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September 14, 2005
Via Overnight

P.O. Drawer 200
Winter Park, FL
32790-0200

Mr. Brent Kirtley, Tariff Branch Manager
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40602-0615

Tel: 407-740-8575
Fax: 407-740-0613
tmi@tminc.com

RE: Application of LexTel, LLC for Authority to Operate as a Competitive Local Exchange Carrier Throughout the State of Kentucky

Dear Mr. Kirtley:

Enclosed please find for filing the original and four (4) copies of the Application for Authority to Operate as a Competitive Local Exchange Carrier throughout Kentucky on behalf of LexTel, LLC. The company requests that the tariff be allowed to go into effect on thirty (30) days notice, on October 15, 2005.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided.

Any questions you may have pertaining to this filing may be directed to me at (407) 740-3006 or via email at croesel@tminc.com. Thank you for your assistance.

Sincerely,

Carey Roesel
Consultant to LexTel, LLC

CR/gs
Enclosure

cc: Liz Thacker - LexTel
file: LexTel - KY Local
tms: KY10500

**BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY**

In the Matter of the Application of)
LexTel, LLC)
for Authority to Operate as)
a Competitive Local Exchange Carrier)
Throughout the State of Kentucky)

LexTel, LLC ("LexTel"), hereby submits the following information in accordance with the provisions of Administrative Case No. 370 and its proposed tariff in accordance with 807 KAR 5:011:

1. The name, address and telephone and fax numbers of the applicant corporation are:

LexTel, LLC
Suite 211, 333 West Vine Street
Lexington, Kentucky 40507
Phone: (859) 255-1928
Fax: (859) 255-1798

2. A copy of the Kentucky Certificate of Authority & the Company's Articles of Incorporation:

Please see Attachment I for LexTel's Kentucky Certificate of Authority and its Articles of Incorporation.

3. **The name, street address, telephone and fax numbers of the responsible contact person(s) for customer complaints and regulatory issues:**

Customer Service Contact:

Liz Thacker
Suite 211, 333 West Vine Street
Lexington, Kentucky 40507
Phone: (859) 255-1928, extension 236
Fax: (859) 255-1798
E-Mail: lizthacker@qx.net

Regulatory Contact:

Liz Thacker
Suite 211, 333 West Vine Street
Lexington, Kentucky 40507
Phone: (859) 255-1928, extension 236
Fax: (859) 255-1798
E-Mail: lizthacker@qx.net

Questions and correspondence concerning this Application & Tariff:

Carey Roesel, Consultant to LexTel, LLC
Technologies Management, Inc.
210 N. Park Avenue
Winter Park, FL 32789
Phone: 407-740-8575
Fax: 410-740-0613
E-mail: croesel@tminc.com

4. **A notarized statement that the company has not provided or collected for intrastate service in Kentucky prior to filing its tariff:**

Please see Attachment 2 for LexTel's notarized statement.

5. **If the Applicant seeks authority to provide Operator Assisted services to traffic aggregators, then the Commission's mandates rules in Administrative Case No. 330.**

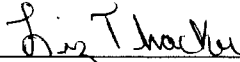
LexTel does not seek authority to provide operator assisted services to traffic aggregators, therefore, the Commission's mandates in Administrative Case No. 330 would not apply.

6. **The applicant must include a proposed tariff to become effective 30 days from the date of this filing.**

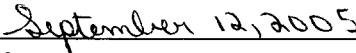
LexTel's proposed tariff is included herein as Attachment 3, and will become effective 30 days from the date of this filing.

WHEREFORE, LexTel, LLC, requests that the Public Service Commission of the Commonwealth of Kentucky grant LexTel, LLC, authority to operate as a Competitive Local Exchange Carrier in accordance with applicable laws currently in effect or hereinafter enacted by the Commission.

Respectfully submitted this 12th day of September, 2005.



Liz Thacker
Vice President
LexTel, LLC



Date

VERIFICATION OF APPLICANT

STATE OF KENTUCKY §

COUNTY OF §

I, Liz Thacker, being first duly sworn, state that I am Vice President of LexTel, LLC, the Applicant herein; that I have reviewed the matters set forth in the Application and Exhibits and the statements contained therein are true to the best of my knowledge, except as to those matters which are stated on information or belief, and as to those matters I believe them to be true.

Liz Thacker
Liz Thacker
Vice President
LexTel, LLC

September 12, 2005
Date

Subscribed and sworn before me this 12th day of September, 2005.

Nancy D. Barker
(NOTARY PUBLIC) My Commission expires on: September 15, 2007

ATTACHMENT 1

LexTel, LLC

Kentucky Certificate of Authority
&
Articles of Incorporation

COMMONWEALTH OF KENTUCKY
TREY GRAYSON
SECRETARY OF STATE

0616238.06

PBlevins
LAOO

Trey Grayson
Secretary of State
Received and Filed
06/27/2005 1:09:08 PM
Fee Receipt: \$40.00



ARTICLES OF ORGANIZATION
Limited Liability Company

For the purposes of forming a limited liability company in Kentucky pursuant to KRS Chapter 275, the undersigned organizer(s) hereby submit(s) the following Articles of Organization to the Secretary of State for filing:

Article I: The name of the limited liability company is

LexTel, LLC

Article II: The street address of the limited liability company's initial registered office in Kentucky is

Suite 211, 333 West Vine Street, Lexington KY 40507

and the name of the initial registered agent at that office is Lizabeth Thacker

Article III: The mailing address of the limited liability company's initial principal office is

P.O. Box 36 Lexington KY 40588

Article IV: The limited liability company is to be managed by:

- a manager or managers.
- its member(s). (must check one)

Executed by the Organizer(s) on June 23, 2005

[Signature]
Signature of Organizer

Jonathan C. Barker
Type or Print Name of Organizer

Signature of Organizer

Type or Print Name of Organizer

I, Lizabeth Thacker, consent to serve as the registered agent on behalf of the company.

[Signature]
Signature of Registered Agent
Lizabeth Thacker Vice President
Type or Print Name & Title

ARTICLES OF ORGANIZATION

OF

LEX TEL, LLC

The undersigned organizer, desiring to form a limited liability company under the Kentucky Limited Liability Company Act, hereby states the following:

1. **NAME.** The name of the limited liability company is Lex Tel, LLC.
2. **REGISTERED AGENT.** The name and address of the registered agent are:

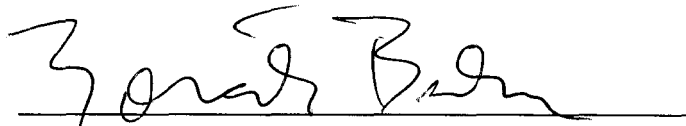
Liz Thacker
333 W. Vine Street, Suite 211
Lexington, Kentucky 40507

3. **PRINCIPAL OFFICE.** The address of the initial principal office of the limited liability company is:

333 W. Vine Street, Suite 211
Lexington, Kentucky 40507

4. **MANAGEMENT.** The limited liability company is to be managed by one or more managers.

IN WITNESS WHEREOF, the undersigned has duly executed these Articles of Organization this 8-16-05.

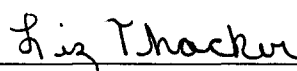


JONATHAN C. BARKER, Organizer

CONSENT OF REGISTERED AGENT

The undersigned, having been named in these Articles of Organization as the registered agent of the Company, hereby consents to serve in that capacity.

LEX TEL, LLC



LIZ THACKER, Vice President

OPERATING AGREEMENT

OF

LEX TEL, LLC

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**OPERATING AGREEMENT
OF
LEX TEL, LLC**

THIS OPERATING AGREEMENT ("Agreement") is made as of the _____ day of _____, by and between (i) JONATHAN C. BARKER ("Jonathan") and (ii) STACEY BARKER. The foregoing parties are collectively referred to herein as "Members" and individually as a "Member." For purposes of this Agreement, the term "Members" includes all persons then acting in such capacity in accordance with the terms of this Agreement.

1. FORMATION. The Members do hereby form a limited liability company ("Company") pursuant to the provisions of the Kentucky Limited Liability Company Act ("Act").

2. NAME AND OFFICE.

2.1 Name. The name of the Company shall be Lex Tel, LLC.

2.2 Principal Office. The principal office of the Company shall be at 333 W. Vine Street, Suite 211, Lexington, Kentucky 40507, or at such other place as shall be determined by the Manager (hereinafter referred to) from time to time with notice to the Members. The books of the Company shall be maintained at such principal place of business or such other place that the Manager shall deem appropriate. The Company shall designate an agent for service of process in Kentucky in accordance with the provisions of the Act. The Manager shall maintain, at the Company's principal office, those items referred to in KRS 275.185(1).

3. PURPOSE AND TERMS.

3.1 Purpose. The purpose of the Company is to engage in all lawful activities in which a limited liability company may engage under the Act.

3.2 Company's Power. In furtherance of the purposes of the Company as set forth in Section 3, the Company shall have the power to do any and all things whatsoever necessary, appropriate or advisable in connection with such purposes, or as otherwise contemplated in this Agreement. The Company shall not engage in any business other than as set forth in Section 3, nor take any action not contemplated in this Agreement.

3.3 Term. The term of the Company shall commence as of the date of the filing of Articles of Organization with the Kentucky Secretary of State's Office, and shall continue until dissolved in accordance with Section 11.

4. CAPITAL.

4.1 Initial Capital Contributions of Members. Upon the request of the Manager, Jonathan Barker shall make an initial capital contribution to the Company of \$100.00 in cash and Stacey Barker shall make an initial contribution to the Company of \$1.00 in cash.

4.2 Additional Capital Contributions. If the Manager determines that the Company requires additional capital, the Manager shall give written notice thereof to the Members and

assignees of interests in the Company who are not admitted as substitute Members (Members and such unadmitted assignees are hereinafter collectively referred to as "Interest Holders") not less than 10 days before such capital is to be contributed, setting forth the reason therefor and the amount required. Each of the Interest Holders shall have the right, but not the obligation, to make such additional capital contributions in accordance with their respective Percentage Interests (as hereinafter defined). If any Interest Holder falls to make the additional capital contribution which such Interest Holder is entitled to make, then the other Interest Holders may, but shall not be obligated to, make the additional capital contribution which such Interest Holder did not make in accordance with their respective Percentage Interests among themselves, or in such other percentages as they shall unanimously agree.

4.3 Loans from Interest Holders. If the Company has a temporary need for funds, the Company may borrow such funds from, among others, one or more of its Interest Holders on such terms and conditions as shall be agreed to by the Manager and such Interest Holders.

4.4 No Liability of Interest Holders. Except as otherwise specifically provided in the Act, no Interest Holder shall have any personal liability for the obligations of the Company. Except as provided in Section 4.1, no Interest Holder shall be obligated to contribute funds or loan money to the Company.

4.5 No Interest on Capital Contributions. No Interest Holder shall be entitled to interest on any capital contributions made to the Company.

4.6 No Withdrawal of Capital. No Interest Holder shall be entitled to withdraw any part of such Interest Holder's capital contributions to the Company, except as provided in Sections 9 and 11. No Interest Holder shall be entitled to demand or receive any property from the Company other than cash, except as otherwise expressly provided for herein.

4.7 Capital Account. There shall be established on the books of the Company a capital account ("Capital Account") for each Interest Holder. It is the intention of the Members that such Capital Account be maintained in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv) and this Agreement shall be so construed. Accordingly, such Capital Account shall initially be credited with the initial capital contribution of the Interest Holder and thereafter shall be increased by (i) any cash or the fair market value of any property contributed by such Interest Holder (net of any liabilities assumed by the Company or to which the contributed property is subject) and (ii) the amount of all net income (whether or not exempt from tax) and gain allocated to such Interest Holder hereunder, and decreased by (1) the amount of all net losses allocated to such Interest Holder hereunder (including expenditures described in section 705(a)(2)(B) of the Internal Revenue Code of 1986, as amended ("Code"), or treated as such an expenditure by reason of Treas. Reg. § 1.704-1(b)(2)(iv)(i) and (ii) the amount of cash, and the fair market value of property (net of any liabilities assumed by such Interest Holder or to which the distributed property is subject), distributed to such Interest Holder pursuant to Sections 9 and 11. If the Company has made an election under section 754 of the Code, Capital Accounts shall also be adjusted to the extent required by Treas. Reg. § 1.704-1(b)(2)(iv)(m). If an Interest Holder transfers all or any part of such Interest Holder's interest in the Company ("Company Interest") in accordance with the terms of this Agreement, the Capital Account of the transferor

shall become the Capital Account of the transferee to the extent of the Company Interest transferred.

5. ACCOUNTING.

5.1 Books and Records. The Manager shall maintain full and accurate books of the Company at the Company's principal place of business, or such other place as the Manager shall determine, showing all receipts and expenditures, assets and liabilities, net income and loss, and all other records necessary for recording the Company's business and affairs, including those sufficient to record the allocations and distributions provided for in Sections 7, 9 and 11. Except as otherwise specifically provided herein, such books and records shall be maintained, and the net income and net loss of the Company shall be determined, in the same manner as the Company computes its income and expenses for Federal income tax purposes; provided, however, that (i) the installment method shall not be used for book purposes, (ii) gain or loss from the disposition of an asset shall be determined by reference to the adjusted book value of the asset rather than its adjusted basis and (iii) depreciation, amortization or cost recovery deductions shall be based upon the adjusted book value of an asset. Upon reasonable request of a Member, such books and records shall be open to the inspection and examination by such Member in person or by the Member's duly authorized representatives during normal business hours and may be copied at the expense of the Member.

5.2 Fiscal Year. The fiscal year of the Company shall be the calendar year ("Fiscal Year").

5.3 Reports.

(a) Within 90 days after the close of each Fiscal Year of the Company, the Manager shall furnish to each person who was an Interest Holder at any time during such Fiscal Year all the information relating to the Company which shall be necessary for the preparation by each such person of their Federal and state income or other tax returns.

(b) Within 90 days after the close of each Fiscal Year of the Company, the Manager shall furnish to each Member a report of the business and operations of the Company during such Fiscal Year. Such report shall contain unaudited financial statements, including a balance sheet as of the end of such Fiscal Year, a statement of Company net income or net loss for such Fiscal Year and such other information as in the judgment of the Manager shall be reasonably necessary for the Members to be advised of the results of the Company's operations.

5.4 Tax Returns. It shall be the duty of the Manager to prepare, or cause to be prepared, and timely file, all Federal, state and local income tax returns and information returns, if any, which the Company is required to file. All expenses incurred in connection with such tax returns and information returns, as well as for the reports referred to in Section 5.3, shall be expenses of the Company.

5.5 Revaluation of Company Property. If there shall occur (i) an acquisition of a Company Interest from the Company for more than a de minimis capital contribution, or (ii) a distribution (other than a de minimis distribution) to an Interest Holder in consideration for a Company Interest, the Manager may revalue the assets of the Company at their then fair market

value and adjust the Capital Accounts of the Interest Holders in the same manner as provided in Section 9.2 in the case of a property distribution. If there is a reallocation pursuant to this Section 5.5, then net income and net loss shall thereafter be adjusted for allocations of depreciation (cost recovery) and gain or loss in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(f) and (g), and the Interest Holders' distributive shares of depreciation (cost recovery) and gain or loss computed in accordance with the principles of section 704(c) of the Code and the regulations promulgated thereunder using the method selected by the Manager.

6. BANK ACCOUNTS.

6.1 Bank Accounts. All funds of the Company shall be deposited in its name into such checking, savings and/or money market accounts or time certificates as shall be designated by the Manager. Withdrawals therefrom shall be made upon such signature or signatures as the Manager may designate. Company funds shall not be commingled with those of any other person or entity.

7. ALLOCATION OF NET INCOME AND NET LOSS.

7.1 Net Income and Net Loss.

(a) Except as otherwise provided herein, the net income and net loss of the Company for each Fiscal Year shall be allocated among the Interest Holders in accordance with their respective Percentage Interests. For purposes of this Agreement, the term "Percentage Interest" shall mean the percentage which the Capital Account of an Interest Holder bears to the aggregate Capital Accounts of all of the Interest Holders.

(b) Notwithstanding anything herein to the contrary, if an Interest Holder has a deficit balance in such Interest Holder's Capital Account (excluding from such Interest Holder's deficit Capital Account any amount which such Interest Holder is obligated to restore in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(c), as well as any amount such Interest Holder is treated as obligated to restore under Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5)) and unexpectedly receives an adjustment, allocation or distribution described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), (5) or (6), then such Interest Holder will be allocated items of income and gain in an amount and manner sufficient to eliminate the deficit balance in such Interest Holder's Capital Account as quickly as possible. If there is an allocation to an Interest Holder pursuant to this Section 7.1 (b), then future allocations of net income pursuant to Section 7.1 (a) shall be adjusted so that those Interest Holders who were allocated less income, or a greater amount of loss, by reason of the allocation made pursuant to this Section 7.1 (b), shall be allocated additional net income in an equal amount. It is the intention of the parties that the provisions of this Section 7.1(b) constitute a "*qualified income offset*" within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(d), and such provisions shall be so construed.

(c) If there is a net decrease in the Company's Minimum Gain (within the meaning of Treas. Reg. § 1.704-2(b)(2)) or Partner Nonrecourse Debt Minimum Gain (within the meaning of Treas. Reg. § 1.704-2(i)(3)) during any Fiscal Year, each Interest Holder shall be allocated, before any other allocations hereunder, items of income and gain for such Fiscal Year (and subsequent Fiscal Years, if necessary), in an amount equal to such Interest Holder's share

(determined in accordance with Treas. Reg. §§ 1.704-2(g) and 1.704-2(i)(5), as applicable) of the net decrease in the Company's Minimum Gain or Partner Nonrecourse Debt Minimum Gain, as applicable, for such Fiscal Year; provided, however, that no such allocation shall be required if any of the exceptions set forth in Treas. Reg. §§ 1.704-2(f) or 1.704-2(i)(4) apply. It is the intention of the parties that this provision constitute a "*minimum gain chargeback*" within the meaning of Treas. Reg. §§ 1.704-2(f) and 1.704-2(i)(4), and this provision shall be so construed.

(d) Notwithstanding anything herein to the contrary, the Company's partner nonrecourse deductions (within the meaning of Treas. Reg. § 1.704-2(i)(2)) shall be allocated solely to the Interest Holder who has the economic risk of loss with respect to the partner nonrecourse liability related thereto in accordance with the provisions of Treas. Reg. § 1.704-2(i)(1).

(e) Notwithstanding the provisions of Section 7.1(a), no net losses shall be allocated to an Interest Holder if such allocation would result in such Interest Holder having a deficit balance in such Interest Holder's Capital Account (excluding from such Interest Holder's deficit Capital Account any amount such Interest Holder is obligated to restore in accordance with Treas. Reg. § 1.704-1(b)(2)(ii)(c), as well as any amount such Interest Holder is treated as obligated to restore under Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5)). In such case, the net loss that would have been allocated to such Interest Holder shall be allocated to the other Interest Holders to whom such loss may be allocated without violation of the provisions of this Section 7.1(e) in proportion to their respective Percentage Interests among themselves.

(f) Notwithstanding the provisions of Section 7.1(a), to the extent losses are allocated to Interest Holders by virtue of Section 7.1(e), the net income of the Company thereafter recognized shall be allocated to such Interest Holders (in proportion to the losses previously allocated to such Interest Holders pursuant to Section 7.1(e)) until such time as the net income of the Company allocated to such Interest Holders pursuant to this Section 7.1(f) equals the net losses allocated to such Interest Holders pursuant to Section 7.1(e).

(g) For Federal state and local income tax purposes only, with respect to any assets contributed by an Interest Holder to the Company ("Contributed Assets") which have an agreed fair market value on the date of their contribution which differs from the Interest Holder's adjusted basis therefor as of the date of contribution, the allocation of depreciation and gain or loss with respect to such Contributed Assets shall be determined in accordance with the provisions of section 704(c) of the Code and the regulations promulgated thereunder using the method selected by the Manager. For purposes of this Agreement, an asset shall be deemed a Contributed Asset if it has a basis determined, in whole or in part, by reference to the basis of a Contributed Asset (including an asset previously deemed to be a Contributed Asset pursuant to this sentence). Notwithstanding the foregoing, if the gain from the sale of any Contributed Asset is being reported on the installment method for income tax purposes, then the total amount of gain which is to be recognized by each of the Interest Holders in accordance with the above provision in all taxable years shall be computed and the amount of gain to be recognized by each of the Interest Holders in each year shall be in proportion to the total gain to be recognized by each of the Interest Holders in all taxable years.

7.2 Allocation of Excess Nonrecourse Liabilities. For purposes of section 752 of the Code and the regulations thereunder, the excess nonrecourse liabilities of the Company (within the meaning of Treas. Reg. § 1.752-3(a)(3)), if any, shall be allocated to the Interest Holders as follows:

(a) First, such excess nonrecourse liabilities shall be allocated to the Interest Holders up to the amount of built-in gain allocable to such Interest Holders on section 704(c) property (as defined in Treas. Reg. § 1.704-3(a)(3)(ii)) or property for which reverse section 704(c) allocations are applicable (as described in Treas. Reg. § 1.704-3(a)(6)(i)) where such property is subject to the nonrecourse liability, to the extent such gain exceeds the gain described in Treas. Reg. § 1.752-3(a)(2).

(b) Second, the balance of such excess nonrecourse liabilities, if any, shall be allocated to the Interest Holders in accordance with their respective Percentage Interests.

7.3 Allocations in Event of Transfer, Admission of New Member, Etc. In the event of (i) the transfer of all or any part of an Interest Holder's Company Interest (in accordance with the provisions of this Agreement), (ii) the admission of a new Member or (iii) disproportionate capital contributions, at any time other than at the end of a Fiscal Year, the transferring Interest Holder's, new Member's or Interest Holders' shares of the Company's income, gain, loss, deductions, and credits allocable to such Company Interest, as computed both for accounting purposes and for Federal income tax purposes, shall be allocated between the transferor Interest Holder and the transferee(s), the new Member and the other Interest Holders or among the Interest Holders, as the case may be, in the same ratio as the number of days in such Fiscal Year before and after the date of such transfer, admission or disproportionate capital contributions; provided, however, that the Manager shall have the option to treat the periods before and after the date of such transfer, admission or disproportionate capital contributions as separate Fiscal Years and allocate the Company's net income, gain, net loss, deductions and credits for each of such deemed separate Fiscal Years in accordance with the Interest Holders' respective interests in the Company for such deemed separate Fiscal Years. Notwithstanding the foregoing, if the Company uses the cash receipts and disbursements method of accounting, the Company's "allocable cash basis items," as that term is used in section 706(d)(2)(B) of the Code, shall be allocated as required by section 706(d)(2) of the Code and the regulations promulgated thereunder.

8. DISTRIBUTIVE SHARES AND FEDERAL INCOME: TAX ELECTIONS.

8.1 Distributive Shares. For purposes of Subchapter K of the Code, the distributive shares of the Interest Holders of each item of Company taxable income, gains, losses, deductions or credits for any Fiscal Year shall be in the same proportions as their respective shares of the net income or net loss of the Company allocated to them pursuant to Section 7.1. Notwithstanding the foregoing, to the extent not inconsistent with the allocation of gain provided for in Section 7.1, gain recognized by the Company which represents recapture of depreciation or cost recovery deductions for Federal income tax purposes shall be allocated in accordance with the provisions of Treas. Reg. § 1.1245-1(e) (without regard to whether real property or personal property is involved).

8.2 Elections. The election permitted to be made by section 754 of the Code, and any other elections required or permitted to be made by the Company under the Code, shall be made in such a manner as shall be determined by the Manager.

8.3 Partnership Tax Treatment. It is the intention of the Members that the Company be treated as a partnership for Federal, state and local income tax purposes, and the Interest Holders shall not take any position or make any election, in a tax return or otherwise, inconsistent with such treatment.

9. DISTRIBUTIONS.

9.1 Cash Distributions. The Manager shall determine when the Company's cash available for distribution shall be distributed. All such distributions (other than distributions in connection with the liquidation of the Company, which shall be distributed as provided in Section 11.3) shall be made to the Interest Holders in accordance with their respective Percentage Interests as of the date the distribution is made. Notwithstanding the foregoing, the Company shall distribute, not later than 90 days after the close of each Fiscal Year, an amount which the Manager determines is necessary for the Interest Holders to pay their Federal and state income taxes on their distributive shares of the Company's income to the extent the Company has sufficient net cash flow with respect to such Fiscal Year. In determining the income taxes of the Interest Holders on their distributive shares of the Company's taxable income (including separately stated items), the Manager shall assume that all Interest Holders are individuals in the highest marginal Federal income tax bracket and residents of Kentucky.

9.2 Property Distributions. If any property of the Company other than cash is distributed by the Company to an Interest Holder (in connection with the liquidation of the Company or otherwise), the fair market value of such property shall be used for purposes of determining the amount of such distribution. The difference, if any, of such fair market value over (or under) the value at which such property is carried on the books of the Company shall be credited or charged to the Capital Accounts of the Interest Holders in accordance with the ratio in which the Interest Holders share in the gain and loss of the Company pursuant to Section 7.1. The fair market value of the property distributed shall be agreed to by the Manager and the distributee Interest Holder in good faith. If any such property distribution is made other than in exchange for a Company Interest, such distribution shall be made in the same manner as an equivalent amount of cash would be distributed. Property need not be distributed pro rata to the Interest Holders.

9.3 Withholding. The Manager may withhold taxes from any distribution to any Interest Holder to the extent required by the Code or any other applicable law, or file a return and pay tax on behalf of certain Interest Holders. For purposes of this Agreement, any taxes so withheld by the Company with respect to any amount otherwise distributable by the Company to any Interest Holder, or any tax paid on behalf of an Interest Holder, shall be deemed to have been distributed to such Interest Holder for all purposes.

10. MANAGEMENT.

10.1 Management.

(a) Control and management of the business of the Company as described in Section 3 shall be vested exclusively in the Manager during the term of the Company, including its liquidation and dissolution. Except as otherwise specifically provided herein, no Member, other than the Manager, shall have any voice in, or take any part in, the management of the business of the Company, nor any authority or power to act on behalf of the Company in any manner whatsoever.

(b) Except as otherwise provided herein, the Manager shall have the right, power and authority on behalf of the Company, and in its name, to exercise all of the rights, power and authority which may be possessed by a manager pursuant to the Act including, but not limited to, the sale of all, or substantially all, of the assets of the Company, the borrowing of funds and the pledging of the Company's assets to secure the Company's debts. The Manager may execute any document or take any action on behalf of the Company and such execution or action shall be binding upon the Company. In dealing with the Manager, no person shall be required to inquire into the authority of the Manager to bind the Company. Notwithstanding the foregoing, the decision of whether to merge the Company with another entity, and whether to file a voluntary petition in bankruptcy, shall require the consent of a majority-in interest of the Members (based upon Percentage Interests) ("Majority Members").

(c) The manager of the Company ("Manager") shall be Jonathan so long as Jonathan remains a Member and does not resign as the Manager. Upon Jonathan ceasing to be the Manager for any reason, a new Manager shall be selected by the vote of the Majority Members. After Jonathan has ceased to be the Manager, a Manager may be removed, with or without cause, upon the vote of the Majority Members. The Manager may delegate a portion of the Manager's duties to third parties in which event such third parties shall have such authority as shall have been delegated to them. If the Manager desires, the Manager may appoint officers for the Company in which event such officers shall have such authority as similar officers would have in a Kentucky corporation unless their appointment specifically provides otherwise.

10.2 Standard of Care of Manager; Indemnification.

(a) The Manager shall not be liable, responsible or accountable in damages to any Interest Holder or the Company for any act or omission on behalf of the Company performed or omitted by the Manager in good faith and in a manner reasonably believed by the Manager to be within the scope of the authority granted to the Manager by this Agreement and in the best interests of the Company, unless the Manager has been guilty of wanton or reckless misconduct with respect to such acts or omissions.

(b) To the full extent permitted by the Act, the Company shall indemnify the Manager for, and hold the Manager harmless from, any loss or damage incurred by the Manager by reason of any act or omission so performed or omitted by the Manager (and not involving wanton or reckless misconduct). To the full extent authorized or permitted by the Act, the Company shall pay or reimburse reasonable expenses (including reasonable attorneys' fees)

incurred by the Manager who is a party to a proceeding in advance of final disposition of such proceeding. The Company may purchase and maintain insurance on behalf of the Manager against any liability asserted against or incurred by the Manager as a result of being the Manager, whether or not the Company would have the power to indemnify the Manager against the same liability under the provisions of this Section 10.2(b) or the Act.

10.3 Compensation for Services. The Manager shall not be entitled to receive a fee for the Manager's services as Manager unless unanimously agreed to by the Members. If any such fee is paid to a Manager which is also an Interest Holder, it is intended that such fee be treated as an expense of the Company in arriving at net income or net loss and deductible by the Company for Federal income tax purposes pursuant to sections 707(a) or 707(c) of the Code (unless required to be capitalized).

10.4 Other Activities; Related Party Transactions.

(a) The Manager shall devote such of the Manager's time to the affairs of the Company's business as the Manager shall deem necessary. The Interest Holders, Manager and their Affiliates (as hereinafter defined) may engage in, or possess an interest in, other business ventures of any nature and description, independently or with others, whether or not such activities are competitive with those of the Company. Neither the Company, nor any Interest Holder shall have any rights by virtue of this Agreement in and to such independent ventures, or to the income or profits derived therefrom. No Interest Holder or Manager shall be obligated to present any particular business opportunity of a character which, if presented to the Company, could be taken by the Company and each Interest Holder, Manager and their Affiliates shall have the right to take for their own account, or to recommend to others, any such particular business opportunity to the exclusion of the Company and the Interest Holders. For purposes of this Agreement, the term "Affiliate" shall mean any person, corporation, partnership, limited liability company, trust or other entity (directly or indirectly) controlling, controlled by, or under common control with, another person.

(b) The fact that the Manager or the Manager's Affiliates are directly or indirectly interested in or connected with any person, firm or corporation employed by the Company to render or perform a service, or to or from whom the Company may purchase, sell or lease property, shall not prohibit the Manager from employing such person, firm or corporation or from otherwise dealing with such person, firm or corporation, and neither the Company, nor any of the Interest Holders, shall have any rights in or to any income or profits derived therefrom. All such dealings with the Manager or the Manager's Affiliates will be on terms which are competitive and comparable with amounts charged by independent third parties.

10.5 Reimbursement of Expenses of Manager. Regardless of whether any distributions are made to the Interest Holders, the Company shall reimburse the Manager, at the Manager's cost, for the direct expenses which the Manager incurs in performing services on behalf of the Company including, without limitation, costs of (i) accounting, statistical or bookkeeping services, (ii) computing or accounting equipment and (iii) travel, telephone, postage, legal, accounting and other expenses relating to the operation of the business of the Company.

10.6 Member Voting. Whenever a vote of the Members is required under this Agreement, such vote may be taken at a meeting of the Members or by a writing signifying the consent of the Members. At a meeting of the Members, the Members may vote by proxy.

11. DISSOLUTION.

11.1 Dissolution. Notwithstanding anything in the Act to the contrary, the Company shall dissolve upon, but not before, the decision of the Majority Members to dissolve the Company. Dissolution of the Company shall be effective upon the date the Majority Members decide to dissolve the Company, but the Company shall not terminate until the assets of the Company shall have been distributed as provided in Section 11.3. Notwithstanding dissolution of the Company, prior to the liquidation and termination of the Company, the business of the Company shall continue to be governed by this Agreement.

11.2 Sale of Assets Upon Dissolution. Following the dissolution of the Company, the Company shall be wound up and the Manager shall determine whether the assets of the Company are to be sold or whether some or all of such assets are to be distributed to the Interest Holders in kind in liquidation of the Company.

11.3 Distributions Upon Dissolution. Upon the dissolution of the Company, the properties of the Company to be sold shall be liquidated in orderly fashion and the proceeds thereof, and the property to be distributed in kind, shall be distributed on or before the later to occur of (i) the close of the Company's taxable year, or (ii) 90 days following the date of such dissolution, as follows:

(a) First, to the payment and discharge of all of the Company's debts and liabilities, to the necessary expenses of liquidation and to the establishment of any cash reserves which the Manager determines to create for unmatured and/or contingent liabilities or obligations of the Company.

(b) Second, to the Interest Holders, in accordance with their respective Capital Accounts; provided, however, that if the Manager establishes any reserves in accordance with the provisions of Section 11.3, then the distributions pursuant to this Section 11.3(b) (including distributions of such reserve) shall be pro rata in accordance with the balances of the Interest Holders' Capital Accounts.

11.4 No Negative Capital Account Makeup Required. No Interest Holder shall be required to contribute any property to the Company or any third party by reason of having a negative Capital Account.

11.5 Liquidation of an Interest Holder's Interest. If an Interest Holder's Company Interest is to be liquidated by agreement between the Company and such Interest Holder (the Company being under no obligation to do so), the Interest Holder shall be entitled to receive in liquidation an amount equal to the amount of such Interest Holder's Capital Account at such time. For purposes of determining the Capital Account of such Interest Holder, (i) the net income or net loss of the Company to the date of liquidation shall be allocated to such Interest Holder and (ii) if the Manager determines to revalue the assets of the Company in accordance

with Section 5.5, the Interest Holders' Capital Accounts shall be adjusted as provided in Section 5.5.

12. WITHDRAWAL, ASSIGNMENT AND ADDITION OF MEMBERS.

12.1 Assignment of an Interest Holder's Interest. The Interest Holders may not sell, assign (by operation of law or otherwise), transfer, pledge, hypothecate, encumber or otherwise dispose of their Company Interest, nor withdraw from the Company, except as provided in Section 12. Any purported transfer which is not in compliance with the provisions of Section 12 shall be null and void *ab initio* and the Interest Holder purporting to make such transfer shall for all purposes hereof remain an Interest Holder.

12.2 Voluntary Transfers.

(a) If any Interest Holder ("Selling Party") receives a bona fide written offer ("Offer") to purchase for cash and/or the purchaser's evidence of indebtedness all or any part of the Selling Party's Company Interest which the Selling Party wishes to accept, the Selling Party shall first offer to sell all of the Company Interest covered by the Offer to the other Members, and the other Members shall have the option to purchase such Company Interest at the price and upon the terms and conditions set forth in the Offer ("Voluntary Option"). Each of the other Members shall have the right to purchase the Selling Party's Company Interest offered for sale in accordance with their Percentage Interests among themselves, or in such other percentages as the other Members shall unanimously agree. If not all of the other Members exercise their Voluntary Options, those Members exercising their Voluntary Options shall be entitled to purchase the balance in accordance with their Percentage Interests among themselves, or in such other percentages as the other Members shall unanimously agree. If there is only one other Member, such Member may assign all or a portion of such Member's rights under the Voluntary Option to a third party.

(b) Notice of the Voluntary Option shall be given in writing to the other Members. Such notice shall state the Company Interest being offered and shall contain a copy of the Offer. The Voluntary Option period shall commence upon the date of the proper delivery of the notice and shall terminate, unless exercised, 30 days thereafter, unless sooner terminated by written refusal of the other Members. An election to exercise a Voluntary Option shall be made in writing and transmitted to the Selling Party. Unless the other Members exercise their Voluntary Options with respect to all of the Company Interest subject to the Offer, no exercises of the Voluntary Option shall be effective.

(c) Upon the failure or neglect of the other Members to purchase all of the Company Interest offered in accordance with Section 12.2(a), the Selling Party shall, for a period of 60 days from the date when the Voluntary Option expired, have the right to sell the Company Interest covered by the Offer to the person or entity making such Offer upon the exact terms and conditions set forth in such Offer. Notwithstanding the foregoing, the transferee of the Company Interest shall not become a substitute Member unless the requirements of Section 12.5 are met, but the transferee shall nevertheless be subject to the provisions of this Agreement. For all purposes of this Agreement, a transferee who is not admitted as a substitute Member shall only be entitled to receive the distributions to which the assignor would have been entitled with

respect to the Company Interest assigned and, in such event, the transferor, if a Member, shall not have any voting rights with respect to the Company Interest transferred. If the Selling Party falls to so sell such Company Interest within such 60-day period, or if any material term of the Offer is changed, modified or supplemented, then such Company Interest may not be sold without first again giving the other Members a Voluntary Option with respect thereto.

12.3 Involuntary Transfers.

(a) If any Interest Holder's Company Interest is sought to be transferred by any involuntary means (other than death or adjudication of incompetency or insanity) including, but not by way of limitation, attachment, garnishment, execution, levy, bankruptcy, seizure or transfer in connection with a divorce or marital property settlement, then the other Members shall have the option ("Involuntary Option") to purchase all or any portion of the Company Interest sought to be involuntarily transferred at the price and upon the terms and conditions set forth in Section 12.4. Each of the other Members shall have the right to purchase such Company Interest in accordance with their respective Percentage Interests among themselves, or in such other percentages as they shall unanimously agree. If not all of the other Members exercise their Involuntary Options, those other Members exercising their Involuntary Options shall be entitled to purchase the balance in accordance with their Percentage Interests among themselves, or in such other percentages as they shall unanimously agree. If there is only one other Member, such other Member may assign such Member's rights under the Involuntary Option to a third party if the Member so desires.

(b) The Involuntary Option period shall commence upon receipt by the other Members of actual notice of the attempted involuntary transfer and terminate, unless exercised, 60 days thereafter, unless sooner terminated by written refusal of the other Members. An election to exercise any Involuntary Option shall be made in writing and transmitted to the Interest Holder whose Company Interest is sought to be involuntarily transferred.

(c) Upon the failure or neglect of the other Members to purchase all of the Company Interest sought to be involuntarily transferred in accordance with this Section 12.3, the unpurchased Company Interest may be involuntarily transferred, but such transferee may not become a substitute Member unless the conditions of Section 12.5 have been complied with, but the transferee shall nevertheless be subject to the provisions of this Agreement.

(d) If, notwithstanding the provisions of this Section 12.3, any Company Interest is effectively transferred by involuntary means without compliance with the provisions of Section 12.3, then the Involuntary Option shall be to purchase such Company Interest from the transferee(s).

12.4 Purchase Price and Terms.

(a) The purchase price for all of an Interest Holder's Company Interest to be purchased pursuant to the exercise of the Involuntary Option shall be the Capital Account of such Interest Holder as of the close of the month following the exercise of the Involuntary Option ("Effective Date"), prorated if less than all of an Interest Holder's Company Interest is to be purchased; provided, however, that if the Interest Holder has a zero or negative Capital

Account, the purchase price for the Interest Holder's entire Company Interest shall be One Dollar. Such Capital Account shall be adjusted to reflect the profit or loss of the Company through the Effective Date and contributions by, and distributions to, the Interest Holder since the close of the Company's last Fiscal Year to the extent such adjustments have not already been reflected in the Capital Account of the Interest Holder on the books of the Company.

(b) The purchase price shall, at the option of the purchaser, be paid either (i) by cashier's or certified check on the closing date, or (ii) at least 20% by cashier's or certified check on the closing date, with the balance represented by a promissory note of the purchaser, bearing interest at the applicable Federal rate (within the meaning of section 1274(d) of the Code), payable in not more than five equal annual installments of principal together with accrued interest.

(c) The closing date shall occur on or before 30 days following the exercise of the Involuntary Option. At the closing, the selling Interest Holder shall execute such instruments of assignment as shall be requested by the purchaser conveying the Interest Holder's Company Interest purchased free and clear of all liens and encumbrances whatsoever. If the selling Interest Holder fails to execute such document, the Manager may do so pursuant to the power of attorney granted in Section 14.1.

12.5 Substitute Member. Except as otherwise provided herein, no assignee of an Interest Holder's Company Interest shall have the right to become a substitute Member unless all of the following conditions are satisfied:

(a) except in the case of death or adjudication of incompetency or insanity, the fully executed and acknowledged written instrument of assignment has been filed with the Company setting forth the intention of the assignor that the assignee become a substitute Member in place of the assignor with respect to the Company Interest assigned;

(b) the assignor and assignee execute and acknowledge such other instruments as the Manager deems necessary or desirable to effect such admission including, but not limited to, the written acceptance and adoption by the assignee of the provisions of this Agreement; and

(c) the Manager has consented to the assignment and substitution which shall be in the Manager's sole and absolute discretion.

Notwithstanding the foregoing, upon the death of Jonathan, Jonathan's successor-in-interest shall become a substitute Member.

12.6 Death, Incompetency, Etc. of Interest Holders. Upon the occurrence of any of the events set forth in KRS 275.280(1)(d) through (j), the successor-in-interest of such Interest Holder shall have all of the rights of an Interest Holder for the purposes of managing or settling such Interest Holder's estate and, if the Interest Holder was a Member, upon compliance with the provisions of Section 12.5, may become a substitute Member. In all of the above events, the successor-in-interest shall not have the right to demand payment for the Company Interest.

12.7 Admission of New Member. No new Member may be admitted to the Company without the consent of the Majority Members. For purposes of this Section 12.7, a substitute Member shall not be considered a new Member.

13. TAX MATTERS PARTNER.

13.1 Tax Matters Partner.

(a) The tax matters partner ("TMP") for the Company shall be the Manager so long as the Manager is a Member. If the Manager is not a Member, the TMP shall be the Member selected by the Majority Members to act as TMP. The TMP shall have such authority as is granted a TMP under the Code.

(b) The TMP shall employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such counsel, as well as all other expenses incurred by the TMP in serving as the TMP, shall be a Company expense and shall be paid by the Company.

(c) The Company shall indemnify and hold harmless the TMP against judgments, fines, amounts paid in settlement and expenses (including attorneys' fees) reasonably incurred by the TMP in any civil, criminal or investigative proceeding in which the TMP is involved or threatened to be involved by reason of it being the TMP, provided that the TMP acted in good faith, within what the TMP reasonably believed to be the scope of the TMP's authority and for a purpose which the TMP reasonably believed to be in the best interests of the Company or the Interest Holders. The TMP shall not be indemnified under this provision against any liability to the Company or its Interest Holders to which the TMP would otherwise be subject by reason of willful misconduct or gross negligence in the TMP's duties involved in acting as TMP.

(d) Nothing herein shall constitute an election to be subject to the partnership level audit procedures of section 6221 *et seq.* of the Code.

14. POWER OF ATTORNEY.

14.1 Power of Attorney.

(a) Each Interest Holder, as well as persons who subsequently become Interest Holders, hereby irrevocably constitutes and appoints the Manager, with full power of substitution, as such Interest Holder's true and lawful attorney-in-fact, with full power and authority, in such Interest Holder's name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file with respect to the Company, the following:

(1) Any certificate or other instrument which may be required to be filed by the Company or the Interest Holders under the laws of any state, or any other Jurisdiction in which the Company is conducting, or proposes to conduct, business.

(2) Any and all amendments or modifications of the instruments described in Section 14.1 (a).

(3) All instruments of assignment as contemplated in Section 12.4(c) if the selling Interest Holder falls to do so.

(4) All such other instruments as such attorney in fact may deem necessary or desirable in order to carry out the provisions of this Agreement in accordance with its terms.

(b) The power of attorney hereby granted to the Manager is a special power of attorney coupled with an interest, is irrevocable and shall survive the death, bankruptcy or adjudication of incompetency or insanity, of the Interest Holder granting it. The Power of Attorney hereby granted may be exercised on behalf of the Interest Holders by referencing all of the Interest Holders on whose behalf a document is being executed, and with a single signature as attorney-in-fact for all of them.

(c) Each of the Interest Holders hereby agrees to execute and deliver to the Manager within five days after receipt of the Manager's written request therefor, such other and further powers of attorney and other instruments which the Manager, in the Manager's sole discretion, deems necessary or desirable to comply with any laws, rules or regulations relating to the formation of the Company, or the conduct of business by the Company.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS OF INTEREST HOLDERS.

15.1 Representations, Warranties and Covenants of Interest Holders. Each of the Interest Holders hereby represents and warrants to, and agrees with, the Company that:

(a) The Interest Holder has the full right, power and authority to execute, deliver and perform the terms of this Agreement.

(b) This Agreement has been duly executed and delivered on behalf of the Interest Holder and constitutes the valid and binding obligation of the Interest Holder in accordance with its terms.

(c) The Interest Holder is not subject to any restriction or agreement which prohibits or would be violated by the execution hereof or the consummation of the transactions contemplated herein or pursuant to which the consent of any third person, firm or corporation is required in order to give effect to the transactions contemplated herein.

(d) The Interest Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company, or has obtained the advice of an advisor who is so qualified.

(e) The Interest Holder has been advised that the Company Interests have not been registered under the Securities Act of 1933, as amended ("Securities Act"), or under the laws of any other Jurisdiction, nor does the Company contemplate registering the Company Interests. Accordingly, the Company Interests must be held by the Interest Holder indefinitely

unless such Company Interests are subsequently registered under the Securities Act or an exemption from such registration is available.

(f) The Company Interests are being acquired for the Interest Holder's own account, solely for investment purposes and not with a view toward resale, distribution or other disposition and will not be sold, transferred or disposed of except pursuant to an effective registration statement under the Securities Act or an exemption therefrom, as determined by, or with the approval of, counsel satisfactory to the Company.

(g) The Interest Holder recognizes that an investment in the Company involves great risks, including a possible total loss of the Interest Holder's investment, and the Interest Holder has taken full cognizance of, and understands all of, the risk factors related to such investment.

(h) The Interest Holder or, if applicable, the Interest Holder's advisor, has had full access to all information necessary to make a determination of whether to invest in the Company and has had an opportunity to ask questions of the Manager concerning an investment in the Company.

16. GENERAL.

16.1 Notices.

(a) All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and be personally delivered against a written receipt, delivered to a reputable messenger service (such as Federal Express, DHL Courier, United Parcel Service, etc.) for overnight delivery, transmitted by confirmed telephonic facsimile (fax) or transmitted by mail, registered, express or certified, return receipt requested, postage prepaid, addressed as follows:

(1) If given to the Company, to the Company at its principal office;

(2) If given to an Interest Holder, to the Interest Holder at the address set forth in the records of the Company.

(b) All notices, demands and requests shall be effective upon being properly personally delivered, upon being delivered to a reputable messenger service, upon transmission of a confirmed fax, or upon being deposited in the United States mail in the manner provided in Section 16.1. However, the time period in which a response to any such notice, demand or request must be given shall commence to run from the date of personal delivery, the date of delivery by a reputable messenger service, the date on the confirmation of a fax, or the date on the return receipt, as applicable; provided, however, that if any party rejects delivery, then the time for a response shall commence to run two days following the mailing of the notice.

16.2 Amendment.

(a) Except as provided in Section 16.2(b), this Agreement may be modified or amended from time to time only upon the written consent of the Majority Members; provided,

however, that no such, amendment may be made which reduces the economic interest of a Member without the consent of such Member.

(b) In addition to any amendments authorized by Section 16.2, this Agreement may be amended from time to time by the Manager without the consent of any of the Members to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with any other provision hereof, or to make any other provisions with respect to matters or questions arising under this Agreement which will not be inconsistent with the provisions of this Agreement.

16.3 Captions; Section References. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this Agreement, or the intent of any provision hereof. All references herein to Sections shall refer to Sections of this Agreement unless the context clearly requires otherwise.

16.4 Confidentiality.

(a) Each Interest Holder agrees not to divulge, communicate, use to the detriment of the Company or for the benefit of any other person, or misuse in any way, any confidential information or trade secrets of the Company, including personnel information, secret processes, know-how, customer lists, formulas or other technical data, except as may be required by law; provided, however, that this prohibition shall not apply to (i) any information which, through no improper action of such Interest Holder, is publicly available or generally known in the industry or (ii) any information which is disclosed upon the consent of the Manager. Each Interest Holder acknowledges and agrees that any information or data such Interest Holder has acquired on any of these matters or items were received in confidence and as a fiduciary of the Company.

(b) Each Interest Holder agrees that the Company would be irreparably damaged by reason of any violation of the provisions of Section 16.4(a), and that any remedy at law for a breach of such provisions would be inadequate. Therefore, the Company shall be entitled to seek and obtain injunctive or other equitable relief (including, but not limited to, a temporary restraining order, a temporary injunction or a permanent injunction) against any Interest Holder, for a breach or threatened breach of such provisions and without the necessity of proving actual monetary loss. It is expressly understood among the parties that this injunctive or other equitable relief shall not be the Company's exclusive remedy for any breach of this Section 16.4 and the Company shall be entitled to seek any other relief or remedy that the Company may have by contract, statute, law or otherwise for any breach hereof, and it is agreed that the Company shall also be entitled to recover its attorneys' fees and expenses in any successful action or suit against any Interest Holder relating to any such breach.

16.5 Number and Gender. Unless the context otherwise requires, when used herein, the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

16.6 Severability. If any provision of this Agreement, or the application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to other persons, entities or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16.7 Arbitration. If any dispute shall arise between the Interest Holders as to their rights or liabilities under this Agreement, the dispute shall be exclusively determined, and the dispute shall be settled, by arbitration in accordance with the commercial rules of the American Arbitration Association. The arbitration shall be held in Lexington, Kentucky before a panel of three arbitrators, all of whom shall be chosen from a panel of arbitrators selected by the American Arbitration Association. Each of the parties to the dispute shall select one arbitrator, and the two arbitrators so selected shall select a third arbitrator (or, if they are unable to agree to a third arbitrator, the arbitrator shall be selected by the American Arbitration Association). The decision of the arbitrators shall be final and binding upon the Interest Holders and the Company and judgment thereon may be entered in any court of competent Jurisdiction. The costs of the arbitrators and of the arbitration shall be borne one half by each of the parties. The costs of each party's counsel, accountants, etc., as well as any costs solely for their benefit, shall be borne separately by each party. Each of the Interest Holders hereby acknowledges that this provision constitutes a waiver of their right to commence a lawsuit in any jurisdiction with respect to the matters which are required to be settled by arbitration as provided in this Section 16.7.

16.8 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

16.9 Binding Agreement. Except as otherwise provided herein, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective executors, administrators, heirs, successors and assigns.

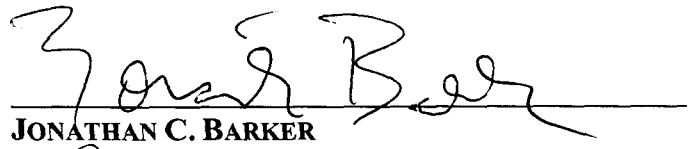
16.10 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without regard to its conflict of laws rules.

16.11 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof

16.12 Counterparts. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement, binding upon the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.

16.13 No Right of Partition. The Interest Holders hereby agree that the Company's properties are not, and will not be, suitable for partition. Accordingly, each of the Interest Holders hereby irrevocably waives any and all rights which such Interest Holder may have to maintain an action for partition of any of the Company's properties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.


JONATHAN C. BARKER


STACEY BARKER

LEX:685800_1

ATTACHMENT 2

LexTel, LLC

Notarized Statement

AFFIDAVIT

STATE OF KENTUCKY §

COUNTY OF §

I, Liz Thacker, Vice President for LexTel, LLC, do hereby certify that the Company has not provided or collected for intrastate telecommunications service in Kentucky prior to filing of this application and tariff.

Liz Thacker

Liz Thacker
Vice President
LexTel, LLC

September 12, 2005

Date

Subscribed and sworn before me this *12th* day of September, 2005

Stacy S. Barker

(NOTARY PUBLIC)

My Commission expires on: *Sept 15th 2005*