissions which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the Indemnitee received any improper personal benefit.

(b) Advances of Expenses. Expenses incurred by an Indemnitee in defending any claim, demand, action, suit, or proceeding subject to this Section 7.05 shall, from time to time, upon request by the Indemnitee, be advanced by the LLC prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the LLC of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined in a judicial proceeding or a binding arbitration that such Indemnitee is not entitled to be indemnified as authorized in this Section 7.05.

(c) Other Rights. The indemnification provided by this Section 7.05 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, vote of the Board of Managers as a matter of law or equity, or otherwise, both as to an action in the Indemnitee's capacity as a Member, a Manager, an officer or any Affiliate thereof, and as to an action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns, and administrators of the Indemnitee.

(d) Insurance. The LLC may purchase and maintain insurance on behalf of the Board of Managers and such other Persons as the Board of Managers shall determine against any liability that may be asserted against or expense that may be incurred by such Persons in connection with the offering of interests in the LLC or the business of the LLC, regardless of whether the LLC would have the power to indemnify such persons against such liability under the provisions of this Agreement.

(e) Effect of Interest in Transaction. An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.05 or otherwise by reason of the fact that the Indemnitee had an interest in a transaction with respect to which the indemnification applies if the transaction was otherwise permitted or not expressly prohibited by the terms of this Agreement.

(f) Survival of Rights. The provisions of this Section 7.05 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

## ARTICLE VIII DEADLOCK

### 8.01 Deadlock

(a) Definition of Deadlock. "Deadlock" shall occur if the Board of Managers casts a tie vote on a matter submitted to it at a meeting or in the form of a proposed written consent, and during the sixty (60) day period following this tie vote, the Board of Managers is unable to break the tie. (If the matter is presented in the form of a proposed written consent, the sixty (60) day period shall commence on the date that the Manager who was last to receive the proposal received it.) During this sixty (60) day period, the Board of Managers shall hold at least one additional meeting at which it shall make a good faith effort to break the tie. The additional meeting shall be

held at the time and place agreed to by the Manager, or if the Managers are unable to agree, at a time and place determined by the President, on at least five (5) days' written notice.

(b) Resolution of Deadlock. If a Deadlock occurs, the LLC shall submit the matter that was the subject of the tie to the chief executive officers for each of the Members by providing notice of the Deadlock to the Members. The chief executive officers shall then make a good faith effort to resolve the dispute and break the tie. If they are unable to resolve the dispute within sixty (60) days of receiving notice of the Deadlocks, then either Member may terminate the LLC in accordance with the provisions of Section 11.01.

## ARTICLE IX

### BANK ACCOUNTS; BOOKS AND RECORDS; STATEMENTS; TAXES; FISCAL YEAR

#### 9.01 Bank Accounts

All funds of the LLC shall be deposited in its name in such checking and time deposits, certificates of deposit or other accounts at such banks as shall be determined by the Board of Managers from time to time, and the Board of Managers shall arrange for the proper conduct of such account or accounts.

#### 9.02 Books and Records

The Board of Managers shall keep or cause to be kept accurate, full and complete books and accounts showing assets, liabilities, capital contributions, transactions and the financial condition of the LLC. Such books and accounts shall be prepared on the accrual basis of accounting. Any Member or its designee shall have access to and inspect any reasonable time during regular business hours and shall have the right to copy said records at its expense.

#### 9.03 Financial Statements and Information

(a) Preparation in Accordance with Generally Accepted Accounting Principles. All financial statements prepared pursuant to this Section 8.04 shall present fairly the financial position and operating results of the LLC and shall be prepared in accordance with generally accepted accounting principles on the accrual basis for each Fiscal Year of the LLC during the term of this Agreement.

(b) Quarterly Report. Within thirty (30) days after the end of each quarterly period (the "Fiscal Quarter") of each Fiscal Year, commencing with the first Fiscal Quarter after the date of this Agreement, the Board of Managers shall prepare and submit or cause to be prepared and submitted to the Members an unaudited statement of profit and loss for the LLC for such Fiscal Quarter and an unaudited balance sheet of the LLC dated as of the end of such Fiscal Quarter, in each case prepared in accordance with generally accepted accounting principles consistently applied.

(c) Annual Reports. Within sixty (60) days after the end of each Fiscal Year during the term of this Agreement, the Board of Managers shall prepare and submit or cause to be

prepared and submitted to the Members (i) an audited balance sheet, together with audited statements of profit and loss, Members' equity and changes in financial position for the LLC during such Fiscal Year; (ii) a report of the activities of the LLC during the Fiscal Year; (iii) a report summarizing the fees and other remuneration paid by the LLC for such Fiscal Year to the Board of Managers and any Affiliate thereof; and (iv) an audited statement showing any amounts distributed to the Members in respect of such Fiscal Year.

(d) Other Reports. The Board of Managers shall provide to the Members such other reports and information concerning the business and affairs of the LLC as may be required by the Delaware LLC Act or by any other law or regulation of any regulatory body applicable to the LLC.

#### 9.04 Accounting Decisions

All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Board of Managers.

#### 9.05 Where Maintained

The books, accounts and records of the LLC at all times shall be maintained at the LLC's principal office.

#### 9.06 Fiscal Year

The fiscal year of the LLC for federal, state and local income tax purposes shall initially be the fiscal year commencing on January 1 and ending on December 31 (the "Fiscal Year"). The Board of Managers shall have authority to change the beginning and ending dates of the Fiscal Year if the Board of Managers, in its sole and absolute discretion, deems such change to be necessary or appropriate to the business of the LLC, and shall give written notice of any such change to the Members within thirty (30) days after the occurrence thereof.

### ARTICLE X TRANSFER AND CONVERSION OF LLC INTERESTS AND THE ADDITION, SUBSTITUTION AND WITHDRAWAL OF MEMBERS

#### 10.01 Transfer of LLC Interests

(a) Definition of Transfer. The term "transfer," when used in this Article X with respect to an LLC Interest, shall include any sale, assignment, gift, pledge, hypothecation, mortgage, exchange or other disposition, except that such term shall not include any pledge, mortgage or hypothecation of or granting of a security interest in an LLC Interest in connection with any financing obtained on behalf of the LLC.

(b) Void Transfers. No LLC Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article X. Any transfer or purported transfer of any LLC Interest not made in accordance with this Article X shall be void ab initio.

## 10.02 Restrictions on Transfers

(a) Consent Required. No Member may transfer all or any portion of its LLC Interest or its Capital Account without the express written consent of the nontransferring Member.

(b) Substitution. Any transferee of an LLC Interest shall become a substituted Member upon (i) the express written consent of the nontransferring Member in the exercise of their sole and absolute discretion; (ii) the transferee agreeing to be bound by all the terms and conditions of the Certificate and this Agreement as then in effect; and (iii) receipt of any necessary regulatory approvals. Unless and until a transferee is admitted as a substituted Member, the transferee shall have no right to exercise any of the powers, rights, and privileges of a Member hereunder. A Member who has transferred its LLC Interest shall cease to be a Member upon transfer of the Member's entire LLC Interest and thereafter shall have no further powers, rights, and privileges as a Member hereunder except as provided in Section 7.05.

(c) Dealing with Members. The LLC, each Member, the Board of Managers, the President and any other Person or Persons having business with the LLC need deal only with Members who are admitted as Members or as substituted Members of the LLC, and need not be required to deal with any other person by reason of transfer of a Member or by reason of the death of a Member, except as otherwise provided in this Agreement. In the absence of the substitution (as provided herein) of a Member for a transferring or deceased Member, any payment to a Member or to a Member's executor, administrator or other legal representative shall acquit the LLC and the Board of Managers of all liability to any other person who may be interested in such payment by reason of an assignment by, or the death of, such Member.

(d) Transfer of Economic Interest. Notwithstanding the foregoing, any Member may transfer its economic interest in its LLC Interest to a transferee which, directly or indirectly, controls, is controlled by, or is under common control with, such Member; provided, however that such transfer shall give the transferee only the right to receive distributions, income, gain and loss allocable to such LLC Interest to which such Member would otherwise be entitled.

## 10.03 No Resignation or Withdrawal

No Member shall have any right to resign or otherwise withdraw from the LLC without the express written consent of all the other Members.

## ARTICLE XI DISSOLUTION AND LIQUIDATION

### 11.01 Events Causing Dissolution

The LLC shall be dissolved and its affairs wound up upon the occurrence of any of the following events:

(a) the consent in writing to dissolve and wind up the affairs of the LLC by all of the Members;

(b) the sale or other disposition by the LLC of all or substantially all of the LLC Assets and the collection of all amounts derived from any such sale or other disposition, including all amounts payable to the LLC under any promissory notes or other evidences of indebtedness taken by the LLC and the satisfaction of contingent liabilities of the LLC in connection with such sale or other disposition (unless the Members shall elect to distribute such indebtedness to the Members in liquidation);

(c) the "Bankruptcy" (as hereinafter defined), dissolution or liquidation of a Member;

(d) the Termination Date; or

(e) the occurrence of any event that, under the Delaware LLC Act, would cause the dissolution of the LLC or that would make it unlawful for the business of the LLC to be continued.

(f) Upon thirty (30) days' written notice by either Member, if a Deadlock occurs and the chief executive officers of the Members are unable to resolve the Deadlock within thirty (30) days of receiving notice of the Deadlock.

For the purposes of this Agreement, the term "Bankruptcy" shall mean a Member shall be deemed "Bankrupt" upon, (i) the entry of a judgment or order for relief of the Member by a court of competent jurisdiction in any involuntary case involving the Member under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for the Member or for any substantial part of the Member's assets or property; (iii) the ordering of the winding up or liquidation of the Member's affairs, or the filing with respect to the Member of a petition in any such involuntary bankruptcy or insolvency case which remains undismissed for a period of ninety (90) days or which is dismissed or annulled pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Member of a voluntary case under any bankruptcy, insolvency or other similar law now or hereafter in effect; (vi) the consent by the Member to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent for the Member or for any substantial part of the Member's assets or property; (vii) the making by the Member of any general assignment for the benefit of creditors; or (viii) the failure by the Member generally to pay its debts as such debts become due.

(g) Default. If a Member fails to perform any of its material obligations under this agreement (an "Event of Default") then the other Member a "Nondefaulting Member"), shall have the right to give the Defaulting Member notice (a "Notice of Default"). The Notice of Default shall set forth the nature of the obligations which the Defaulting Member has failed to perform. If the Defaulting Member fails to cure the Event of Default within thirty (30) days, and the Nondefaulting Member has given Notice of Default in compliance with this section, the Nondefaulting Member may (i) terminate the LLC (ii) cause the determination of Fair Market Value and purchase the Defaulting Member's interest in the LLC at a price equal to eighty percent (80%) of the Fair Market

Value of such interest. The Members agree that damages resulting from an Event of Default may be impossible to measure; therefore the Members further agree that the reduction in the purchase price for the Defaulting Member's interest in the LLC as provided in the foregoing clause (ii) constitutes the Member's best estimate of any such damages and is not a penalty. The rights of the Nondefaulting Members to terminate or purchase the Defaulting Member's interest shall be exercised, if at all, within sixty (60) days after (x) the determination of Fair Market Value in the case of a purchase or (y) the expiration of the thirty (30) day cure period in the case of termination. The fees of any and all Appraisers used to determine Fair Market Value under this Section 11.01(f) shall be borne by the Defaulting Member. The rights granted in this Section 11.01(f) above shall not be deemed the exclusive remedy of a Nondefaulting Member, but all other rights and remedies, legal and equitable, shall be available to it.

#### 11.02 Cancellation of Certificate

Upon the dissolution of the LLC, the Certificate shall be canceled in accordance with the provisions of Section 18-203 of the Delaware LLC Act, and the Board of Managers (or any other person or entity responsible for winding up the affairs of the LLC) shall promptly make the Members of such dissolution.

#### 11.03 Distributions Upon Dissolution

(a) Upon the dissolution of the LLC, the Board of Managers (or any other person or entity responsible for winding up the affairs of the LLC) shall proceed without any unnecessary delay to sell or otherwise liquidate the LLC and shall make due provision for the payment of all debts, liabilities and obligations of the LLC.

(b) The Board of Managers (or any other person or entity responsible for winding up the affairs of the LLC) shall distribute liquidation proceeds and any other liquid assets of the LLC after the payment of all debts, liabilities and obligations of the LLC (including, without limitation, all amounts owing to a Member under this Agreement or under any agreement between the LLC and a Member entered into by the Member other than in its capacity as a Member in the LLC), the payment of expenses of liquidation of the LLC, and the establishment of a reasonable reserve in an amount estimated by the Board of Managers to be sufficient to pay any amounts reasonably anticipated to be required to be paid by the LLC, which shall be distributed to the Members first, pro rata, in proportion to the positive balances, if any, in their respective Capital Accounts until such Capital Accounts are reduced to zero sums, and, second, the remaining LLC Assets, if any, shall be distributed to the Members, pro rata, in accordance with their respective Percentage Interests.

#### 11.04 Reasonable Time for Winding Up

A reasonable time shall be allowed for the orderly winding up of the business and affairs of the LLC and the liquidation of its assets pursuant to Section 11.03 in order to minimize any losses otherwise attendant upon such a winding up.

## ARTICLE XII



## MISCELLANEOUS PROVISIONS

### 12.01 Compliance with Delaware LLC Act

Each Member agrees not to take any action or fail to take any action which, considered alone or in the aggregate with other actions or events, would result in the termination of the LLC under the Delaware LLC Act.

### 12.02 Additional Actions and Documents

Each of the Members hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use best efforts to obtain such consents, as may be necessary or as may be reasonably requested to fully effectuate the purposes, terms and conditions of this Agreement, whether before, at or after the closing of the transactions contemplated by this Agreement.

### 12.03 Notices

All notices, demands, requests or other communications which may be required to be given, served or sent by a Member pursuant to this Agreement shall be in writing and shall be hand delivered (including delivery by courier), mailed first-class registered or certified mail, return receipt requested, postage prepaid, or transmitted by telex, fax or facsimile transmission, addressed as follows:

- (i) If to Member: [address]
- If to Member: [address]

Each Member may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication which shall be delivered, mailed or transmitted in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee (with an affidavit of personal delivery, the return receipt, the delivery receipt or (with respect to a telex) the answer back being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

### 12.04 Severability

The invalidity of any one or more provisions hereof or of any other agreement or instrument given pursuant to or in connection with this Agreement shall not affect the remaining portions of this Agreement or any such other agreement or instrument or any part thereof, all of which are included subject to the condition that they are held valid in law; and in the event that one or more of the provisions contained herein or therein should be invalid, or should operate to render this Agreement or any such other agreement or instrument invalid, this Agreement and such other agreements and instruments shall be construed as if such invalid provisions had not been inserted.

#### 12.05 Survival

It is the express intention and agreement of the Members that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement.

#### 12.06 Waivers

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

#### 12.07 Exercise of Rights

No failure or delay on the part of a Member or the LLC in exercising any power or privilege hereunder and no course of dealing between the Members or between a Member and the LLC shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise hereunder of the same or any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which a Member or the LLC would otherwise have at law or in equity or otherwise.

#### 12.08 Binding Effect

Subject to any provisions of this Agreement relating to assignment, this Agreement shall be binding upon and shall inure to the benefit of the Members and their respective heirs, devisees, executors, administrators, legal representatives, successors and assigns.

#### 12.09 Limitation of Benefits of this Agreement

Subject to Section 7.05, it is the explicit intention of the Members that no person or entity other than the Members and the LLC is or shall be entitled to bring any action to enforce any provision of this Agreement against any Member or the LLC, and that the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Members (or their respective successors and assigns as permitted hereunder) and the LLC.

#### 12.10 Amendment Procedure

Except for adjustments to the Member's Percentage Interests as set forth in Section 5.02 this Agreement may only be modified or amended by the unanimous written consent of the Members.

#### 12.11 Entire Agreement

This Agreement (including the Schedules hereto) contains the entire agreement between the Members with respect to the transactions contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein.

#### 12.12 Pronouns

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

#### 12.13 Headings

Article, Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

#### 12.14 Governing Law

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the law of the State of Delaware (but not including the choice of law provisions hereof).

#### 12.15 Execution in Counterparts

To facilitate execution of this Agreement, it may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to sign on behalf of any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to sign on behalf of any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

#### 12.16 Announcements

Except as required by law or applicable stock exchange regulation, no party hereto shall make any announcement, press release or other public statement relating in any manner to this Agreement, the terms hereof or the relationship of the parties hereto without first obtaining the consent of the other parties to the disclosure proposed to be made. The other parties hereto shall not unreasonably withhold their consent to any request made by a party pursuant to this Section 12.16. The Members shall use their best efforts to consult and coordinate with each other before making any announcement, press release or other public statement as required by law or applicable stock exchange regulation.

IN WITNESS WHEREOF, the undersigned have duly executed this Limited Liability Company Agreement or have caused this Limited Liability Company Agreement to be duly executed on their behalf as of the day and year first set forth above.

(Member A)

By:

Name:

Title:

(Member B)

By:

Name:

Title:

## ADDENDUM I DEFINITIONS

Additional Capital Contribution: As defined in Section 5.03.

Affiliate: Any Person directly or indirectly controlled by, or under common control with the Person in question; if the Person in question is a corporation, any executive officer or director of the Person in question or any corporation directly or indirectly controlling the Person in question. As used in this definition of Affiliate, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

Agreement: This Limited Liability Company Agreement, as it may be further amended or supplemented from time to time.

Appraiser: An Independent appraiser or investment bank.

Bankruptcy: As defined in Section 11.01.

Board of Managers: As defined in Section 7.01.

Business Day: Monday through Friday of each week, except that a legal holiday recognized as such by the Government of the United States shall not be regarded as a Business Day.

Capital Account: As defined in Section 5.03.

Capital Contribution: Any property (including cash) contributed to the LLC by or on behalf of a Member.

Certificate: The Certificate of Formation, and any and all amendments thereto, filed on behalf of the LLC with the Recording Office as required under the Delaware LLC Act.

Code: The Internal Revenue Code of 1986, as in effect and hereafter amended, and, unless the context otherwise requires, applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

Deadlock: As defined in Section 8.01.

Delaware LLC Act: The Delaware Limited Liability Company Act, as amended from time to time.

Event of Default: As defined in Section 11.01(g).

Fair Market Value: With respect to any property or asset, the dollar value of the property or asset determined (i) by mutual agreement of the Members, or (ii) if the Members do not so agree within twenty (20) days after one Member first proposes in writing to the other Members that the Fair Market Value be determined, by two independent Appraisers, one selected by each Member, provided, that if a Member fails to appoint an Appraiser within ten (10) days following the expiration of such twenty (20) day period, Fair Market Value shall be determined by the Appraiser selected by the other Member. If two Appraisers are selected, each Appraiser shall submit to the Members their respective appraisals within thirty (30) days of their selection. If a discrepancy between the dollar value of the appraisals exceeds 10% of the higher appraisal and the Members do not agree on a settlement of the discrepancy within ten (10) days after receipt of the appraisals, then a third Appraiser mutually selected by the Members or if they cannot so select, then selected by the first two Appraisers), shall be provided access to the first two appraisals. The third Appraiser shall select one of the appraisals of the first two Appraisers, which selection shall constitute a final determination of Fair Market Value of the property or asset and shall be binding upon the Venturers. If the difference between the appraisals of the first two Appraisers is less than 10% of the higher appraisal, then the average of the two appraisals shall constitute a final determination of Fair Market Value of the property or asset and shall be binding upon the Venturers.

Fiscal Year: As defined in Section 9.07.

Initial Capital Contribution: As defined in Section 5.01.

LLC: As defined in the preamble.

LLC Assets: All assets and property, whether tangible or intangible and whether real, personal, or mixed, at any time owned by or held for the benefit of the LLC, including, without limitation, the assets of any television broadcast stations owned by the LLC.

LLC Interest: As to any Member, all of the interest of that Member in the LLC, including, without limitation, such Member's (i) right to a distributive share of the income, gain, losses and

deductions of the LLC in accordance with this Agreement, and (ii) right to a distributive share of LLC Assets.

Manager: Any member of the Board of Managers.

Member: Member A and Member B and any other Person who shall in the future execute and deliver this Agreement pursuant to the provisions hereof.

Net Income and Net Loss. For a period as determined for federal income tax purposes, the taxable income or loss, respectively, computed with the following adjustments:

(a) items of gain, loss and deduction relating to LLC Assets shall be computed based on the Carrying Values of the LLC Assets rather than upon their Adjusted Bases, and in the case of depreciation, amortization or other cost recovery deductions, computed using the same method and useful life used by the LLC in computing such deductions for federal income tax purposes;

(b) tax-exempt income of the LLC shall be treated, for purposes of this definition only, as gross income; and

(c) expenditures of the LLC described in Section 1705(b)(2)(B) of the Code or treated as such expenditures pursuant to Section 1.704-1(f)(2)(ii) of the regulations under the Code shall be treated, for purposes of this definition, as deductions for depreciation expenses.

Notice of Default: As defined in Section 1001 of the Code.

Percentage Interest: Member's percentage share of the total LLC Interests, which shall be equal to the percentage that Member's Capital Contributions bears to the sum of all Capital Contributions. Member A's Percentage Interest is \_\_\_\_\_ percent, and Member B's Percentage Interest is \_\_\_\_\_ percent.

Person: Any individual, corporation, association, partnership, limited liability company, joint venture, trust or other entity or organization.

Recording Office: The office of the Secretary of State of the State of Delaware.

Tax Matters Partner: That person required by Section 6231(a)(7) of the Code.