

FILE

69

The Public Utilities Commission of Ohio
TELECOMMUNICATIONS FILING FORM

(Effective: 10-11-2017)

This form is intended to be used with most types of required filings. It provides check boxes with rule references for the most common types of filings. It does not replace or supersede Commission rules in any way.

In the Matter of the Application of PeakNet, LLC

) TRF Docket No. 90 -

to Provide Competitive Facilities-Based and Resold
 Local Services throughout the State of Ohio

) Case No. **19-0818-TP-ACE**

) NOTE: Unless you have reserved a Case #, leave the
 "Case No" fields BLANK.

Name of Registrant(s) PeakNet, LLC
 DBA(s) of Registrant(s) PeakNet, LLC
 Address of Registrant(s) 591 Lytton Avenue, Palo Alto, CA 94301
 Company Web Address www.peaknet.com
 Regulatory Contact Person(s) Allan Bakalar Phone 727 471 5681 Fax 727 471 5688
 Regulatory Contact Person's Email Address _____
 Contact Person for Annual Report Allan Bakalar Phone 727 471 5681
 Address (if different from above) 9501 International Court North, St. Petersburg, FL 33716
 Consumer Contact Information Allan Bakalar Phone 727 471 5681
 Address (if different from above) _____

Motion for protective order included with filing? ☒ Yes ☐ No

Motion for waiver(s) filed affecting this case? ☐ Yes ☒ No [Note: Waivers may toll any automatic timeframe.]

Notes:

Section I and II are Pursuant to Ohio Administrative Code 4901:1-6.

Section III – Carrier to Carrier is Pursuant to Ohio Adm.Code 4901:1-7, and Wireless is Pursuant to Ohio Adm.Code 4901:1-6-24.

Section IV – Attestation.

(1) Indicate the Carrier Type and the reason for submitting this form by checking the boxes below.

(2) For requirements for various applications, see the identified section of Ohio Adm.Code Chapter 4901 and/or the supplemental application form noted.

(3) Information regarding the number of copies required by the PUCO may be obtained from the PUCO's website at www.PUCO.ohio.gov under the docketing information system section, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the PUCO.

(4) An Incumbent Local Exchange Carrier (ILEC) offering basic local exchange service (BLES) outside its traditional service area should choose CLEC designation when proposing to offer BLES outside its traditional service area or when proposing to make changes to that service.

All filings that result in a change to one or more tariff pages require, at a minimum, the following exhibits:

Exhibit	Description:
A	The tariff pages subject to the proposed change(s) as they exist before the change(s).
B	The tariff pages subject to the proposed change(s), reflecting the change, with the change(s) marked in the right margin.
C	A short description of the nature of the change(s), the intent of the change(s), and the customers affected.
D	A copy of the notice provided to customers, along with an affidavit that the notice was provided according to the applicable rule(s).

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician [Signature] - Date Processed 04/04/2019

PUCO

2019 APR -4 PM 12:53

RECEIVED-DOCKETING DIV

Section I – Part I - Common Filings

Carrier Type <input checked="" type="checkbox"/> Other (explain below)	For Profit ILEC	Not For Profit ILEC	CLEC
Change terms & conditions of existing BLES	<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)
Introduce non-recurring charge, surcharge, or fee to BLES			<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)
Introduce or Increase Late Payment	<input type="checkbox"/> ATA <u>1-6-14(I)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(I)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(I)</u> (Auto 30 days)
Revisions to BLES Cap	<input type="checkbox"/> ZTA <u>1-6-14(F)</u> (0 day Notice)		
Introduce BLES or expand local service area (calling area)	<input type="checkbox"/> ZTA <u>1-6-14(H)</u> (0 day Notice)	<input type="checkbox"/> ZTA <u>1-6-14(H)</u> (0 day Notice)	<input type="checkbox"/> ZTA <u>1-6-14(H)</u> (0 day Notice)
Notice of no obligation to construct facilities and provide BLES	<input type="checkbox"/> ZTA <u>1-6-27(C)</u> (0 day Notice)	<input type="checkbox"/> ZTA <u>1-6-27(C)</u> (0 day Notice)	
Change BLES Rates	<input type="checkbox"/> TRF <u>1-6-14(F)</u> (0 day Notice)	<input type="checkbox"/> TRF <u>1-6-14(F)(4)</u> (0 day Notice)	<input type="checkbox"/> TRF <u>1-6-14(G)</u> (0 day Notice)
To obtain BLES pricing flexibility	<input type="checkbox"/> BLS <u>1-6-14(C)(1)(c)</u> (Auto 30 days)		
Change in boundary	<input type="checkbox"/> ACB <u>1-6-32</u> (Auto 14 days)	<input type="checkbox"/> ACB <u>1-6-32</u> (Auto 14 days)	
Expand service operation area			<input type="checkbox"/> TRF <u>1-6-08(G)</u> (0 day)
BLES withdrawal			<input type="checkbox"/> ZTA <u>1-6-25(B)</u> (0 day Notice)
Other* (explain)	Offering of Telecommunications Service as defined in 47 U.S.C. 153(46)		

Section I – Part II – Customer Notification Offerings Pursuant to Chapter 4901:1-6-7 OAC

Type of Notice	Direct Mail	Bill Insert	Bill Notation	Electronic Mail
<input type="checkbox"/> 15-day Notice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> 30-day Notice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Date Notice Sent:				

Section I – Part III –IOS Offerings Pursuant to Chapter 4901:1-6-22 OAC

IOS	Introduce New	Tariff Change	Price Change	Withdraw
<input type="checkbox"/> IOS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section II – Part I – Carrier Certification - Pursuant to Chapter 4901:1-6-08, 09 & 10 OAC

Certification	ILEC (Out of territory)	CLEC	Telecommunications Service Provider Not Offering Local	CESTC	CETC
* See Supplemental form	<input type="checkbox"/> ACE <u>1-6-08</u> * (Auto 30-day)	<input type="checkbox"/> ACE <u>1-6-08</u> * (Auto 30 day)	<input checked="" type="checkbox"/> ACE <u>1-6-08</u> * (Auto 30 day)	<input type="checkbox"/> ACE <u>1-6-10</u> (Auto 30 day)	<input type="checkbox"/> UNC <u>1-6-09</u> * (Non-Auto)

*Supplemental Certification forms can be found on the PUCO webpage.

Section II – Part II – Certificate Status & Procedural

Certificate Status	ILEC	CLEC	Telecommunications Service Provider Not Offering Local
Abandon all Services		<input type="checkbox"/> ABN <u>1-6-26</u> (Auto 30 days)	<input type="checkbox"/> ABN <u>1-6-26</u> (Auto 30 days)
Change of Official Name *	<input type="checkbox"/> ACN <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> ACN <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Change in Ownership *	<input type="checkbox"/> ACO <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> ACO <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Merger *	<input type="checkbox"/> AMT <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> AMT <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Transfer a Certificate *	<input type="checkbox"/> ATC <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> ATC <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Transaction for transfer or lease of property, plant or business *	<input type="checkbox"/> ATR <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> ATR <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)

*Other exhibits may be required under the applicable rule(s). ACN, ACO, AMT, ATC, ATR and CIO applications see the 4901:1-6-29 Filing Requirements on the PUCO's webpage for a complete list of exhibits.

Section III – Carrier to Carrier (Pursuant to 4901:1-7), and Wireless (Pursuant to 4901:1-6-24)

Carrier to Carrier	ILEC	CLEC
Interconnection agreement, or amendment to an approved agreement	<input type="checkbox"/> NAG <u>1-7-07</u> (Auto 90 day)	<input type="checkbox"/> NAG <u>1-7-07</u> (Auto 90 day)
Request for Arbitration	<input type="checkbox"/> ARB <u>1-7-09</u> (Non-Auto)	<input type="checkbox"/> ARB <u>1-7-09</u> (Non-Auto)
Introduce or change c-t-c service tariffs	<input type="checkbox"/> ATA <u>1-7-14</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-7-14</u> (Auto 30 days)
Request rural carrier exemption, rural carrier suspension or modification	<input type="checkbox"/> UNC <u>1-7-04</u> or <u>05</u> (Non-Auto)	
Changes in rates, terms & conditions to Pole Attachment, Conduit Occupancy and Rights- of-Way. (13-579-AU-ORD 11/30/16 Entry)	<input type="checkbox"/> ATA <u>1-3-04</u> (Auto 60 days)	
Wireless Providers See <u>4901:1-6-24</u>	<input type="checkbox"/> RCC [Registration & Change in Operations] (0 day)	<input type="checkbox"/> NAG [Interconnection Agreement or Amendment] (Auto 90 days)

Section IV. – Attestation

Registrant hereby attests to its compliance with pertinent entries and orders issued by the Commission.

AFFIDAVIT

Compliance with Commission Rules

I am an officer/agent of the applicant corporation, PeakNet, LLC, and am authorized to make this statement on its behalf.
Richard Saffir
(Name)

Please check ALL that apply:

☒ I attest that these tariffs comply with all applicable rules for the State of Ohio. I understand that tariff notification filings do not imply Commission approval and that the Commission's rules, as modified and clarified from time to time, supersede any contradictory provisions in our tariff. We will fully comply with the rules of the State of Ohio and understand that noncompliance can result in various penalties, including the suspension of our certificate to operate within the State of Ohio.

☐ I attest that customer notices accompanying this filing form were sent to affected customers, as specified in Section II, in accordance with Ohio Adm.Code 4901:1-6-7.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on
(Date)

FEB 26, 2019 at (Location) SAN FRANCISCO, CA

*Signature and
Title

[Signature] Vice President - Legal/Tax/HR Date 2/26/19

**This affidavit is required for every tariff-affecting filing. It may be signed by counsel or an officer of the applicant, or an authorized agent of the applicant.*

VERIFICATION

I, , verify that I have utilized the Telecommunications Filing Form for most proceedings provided by the Commission and that all of the information submitted here, and all additional information submitted in connection with this case, is true and correct to the best of my knowledge.

*Signature and
Title

[Signature] Vice President - Legal/Tax/HR Date 2/26/19

**Verification is required for every filing. It may be signed by counsel or an officer of the applicant, or an authorized agent of the applicant.*

File document electronically as directed in case number 06-900-AU-WVR

or

Send your completed Application Form, including all required attachments as well as the required number of copies, to:

Public Utilities Commission of Ohio
Attention: Docketing Division
180 East Broad Street, Columbus, OH 43215-3793

The Public Utilities Commission of Ohio
TELECOMMUNICATIONS SUPPLEMENTAL APPLICATION FORM
for CARRIER CERTIFICATION

(Effective: 01/20/2011)

(Pursuant to Case No. 10-1010-TP-ORD)

NOTE: This SUPPLEMENTAL form must be used WITH the
TELECOMMUNICATIONS FILING FORM for ROUTINE PROCEEDINGS.

In the Matter of the Application of PeakNet, LLC
to Provide Competitive Facilities-Based and Resold Telecommunications Services in Ohio

Case No. _____ - _____ -TP - _____

Name of Registrant(s) PeakNet, LLC
DBA(s) of Registrant(s) PeakNet, LLC
Address of Registrant(s) 591 Lytton Avenue, Palo Alto, CA 94301

Motion for protective order included with filing? ☒ Yes ☐ No

Motion for waiver(s) filed affecting this case? ☐ Yes ☒ No [Note: waiver(s) tolls any automatic timeframe]

List of Required Exhibits

Tariffs: (Include all that apply)

☐ Interexchange Tariff

☐ Local Tariff

☐ CESTC Tariff

☐ Carrier-to-Carrier (Access) Tariff

Description of Services

NOTE: All Facilities-Based carriers must file an Access Tariff

☐ Service provisioned via Resale

☐ Service provisioned via Facilities

☒ Both Resold and Facilities-based

☒ Description of Proposed Services

☒ Statement about the provision of
CTS services

☒ Description of the general
geographic area served

☒ Explanation of how the proposed
services in the proposed market
area are in the public interest.

☒ Description of the class of customers (e.g., residence, business) that the
applicant intends to serve

Business Requirements

Evidence of Registration with:

☒ Ohio Department of Taxation

☒ Ohio Secretary of State¹ &
Certificate of Good Standing

Documentation attesting to the applicant's financial viability, including the following:

- ☒ An executive Summary describing the applicant's current financial condition, liquidity, and capital resources. Describe internally generated sources of cash and external funds available to support the applicant's operations that are the subject of this certification application.
- ☒ Copy of financial statements (actual and pro forma income statement and a balance sheet). Indicate if financial statements are based on a certain geographical area(s) or information in other jurisdictions
- ☒ Documentation to support the applicant's cash and funding sources.

Documentation attesting to the applicant's managerial ability and corporate structure, including the following:

- ☒ Documentation attesting to the applicant's technical and managerial expertise relative to the proposed service offering(s) and proposed service area
- ☒ List of names, addresses, and phone numbers of officers and directors, or partners.
- ☒ Documentation indicating the applicant's corporate structure and ownership
- ☒ Information regarding any similar operations in other states.

If this company has been previously certified in the State of Ohio, include that certification number _____

- ☒ Verification that the applicant will follow federal communications commission (FCC) accounting requirements, if applicable.

¹ Certification from Ohio Secretary of State (domestic or foreign corporation, authorized use of fictitious name, etc.), and Certificate of Good Standing is required.

Documentation attesting to the applicant's proposed interactions with other Carriers

- ☒ Explanation as to whether rates are derived through (check all applicable):
☐ interconnection agreement ☐ retail tariffs ☒ resale tariffs
- ☒ Explanation as to which service areas company currently has an approved interconnection or resale agreement.
- ☒ A notarized affidavit accompanied by bona fide letters requesting negotiation pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and a proposed timeline for construction, interconnection, and offering of services to end users.

Documentation attesting to the applicant's proposed interactions with Customers

- ☒ A sample copy of the customer bill and disconnection notice the applicant plans to utilize.
- ☐ Provide a copy of any customer application form required in order to establish residential service, if applicable.
- ☒ For CLECs, List of Ohio ILEC Exchanges the applicant intends to serve
(Use spreadsheet from: http://www.puc.state.oh.us/puco/forms/form.cfm?doc_id=357)
- ☒ If Mirroring the entire ILEC local service areas, tariffs may incorporate by reference. If not mirroring the entire ILEC local exchange areas, the CLEC shall specifically define its local service areas in the tariff.

Affidavit

I am an authorized representative of the applicant corporation Richard A. Saffir, Secretary and VP-Legal/HR

(Name)

and I am authorized to make this statement on its behalf. I attest that I have utilized the Telecommunications Supplemental Application Form for Carrier Certification provided by the Commission, and that all of the information submitted here, and all additional information submitted in connection with this case, is true and correct.

Executed on

February 26, 2019

at

SAN FRANCISCO, CALIFORNIA

R

(Signature and Title)

VP Legal/HR - Legat/HR/HO - 2/26/19 -

(Date)

LIST OF EXHIBITS

Exhibit A	Tariff
Exhibit B	Description of Proposed Services
Exhibit C	Statement about the provision of CTS services
Exhibit D	Description of the proposed Market Area
Exhibit E	Explanation of how the proposed services in the proposed market area are in the public interest
Exhibit F	Description of the class of customers (e.g., residence, business) that the applicant intends to serve
Exhibit G	Statement affirming that the registrant has notified the Ohio Department of Taxation of its intent to conduct operations as a telephone utility in the State of Ohio
Exhibit H	Certification from Ohio Secretary of State and Certificate of Good Standing
Exhibit I	Summary describing Peak Tower, LLC's current financial condition, liquidity and capital resources. Describe internally generated sources of cash and external funds available to support the applicant's operations that are the subject of this certification application
Exhibit J	Copy of financial statements (actual and pro forma income statement and a balance sheet). Indicate if financial statements are based on a certain geographical area(s) or information in other jurisdictions
Exhibit K	Documentation to support the applicant's cash and funding sources

LIST OF EXHIBITS

Exhibit L	Documentation attesting to the applicant's technical and managerial expertise relative to the proposed service offering(s) and proposed service area
Exhibit M	List of names, addresses, and phone numbers of members or partners
Exhibit N	Documentation indicating the applicant's corporate structure and ownership
Exhibit O	Information regarding any similar operations in other states
Exhibit P	Verification that the applicant will maintain local telephony records separate and apart from any other accounting records in accordance with the GAAP
Exhibit Q	Explanation as to which service areas the applicant currently has an approved interconnection or resale agreement
Exhibit R	A notarized affidavit accompanied by bona fide letters requesting negotiation pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and a proposed timeline for construction, interconnection and offering of service to end users
Exhibit S	A sample copy of the customer bill and disconnection notice the applicant plans to utilize
Exhibit T	For CLECs, List of Ohio LEC Exchanges the applicant intend to serve

Exhibit A – Tariff

Detariffed services are regulated but not required to be filed in a tariff.

Exhibit B – Description of Proposed Services

Applicant intends to provide interexchange telecommunications and data transport services to carrier customers. Applicant intends to initially serve business and carrier customers, and provide voice, data, and access services throughout the State of Ohio. Specifically, Applicant expects to offer wholesale transport and backhaul services to wireless carriers and other service providers, as further detailed in Confidential Exhibit B filed under seal contemporaneously with this Application. All services will be available twenty-four hours a day and seven days a week. Applicant will begin offering service if this Application is granted.

Exhibit C - Statement about the provision of CTS services

Applicant will not include competitive telecommunications services within its filing herein.

Exhibit D – Description of the proposed Market Area

Applicant proposes to provide interexchange telecommunications and data transport services statewide.

Exhibit E - Explanation of how the proposed services in the proposed market area are in the public interest

Granting this application will promote the public interest by increasing competition in the provision of telecommunications services in Ohio. Peak Tower, LLC will provide carrier customers high quality, cost effective telecommunications service. Peak will promote the efficiency in the delivery of services and in the development of new services. These very real benefits work to maximize the public interest by providing continuing incentives for carriers to reduce costs, while simultaneously promoting the availability of potentially desirable services.

Exhibit F - Description of the class of customers (e.g., residence, business) that the applicant intends to serve

Applicant intends to serve carrier customers only.

Exhibit G - Statement affirming that the registrant has notified the Ohio Department of Taxation of its intent to conduct operations as a telephone utility in the State of Ohio

See Attached. Please note that PeakNet's former name was Peak Tower, LLC.

Arent Fox

1000 California Street, Suite 1900
Los Angeles, CA 90017-4001 New York, NY 10036-6600 San Francisco, CA 94104-4000 Washington, DC 20006-6600

July 10, 2018

Via Certified U.S. Mail

Ohio Department of Taxation
c/o Public Utility Section
21st Floor
30 East Broad Street
Columbus, OH 43215-3793
1-800-282-1780

Adam D. Bowser

Partner

202.857.6126 DIRECT

202.857.6395 FAX

adam.bowser@arentfox.com

Re: Peak Tower, LLC

To whom it may concern:

This firm represents Peak Tower, LLC ("Peak"). Please be advised that Peak intends to provide telecommunications service in the State of Ohio after receiving approval of its application to be filed with the Public Utilities Commission of Ohio.

Sincerely,



Adam D. Bowser

1000 California Street, Suite 1900
Los Angeles, CA 90017-4001
Tel: 202.857.6126 Fax: 202.857.6395

1070 Broadway
New York, NY 10019-6600
Tel: 202.857.6126 Fax: 202.857.6395

5 Second Street, 21st Floor
San Francisco, CA 94104-4000
Tel: 415.774.2000 Fax: 415.774.2000

1211 K Street, NW
Washington, DC 20006-6600
Tel: 202.857.6126 Fax: 202.857.6395

Exhibit H - Certification from Ohio Secretary of State and Certificate of Good Standing

See Attached.



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
12/07/2018	201834100584	FOREIGN LLC - REGISTRATION CORRECTION (LFC)	50.00	100.00	0.00	0.00

Receipt

This is not a bill. Please do not remit payment.

CORPORATION SERVICE COMPANY
DEANNE E. SCHAUSEIL
50 W. BROAD STREET, SUITE 1330
COLUMBUS, OH 43215

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, Jon Husted
4139986

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

PEAKNET, LLC

and, that said business records show the filing and recording of:

Document(s)

FOREIGN LLC - REGISTRATION CORRECTION

Effective Date: 12/06/2018

Document No(s):

201834100584



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio this
7th day of December, A.D. 2018.

Ohio Secretary of State



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
02/27/2018	201805703860	REGISTRATION OF FOREIGN NONPROFIT LLC (LFN)	99.00	0.00	0.00	0.00

Receipt

This is not a bill. Please do not remit payment.

CORPORATION SERVICE COMPANY
MONIQUE WEAVER
50 W. BROAD STREET
COLUMBUS, OH 43215

STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jon Husted**4139986**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

PEAK TOWER, LLC

and, that said business records show the filing and recording of:

Document(s)

REGISTRATION OF FOREIGN NONPROFIT LLC

Effective Date: 02/13/2018

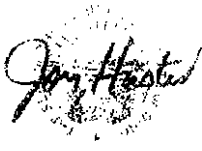
Document No(s):

201805703860

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio this
27th day of February, A.D. 2018.

Ohio Secretary of State



Form 533B Prescribed by:

JON HUSTED
 OHIO SECRETARY OF STATE

Toll Free: (877) 508-FILE (877-767-3433)

Central Ohio: (614) 466-3810

www.OhioSecretaryofState.gov

business@OhioSecretaryofState.gov

File online or for more information: www.OhioBusinessCentral.com

Mail this form to one of the following:

Regular Filing (non expedite)
P.O. Box 470
Columbus, OH 43216Expedite Filing (five business day processing time)
Requires an additional \$100.00
P.O. Box 1200
Columbus, OH 43216

Registration of a Foreign Limited Liability Company

Filing Fee: \$99
Form Must Be Typed

CHECK ONLY ONE (1) BOX

 (1) ☐ Registration of a Foreign For-Profit Limited
 Liability Company
 (106-LFA)
 ORC 1705

Jurisdiction of Formation

Date of Formation

 (2) ☒ Registration of a Foreign Nonprofit
 Limited Liability Company
 (106-LFA)
 ORC 1705

Jurisdiction of Formation

Date of Formation

Delaware

02/26/2010

Name of Limited Liability Company in its jurisdiction of formation

Peak Tower, LLC

Name under which the foreign limited liability company desires to transact business in Ohio (if different from its name in its jurisdiction of formation) is:

Peak Tower, LLC

Name must include one of the following words or abbreviations: "limited liability company," "limited," "LLC," "L.L.C.," "Ltd.," or "Ltd."

The address to which interested persons may direct requests for copies of the limited liability company's operating agreement, bylaws, or other charter documents of the company is:

Richard A. Saffir, Secretary

Name

591 Lytton Avenue

Mailing Address

Palo Alto

City

CA

State

94301

ZIP Code

The limited liability company hereby appoints the following as its agent upon whom process against the limited liability company may be served in the state of Ohio. The name and complete address of the agent is

Corporation Service Company

Name

50 West Broad Street, Suite 1330

Mailing Address

Columbus

City

Ohio

State

43215

ZIP Code

The limited liability company irrevocably consents to service of process on the agent listed above as long as the authority of the agent continues, and to service of process upon the Ohio Secretary of State if:

- a. an agent is not appointed, or
- b. an agent is appointed but the authority of that agent has been revoked, or
- c. the agent cannot be found or served after the exercise of reasonable diligence

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required

Must be signed by an authorized representative

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

Signature

By (if applicable)

Richard A. Saffir, Secretary

Print Name

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "PEAK TOWER, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWELFTH DAY OF FEBRUARY, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "PEAK TOWER, LLC" WAS FORMED ON THE TWENTY-SIXTH DAY OF FEBRUARY, A.D. 2010.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

4793503 8300

SR# 20180919349

You may verify this certificate online at corp.delaware.gov/authver.shtml



A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 202134549

Date: 02-12-18

Exhibit I - Summary describing Peak Tower, LLC's current financial condition, liquidity and capital resources. Describe internally generated sources of cash and external funds available to support the applicant's operations that are the subject of this certification application

See Confidential Exhibit A, filed concurrently with PeakNet's Motion for Protective Order. As demonstrated in these financial documents, PeakNet, f/k/a Peak Tower, LLC, is generating sufficient income to cover its expenses and costs of operations. PeakNet has sufficient capital on hand to commence operations in the State of Ohio and the company has access to additional capital financing as may be needed to sustain future growth and expansion. PeakNet's business plan calls for the Company to provide its transport services based upon direct customer demand. Under this plan, revenue from customers will be readily identified prior to any extensive outlay of capital.

Exhibit J - Copy of financial statements (actual and pro forma income statement and a balance sheet). Indicate if financial statements are based on a certain geographical area(s) or information in other jurisdictions

See Confidential Exhibit A, filed concurrently with PeakNet's Motion for Protective Order.

Exhibit K – Documentation to support the applicant’s cash and funding sources

See Confidential Exhibit A, filed concurrently with PeakNet’s Motion for Protective Order.

**Exhibit L - Documentation attesting to the applicant's technical and managerial expertise
relative to the proposed service offering(s) and proposed service area**

Biographies of applicant's corporate officers are attached.

Mike Hakimi – Sales & Finance

Mike is primarily responsible for sales and finance on behalf of Peak Tower, LLC and currently serves on its board of managers. Prior to his involvement with Peak Tower, Mike has served in senior executive roles at several successful telecommunications companies. Most recently, he has focused on wireless infrastructure businesses in the Southeastern U.S. including Progress Telecom (metro fiber), PT Holding Company (wireless attachments) and Tower Cloud (fiber backhaul). On behalf of these companies, Mike has also managed strategic transactions including M&A, private equity investments and strategic asset sales.

Joseph Stockwell – Operations

Joe is responsible for overseeing the operation of Peak Tower, LLC's infrastructure and the provision of the related services to Peak Tower's customers. Before his involvement with Peak Tower, Joe served as CEO of the reorganized Exodus Communications after the closing of the sale of the majority of Exodus' assets to Cable & Wireless. Joe lead the execution of that transaction and as CEO managed more than \$500M in assets, guiding his team in identifying strategic buyers for various parts of the company's hosting operations in the U.S. and abroad. Prior to his appointment as CEO, Joe served as Exodus' Senior Vice President for Corporate Development. At Exodus, Joe completed 9 acquisitions with a total value exceeding \$7B. Before joining Exodus, Joe was vice president of business development at Secure Computing and senior director of corporate development at Apple Computer Inc. In addition, Joe has served as a Board member and President of EPIK Communications (lit fiber services), as Board member and Vice Chairman of Progress Telecom (lit fiber services, sold to Level 3 in 2006), and is a co-founder of Tower Cloud, a broadband tower backhaul services provider. Joe received a B.S degree in Marketing from Cleveland State University and a J.D. from Boston College.

Richard A. Saffir - Legal

Prior to Rich's involvement with Peak Tower, LLC, Rich served as lead in-house counsel with respect to the sale of Progress Telecom's fiber optic transport network to Level 3 Communications, and as the founding General Counsel of Tower Cloud (a start up focusing on fiber based backhaul services). Less recently, Rich served as lead counsel in connection with the acquisition of EPIK Communications, Inc. and helped successfully restructure EPIK, and lead it through its merger with Progress Telecommunications. In addition, Rich has served as Special Counsel to Handspring, working on the launch of the Treo PDA, and before that, as the Associate General Counsel of Imagine Media, Inc., a publisher of business and technology related magazines such as Mac Addict and Business 2.0. Before Imagine Media, Rich was a General Partner at Bronson, Bronson & McKinnon, LLP (a San Francisco based full service law firm with over 150 attorneys), where he served as the head of Bronson's Business/Tax Department, and as the California representative to the U.S. Law Firm Group's State and Local Tax Committee. While in private practice, Rich worked primarily for closely held start ups, emerging growth companies, and their owners/founders. His practice areas include mergers and acquisitions, corporate and securities laws matters, as well as intellectual property matters, with a particular emphasis on tax planning, compliance and controversy matters. Prior to law school, Rich received Bachelor's degrees in International Relations and Technical Theatre/Stage Lighting and Design from Harpur College/SUNY Binghamton, a Juris Doctor degree from Albany Law School, and a Master of Laws degree (LLM in taxation) from New York University.

Exhibit M - List of names, addresses, and phone numbers of members or partners

PeakNet, LLC is a Limited Liability Company located at 550 Lytton Avenue, Suite 200, Palo Alto, CA 94301 (Tel: 251-662-1170) and its officers and directors are:

Joseph Stockwell	Operations
Michael Hakimi	Sales/Finance
Richard Saffir	Legal

In addition, the following individual serves as Vice President and General Manager:

Allan Bakalar
9501 International Court North
St. Petersburg, FL 33716
727-471-5681

Exhibit N - Documentation indicating the applicant's corporate structure and ownership

See attached LLC Agreement.

PEAK TOWER, LLC LIMITED LIABILITY COMPANY AGREEMENT

THIS LIMITED LIABILITY COMPANY AGREEMENT (the "Agreement") is entered into effective as of the 1st day of June, 2010 (the "Effective Date"), by and among: (a) Progress Telecommunications Corporation, a Florida corporation ("Progress" or "PTC"); (b) Peak Tower Investors, LLC, a California limited liability company ("PTI") (and all together or collectively being the "Members"). If not specifically defined herein, all capitalized terms used herein shall have the meaning set forth on Exhibit A hereto.

SECTION 1 - THE COMPANY

1.1 Formation/Name. The Members have agreed (i) to form and fund a new business focusing on the development, construction and leasing of telecommunications towers and monopoles (the "Business"), (ii) in order to initially fund the Business, to contribute that amount of cash, in exchange for that number of membership units, as is set forth to the right of their names on Exhibit C attached hereto (the "Initial Capital"), and (iii) that, following the contribution of the Initial Capital, the rights and obligations of the Members shall be as provided under the Act, the Certificate, and, more specifically, in this Agreement. The name of the Company shall be "Peak Tower, LLC" and all business of the Company shall be conducted in such name. The Board may change the name of the Company upon ten (10) Business Days notice to the Members.

1.2 Purpose; Powers. The purposes of the Company are (i) to operate the Business, (ii) to make such additional investments and engage in such additional activities as the Members may approve, and (iii) to engage in any and all activities related or incidental to the purposes set forth in clauses (i) and (ii). The Company has the power to do any and all acts necessary, appropriate, incidental, or convenient to or in furtherance of the foregoing purposes and has, without limitation, any and all powers that may be exercised on behalf of the Company by the Board pursuant to Section 4 hereof.

1.3 Principal Place of Business/Registered Agent for Service of Process. The executive offices and principal place of business of the Company shall be located at 550 Lytton Avenue, Suite 200, Palo Alto, CA 94301. The Board may change the principal place of business of the Company to any other place and shall notify the Members of such change within ten (10) Business Days. The registered agent acting for the Company in the State of Delaware shall be Corporation Service Company, and the registered office of the Company in the State of Delaware is, initially, located at 2711 Centerville Road, Suite 400, Wilmington, DE 19803.

1.4 Term/Filings. The term of the Company shall commence on the date the certificate of formation of the Company as such term is described in the Act (the "Certificate") is filed in the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue until the winding up and liquidation of the Company and its business is completed following a Dissolution Event, as provided in Section 10 hereof. The Board shall take any other actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware or as a limited liability entity under the laws of any other jurisdictions in which the Company engages in business, the foregoing to include, but not be limited to, the preparation and filing of such amendments to the Certificate and such other assumed name certificates, documents, instruments and publications as may be required by law. Upon the dissolution and completion of the winding up and liquidation of the Company in accordance with Section 10, the Board shall promptly execute and cause to be filed a Certificate of Cancellation in accordance with the Act and the laws of any other jurisdictions in which the Board deems such filing necessary or advisable.

1.5 Title to Property/No Payment of Individual Obligations. All Property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such Property in its individual name, and each Member's interest in the Company shall be personal property for all purposes. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of, any individual obligation of any Member.

1.6 Independent Activities; Transactions with Affiliates. Each Manager shall be required to devote only that amount of time to the affairs of the Company as may be necessary to manage and operate the Company, and shall be free to serve any other Person or enterprise in any capacity that such Manager may deem appropriate in his, her, or its absolute discretion. Except as otherwise provided in this Agreement, insofar as permitted by applicable law, neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Member or Manager or his or its Affiliates from engaging in whatever activities he or it chooses, whether the same are competitive with the Company or otherwise, and any such activities may be undertaken without having or incurring any obligation to offer any interest in such activities to the Company or any Member, or require any Member or Manager or any of his or its Affiliates to permit the Company or any other Manager or Member or his or its Affiliates to participate in any such activities, and as a material part of the consideration for the execution of this Agreement by each Member, each Member hereby waives, relinquishes, and renounces any such right or claim of participation. To the extent permitted by applicable law and subject to the provisions of this Agreement, the Board is hereby authorized to cause the Company to purchase Property from, sell Property to or otherwise deal with any Member or Manager, acting on its own behalf, or any Affiliate of any Member or Manager, provided that any such purchase, sale or other transaction shall be made on terms and conditions which are no less favorable to the Company than if the sale, purchase, or other transaction had been made with an independent third party.

1.7 Fiduciary Duties (Care and Loyalty) of Members and Managers. Each Manager and Member shall owe to the Company and its Members a fiduciary duty of care; provided, however, that such duty shall be limited to include only the duty to act without gross negligence or willful misconduct in his, her, or its management of or relationship with the Company and with the other Members. Except as is expressly provided for to the contrary in this Agreement, each Manager and Member shall have and owe to the Company and its Members the same fiduciary duty of loyalty as that which a general partner owes or has with respect to his/her/its partners and/or the related partnership under Delaware law.

SECTION 2 - MEMBERS' CAPITAL CONTRIBUTIONS

2.1 Member Names, Addresses, Initial Capital Contributions, Percentage Interests, and Type/Number of Units Held.

The name, address, Capital Contributions, Percentage Interests, and Units issued to and held by each of the Members are as set forth on Exhibit C attached hereto.

2.2 Additional Capital Contributions.

Members may make additional Capital Contributions, provided the same are unanimously approved by the Board. If the Board determines that additional capital is needed to fund the operations of the Company, then the Board shall provide written notice (the "Additional Capital Call Notice") to each Member of the total amount of additional capital needed, the number of Units represented by the additional capital (where each Unit is valued by dividing the Net Appraised Value of the Company immediately prior to the issuance of the Additional Capital Call Notice, by the total number of Units outstanding immediately prior to the issuance of the Additional Capital Call Notice), and such Member's proportionate share of the additional capital required by the Company. If any Member does not agree to fund his/her/its proportionate share of the required additional capital within fifteen (15) Business Days of the receipt of the Additional Capital Call Notice, then the Board shall provide written notice to each other Members in writing that did agree to fund his/her/its entire proportionate share (each, a "Funding Member") of such funding shortfall/failure (the "Funding Shortfall").

Each Funding Member shall then have the opportunity to fund his/her/its proportionate share (relative to and using only the Units/Percentage Interests of Funding Members) of additional capital that the other Members did not agree to fund, by giving written notice to the Company of his/her/its election to provide all or a portion of their respective proportionate shares of the Funding Shortfall within ten (10) days after receipt of the written notification from the Company of the Funding Shortfall. If the foregoing process does not result in the Company being able to secure funding commitments from its Members equal to the amount of additional capital determined necessary by the Board, the process shall be repeated until the Company's Members have committed to fund the required capital or have all indicated they have committed to the maximum amount they are willing to contribute in connection with the specific capital call/raise noticed by the Board.

To the extent that any Funding Member funds any amount set forth in the Additional Capital Call Notice, its Percentage Interest shall be increased to reflect the number of Units purchased. If the Members do not collectively fund the entire amount requested in the Additional Capital Call Notice, the Board may sell such Units to non-Members, who shall be admitted and become Members upon the purchase of the Units, which shall result in a reduction of the Percentage Interests of the Members that did not contribute capital to purchase the Units representing their proportionate share.

SECTION 3 - DISTRIBUTIONS AND ALLOCATIONS

3.1 Net Cash Flow. Except as otherwise provided in Section 11 hereof, Net Cash Flow, if any, shall be distributed at such time and in such amount as the Board shall determine in the following order and priority:

(a) First, with respect to and during the course of each Allocation Year, the Company shall use reasonable efforts to reserve, segregate and hold available, and shall then distribute to each Member on or before April 1st of the next succeeding Fiscal Year (taking into account tentative distributions contemplated below), that amount of cash as is equal to, with respect to each such Member, the "Applicable Tax Rate," as defined below, multiplied by the excess (if any), as determined by the Board, of the taxable net income of the Company for that Allocation Year allocated to each of the Members. The Applicable Tax Rate shall mean the highest individual marginal state and federal income tax rate in effect for ordinary income or long term capital gain, as the case may be, and applicable to a Member for the Allocation Year with respect to which such determination is made (i.e., the combination of the highest state and federal marginal income tax rates, using the highest state income tax rate which applicable to any single Member of the Company, with the same being determined without reduction or adjustment for any right to deduct state taxes when computing federal tax liability)(with respect to the foregoing, the Board shall take into account the effect of the Members' share of net taxable income on the estimated tax liability of the Members' (and may make tentative distributions to pay taxes earlier than specified above).

(b) Then, to the Members who hold Units, in proportion to the number of Units held by each Member relative to the aggregate Units held by all Members (also referred to as a Member's "Percentage Interest").

3.2 Amounts Withheld/Tax Allocations. All amounts withheld pursuant to the Code or any provision of any state, local, or foreign tax law with respect to any payment, distribution or allocation to the Company or the Members shall be treated as amounts paid or distributed, as the case may be, to the Members with respect to which such amount was withheld pursuant to this Section 3.2 for all purposes under this Agreement. The Company is authorized to withhold from payments and distributions, or with respect to allocations to the Members, and to pay over to any federal, state and local government or any foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law or any foreign law, and shall allocate any such amounts to the Members with respect to which such amount was withheld. The Members shall allocate items of Profit and Loss for federal income tax purposes in the manner described on Exhibit B hereto.

3.3 Limitations on Distributions. The Company shall make no distributions to the Members except (i) as provided in this Section 3 and Section 10 hereof, or (ii) as agreed to by the decision of the Board. A Member may not receive a distribution from the Company to the extent that, after giving effect to the distribution, all liabilities of the Company, other than liability to Members on account of their Capital Contributions, would exceed the fair value of the Company's assets.

SECTION 4 - MANAGEMENT

4.1 Managers; Board of Managers.

(a) The management of the Company shall be vested in a board of managers (the "Board of Managers" or the "Board") designated by the Members as provided in Section 4.1(b) hereof. The number of Managers on the Board shall be five (5) unless otherwise provided herein, with three (3) managers being appointed by PTC (or its successors and assigns) having a total of three (3) votes, and two (2) managers being appointed by PTI (or its designated successor[s] and/or assign[s]) having a total of two (2) votes. The initial Board of the Company shall be as follows: (1) for PTI: (a) Joe Stockwell and (b) Mike Hakimi, with Sean Doherty serving as an alternate for either of the above-named Managers appointed by PTI in the event of absence; and from PTC: (d) David Fountain, (e) David Hatcher, and (f) Dede Ramoneda, with PTC naming an alternate for any of the above-named PTC-appointed Managers in the event of absence.

(b) The Chairman of the Board shall be selected every anniversary of the Effective Date of this Agreement, by PTC or PTI (or their respective successors and assigns), in an alternating fashion, with PTC selecting the first Chairman, PTI selecting the second on the first anniversary, PTC on the second anniversary, and so on; provided, however, that if a member entitled to designate the next chairman fails to do so, the "sitting" or current Chairman shall remain as Chairman until such time as a new Chairman is designated by the Member whose turn it is to designate a new Chairman.

(c) A Manager shall remain in office until removed by the Members designating such Manager. A Manager may be removed at any time, with or without cause, by the written notice of the Member(s) authorized or entitled to designate such Manager, delivered to the Company, indicating the removal of one or more specific Managers, and designating the Person(s) who shall fill the position(s) of the removed Manager(s). In the event any Manager dies or is unwilling or unable to serve as such or is removed from office by the Member(s) authorized or entitled to designate such Manager, the Member(s) authorized or entitled to designate such Manager shall promptly designate a successor to such Manager. A Manager chosen to fill a vacancy shall be designated by the Member(s) authorized or entitled to designate the Manager who was removed, was unable or unwilling to serve, or who resigned. Each Manager shall have one (1) vote. Unless otherwise expressly provided in this Agreement to the contrary, the Board shall act by the affirmative vote of a majority of the total number of members of the Board.

(d) The Board shall have the power to delegate authority to such committees of Managers, officers, employees, agents and representatives of the Company as it may from time to time deem appropriate. Any delegation of authority to take any action must be approved in the same manner as would be required for the Board to approve such action directly.

(e) A Manager shall not be liable under a judgment, decree, or order of court, or in any other manner, for a debt, obligation or liability of the Company. Notwithstanding the preceding sentence, in the event a Manager is held liable under a judgment, decree, or order of court, or in any other manner, such Manager shall be indemnified by the Company to the extent provided in Section 4.6 hereof.

4.2 Meetings of the Board.

(a) The Board shall hold regular meetings no less frequently than once, and then in case within 45 days after, the end of each Fiscal Quarter. At such meetings, the Board shall transact such business as may properly be brought before the meeting, including any new business raised by any Manager at such meeting, whether or not notice of such meeting referenced the action taken at such meeting.

(b) Special meetings of the Board may be called by any Manager. Notice of each such meeting shall be given to each Manager by (i) via a nationally recognized overnight courier (pre-paid, signature required)(e.g., FedEx, USPS Express Mail)with delivery at least seventy-two (72) hours before the time of the meeting), unless a longer notice period is expressly established by the Board. Each such notice shall state (i) the time, date, place, and the teleconference dial in number and participant codes and (ii) the purpose of the meeting to be so held. No actions other than those specified in the notice may be considered at any special meeting unless unanimously approved by the Managers. Any Manager may waive notice of any meeting in writing before, at, or after such meeting. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except when a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not properly called.

(c) Any action required to be taken at a meeting of the Board, or any action that may be taken at a meeting of the Board, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting. Notwithstanding anything to the contrary in this Section 4.2, the Board may take without a meeting any action that may be taken by the Board under this Agreement if such action is approved by the unanimous written consent of the Managers.

4.3 Board Powers.

(a) Except as otherwise provided in this Agreement, the Board shall be exclusively vested with all power and authority, and may take any and all actions lawful, reasonable and necessary to control and manage the Business and affairs of the Company, including, without limitation, exercising the following specific rights and powers:

(i) Conduct its business, carry on its operations and have and exercise the powers granted by the Act in any state, territory, district or possession of the United States, or in any foreign country which may be necessary or convenient to effect any or all of the purposes for which it is organized;

(ii) Acquire by purchase, lease, or otherwise any real or personal property, as well as operate, maintain, finance, improve, construct, own, sell, convey, assign, mortgage, or lease any real or personal property, and consistent therewith, execute any and all agreements, contracts, documents, certifications, and instruments necessary or convenient in connection with the management, maintenance, and operation of the Business, and/or borrow money and issue evidences of indebtedness necessary, convenient, or incidental to the accomplishment of the purposes of the Company, and secure the same by mortgage, pledge, or other lien on any Company assets;

(iii) Execute, in furtherance of any or all of the purposes of the Company, any deed, lease, mortgage, deed of trust, mortgage note, promissory note, bill of sale, contract, or other instrument purporting to convey or encumber any or all of the Company assets, and, as required, prepay in whole or in part, refinance, recast, increase, modify, or extend any liabilities affecting the assets of the Company, and in connection therewith execute any extensions or renewals of encumbrances on any or all of such assets, contract on behalf of the Company for the employment and services of employees and/or independent contractors, such as lawyers and accountants, and delegate to such Persons the duty to manage or supervise any of the assets or operations of the Company, and, as necessary, institute, prosecute, defend, settle, compromise, and dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, the Company, the Members or any Manager in connection with activities arising out of, connected with, or incidental to this Agreement, and to engage counsel or others in connection therewith; and

(iv) indemnify a Member or Manager or former Member or Manager, to the maximum extent permitted by law, and to make any other indemnification that is authorized by this Agreement in accordance with the Act.

(b) The Board may, in its sole discretion, establish and appoint an operating committee (the "Operating Committee"), which will be responsible for conducting the day-to-day business and affairs of the Company. If established, the Operating Committee shall consist of three (3) individuals, two (2) of whom shall be appointed or designated by PTI, and the other to be appointed or designated by PTC. A decision of the majority of the members of the Operating Committee shall constitute the decision of the entire Operating Committee.

(c) The Operating Committee shall prepare and present to the Board, for its approval, an Operating Plan for the Company (the "Operating Plan") by January 31st of each year. The Operating Plan shall specifically include a detailed operating budget, reflecting each major category of revenue and expenditures on a monthly basis, for that calendar year (the "Operating Budget"). In addition, the Operating Committee shall prepare and present to any member of the Board who requests it, and then as promptly as possible after the end of each month, a statement of income and expense, a balance sheet and a statement of cash flows (comparing the operations of the Company for the preceding month with the Operating Budget for that month). The Board retains full power to modify the Operating Budget as may be necessary to effectively operate the Company.

4.4 Duties and Obligations of the Board.

(a) The Board shall cause the Company to conduct its business and operations separate and apart from that of any Member or Manager or any of their respective Affiliates, including, without limitation, (i) segregating Company assets and not allowing funds or other assets of the Company to be commingled with the funds or other assets of, held by, or registered in the name of, any Member or Manager or any of its Affiliates, (ii) maintaining books and records of the Company separate from the books and financial records of any Member or Manager and its Affiliates, and observing all Company procedures and formalities, including, without limitation, maintaining minutes of Company meetings and acting on behalf of the Company only pursuant to due authorization pursuant to this Agreement, (iii) causing the Company to pay its liabilities from assets of the Company, and (iv) causing the Company to conduct its dealings with third parties in its own name and as a separate and independent entity.

(b) The Board shall take all actions which may be necessary or appropriate for the accomplishment of the Company's purposes, including the acquisition, development, maintenance, preservation, and operation of Property in accordance with the provisions of this Agreement and applicable laws and regulations. The Company shall not conduct the Business in any state or country where limited liability for members or managers is not recognized.

4.5 Reimbursements. The Company shall reimburse the Members and Managers for all expenses incurred and paid by any of them as may be authorized by the Company, and provided the same are in furtherance of the Company's business, including, but not limited to, expenses of maintaining an office, telephones, travel, office equipment and secretarial and other personnel as may reasonably be attributable to the Company. Any reimbursement made pursuant to this Section 4.5 shall be treated as an expense of the Company and shall not be deemed to constitute a distribution to any Member of profit, loss, or capital of the Company.

4.6 Indemnification of the Managers.

(a) Unless otherwise provided in Section 4.6(d) hereof, the Company, its receiver, or its trustee (in the case of its receiver or trustee, to the extent of Property) shall indemnify, save harmless, and pay all judgments and claims against any Manager relating to any liability or damage incurred by reason of any act performed or omitted to be performed by any Manager in connection with the Business, including reasonable attorneys' fees and costs incurred by the Manager in connection with the defense of any action (including any allegations or claims, regardless of substantiation, made by a member or other party) based on any such act or omission, which attorneys' fees and costs shall be paid within thirty days of invoices for the same being tendered.

(b) Unless otherwise provided in Section 4.6(c) hereof, the Company shall indemnify, save harmless, and pay all expenses, costs, or liabilities of any Manager, if for the benefit of the Company and in accordance with this Agreement said Manager makes any deposit or makes any other similar payment or assumes any obligation in connection with any Property proposed to be acquired by the Company and suffers any financial loss as the result of such action.

(c) Notwithstanding the provisions of Sections 4.6(a), and 4.6(b) above, such Sections shall be enforced only to the maximum extent permitted by law and no Manager shall be indemnified from any liability for the fraud, intentional misconduct, gross negligence or a knowing violation of the law which was material to the cause of action.

(d) The obligations of the Company set forth in this Section 4.6 are expressly intended to create third party beneficiary rights for each of the Managers and any Member is authorized, on behalf of the Company, to give written confirmation to any Manager of the existence and extent of the Company's obligations to each such Manager hereunder.

SECTION 5 - ROLE OF MEMBERS

5.1 Rights or Powers; Limitations Applicable to Holders of Restricted Units.

The Members shall not have any right or power to take part in the management or control of the Company or its Business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act.

5.2 Voting Rights.

Subject to Section 5.1 above, no Member shall have any voting right except with respect to those matters specifically reserved for a Member vote which are set forth in this Agreement and as required in the Act. With respect to any matter upon which the Members may vote, each Member shall have one vote for each Unit owned by the Member.

5.3 Required Member Consents. Notwithstanding any other provision of this Agreement, no action may be taken by the Company (whether by the Board, or otherwise) in connection with any of the following matters without the unanimous written consent of the Members:

(a) Any sale (or series of sales) of assets of the Company which are material to the operation of the Business or involve total consideration in excess of \$1,000,000 (on a cumulative basis), as well as any transaction or transactions by the Company that causes the Company to assume or take on a liability or obligation or similar indebtedness in excess of \$1,000,000 (on a cumulative basis);

(b) Any material acquisition, whether by purchase, the issuance of Units by the Company, a merger, or any similar single or multi-step "reorganization" if the Members will own more than fifty percent (50%) of the surviving entity, and the transaction(s) involve total consideration in excess of \$5,000,000;

(c) Any transaction to liquidate or dissolve the Company;

(d) Any transaction by the Company to merge or consolidate with another Person where the Members will not own more than fifty percent (50%) of the surviving entity or to sell all or substantially all of the assets of the Company; and

(e) Except as provided in paragraphs (a) and (d) of this Section 5.4, any issuance of additional Units by the Company.

5.4 Resignation. Except as otherwise provided in Sections 3 and 10 hereof, no Member shall demand or receive a return on or of its Capital Contributions without the consent of all Members (provided, however, that Member may "abandon" their Units if the Units are transferred back to the Company as part of the abandonment). Except as otherwise provided in the Act or this Agreement, upon resignation, any resigning Member is entitled to receive only the distribution to which it is entitled under this Agreement. Under circumstances requiring a return of any Capital Contributions, no Member has the right to receive Property other than cash except as may be specifically provided herein.

5.5 Limitation of Member(s) Liability. Unless a Member executes or enters into an agreement to the contrary, no Member shall be liable, under the terms of this Agreement, with respect to a judgment, decree or order of a court, or in any other manner, for the Debts or any other obligations or liabilities of the Company or of any other Member. A Member shall be liable only to make its Capital Contributions and shall not be required to restore a deficit balance in its Capital Account (unless a written deficit restoration agreement or similar curative measure has been agreed to, in a signed writing) or to lend any funds to the Company or, after its Capital Contributions have been made, to make any additional contributions, assessments or payments to the Company, provided that a Member may be required to repay distributions made to it in violation of Section 3.3 hereof or as provided for under Section 18-607 of the Act. None of the Managers shall have any personal liability for the repayment of, or obligation to repay, any Capital Contributions of any Member.

5.6 Partition. While the Company remains in effect or is continued, each Member agrees and waives its rights to have any Property partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Property partitioned, and each Member, on behalf of itself, its successors and its assigns, hereby waives any such right.

5.7 Confidentiality. Except as contemplated hereby or required by a court of competent authority, each Member shall keep confidential and shall not disclose to others and shall use its reasonable efforts to prevent its Affiliates and any of its, or its Affiliates', present or former employees, agents, and representatives from disclosing to others without the prior written consent of the Board or, if unavailable, all Members, any information which (i) pertains to this Agreement, any negotiations pertaining thereto, any of the transactions contemplated hereby, or the Business of the Company, or (ii) pertains to confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary; provided that any Member may disclose to its Parent and its Parent's employees, agents, and representatives any information made available to such Member. No Member shall use, and each Member shall use its best efforts to prevent any Affiliate of such Member from using, any information which (i) pertains to this Agreement, any negotiations pertaining hereto, any of the transactions contemplated hereby, or the Business of the Company, or (ii) pertains to the confidential or proprietary information of any Member or the Company or which any Member has labeled in writing as confidential or proprietary, except in connection with the transactions contemplated hereby. The term "confidential information" is used in this Section 5.7 to describe information which is confidential, non-public or proprietary in nature, was provided to such Member or its representatives by the Company, any other Member, or such Person's agents, representatives and employees, and relates either directly or indirectly to the Company or the Business. Information which (i) is available, or becomes available, to the public through no fault or action by such Member, its agents, representatives or employees or (ii) becomes available on non-confidential basis from any source other than the Company, any other Member, or such Person's agents, representatives or employees and such source is not prohibited from disclosing such information, shall not be deemed "confidential information."

5.8 Transactions Between a Member and the Company. Except as otherwise provided by applicable law, any Member may, but shall not be obligated to, lend money to the Company, act as surety for the Company and transact other business with the Company and has the same rights and obligations when transacting business with the Company as a person or entity who is not a Member. A Member, any Affiliate thereof or an employee, stockholder, agent, director or officer of a Member or any Affiliate thereof, may also be an employee or be retained as an agent of the Company. The existence of these

relationships and acting in such capacities will not result in the Member being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member.

5.9 Other Instruments. Each Member hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Board deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

SECTION 6 - REPRESENTATIONS AND WARRANTIES

6.1 In General. As of the date hereof, each of Members hereby makes each of the representations and warranties applicable to such Member as set forth in Section 6.2 hereof, and such warranties and representations shall survive the execution of this Agreement.

6.2 Representations and Warranties. Each Member hereby represents and warrants that:

(a) Due Incorporation or Formation; Legal Capacity; Enforceability; Authorization of Agreement. Such Member is a corporation duly organized or a partnership or limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, partnership, or company power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby, or is an individual at least twenty-one (21) years of age with full legal capacity. Such Member is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such Member has the corporate, partnership or company power and authority to execute and deliver this Agreement and to perform its obligations hereunder and the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate, partnership, or company action. This Agreement constitutes the legal, valid, and binding obligation of such Member, is enforceable against such Member in accordance with its terms.

(b) Investment Company Act. Neither such Member nor any of its Affiliates is, nor will the Company as a result of such Member holding an interest therein be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(c) Investment Intent. Each Member's acquisition of its Units is being made for its own account for investment, and not with a view to the sale or distribution thereof. Each Member is a sophisticated and accredited investor possessing the knowledge and experience in finance and business, and an expertise in analyzing the benefits and risks associated with forming companies and/or acquiring investments that are similar to the acquisition of its Units.

SECTION 7 - ACCOUNTING, BOOKS AND RECORDS

7.1 Accounting, Books and Records.

(a) The Company shall keep on site at its principal place of business each of the following: (i) separate books of account for the Company which shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of the Business in accordance with this Agreement; (ii) a current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present; (iii) a copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed; (iv) copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years; (v) a current copy of this Agreement; (vi) copies of any writings permitted or required under Section 18-502 of the Act regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform services as consideration for such

Member's Capital Contribution; and (vii) any written consents obtained from Members pursuant to Section 18-302 of the Act regarding action taken by Members without a meeting.

(b) The Company shall use the accrual method of accounting in preparation of its financial reports and for tax purposes and shall keep its books and records accordingly. Any Member or its designated representative has the right to have reasonable access to and inspect and copy the contents of such books or records and shall also have reasonable access during normal business hours to such additional financial information, documents, books and records. The rights granted to a Member pursuant to this Section 7.1 are expressly subject to compliance by such Member with the safety, security and confidentiality procedures and guidelines of the Company, as such procedures and guidelines may be established from time to time.

7.2 Reports.

(a) In General. The Operating Committee shall be responsible for causing the preparation of financial reports of the Company and the coordination of financial matters of the Company with the Company's accountants. The Company shall cause to be prepared and delivered, upon the request of any Member, and if so requested, then delivered to each Member, standard (P+L, Balance Sheet, Actual v. Plan) financial statements) prepared, in each case (other than with respect to Member's Capital Accounts, which shall be prepared in accordance with this Agreement) in accordance with GAAP, consistently applied from period to period and within each period (and, if required by any Member or its Affiliates for purposes of reporting under the Securities Exchange Act of 1934, Regulation S-X), and such other reports as any Member may reasonably request from time to time; *provided that*, if the Board so determines within thirty (30) days thereof, such other reports shall be provided at such requesting Member's sole cost and expense. The monthly and quarterly financial statements referred to in clause (ii) below may be subject to normal year-end audit adjustments.

(i) As soon as practicable following the end of each Fiscal Year (and in any event not later than ninety (90) days after the end of such Fiscal Year) and at such time as distributions are made to the Members pursuant to Section 10 hereof following the occurrence of a Dissolution Event, a balance sheet of the Company as of the end of such Fiscal Year and the related statements of operations, Members' Capital Accounts and changes therein, and cash flows for such Fiscal Year, together with appropriate notes to such financial statements and supporting schedules, all of which shall be audited and certified by the Company's accountants, and in each case, to the extent the Company was in existence, setting forth in comparative form the corresponding figures for the immediately preceding Fiscal Year end (in the case of the balance sheet) and the two (2) immediately preceding Fiscal Years (in the case of the statements).

(ii) As soon as practicable following the end of each of the first three Fiscal Quarters of each Fiscal Year (and in any event not later than sixty (60) days after the end of each such Fiscal Quarter), a balance sheet of the Company as of the end of such Fiscal Quarter and the related statements of operations and cash flows for such Fiscal Quarter and for the Fiscal Year to date, in each case, to the extent the Company was in existence, setting forth in comparative form the corresponding figures for the prior Fiscal Year's Fiscal Quarter and the interim period corresponding to the Fiscal Quarter and the interim period just completed.

7.3 Tax Matters.

(a) Tax Elections. The Board may, without any further consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the basis of Property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state, local or foreign law, in connection with Transfers of Units and Company distributions; (ii) with the consent of all of the Members who hold Units, to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local or foreign tax returns; and (iii) to the extent provided in Code Sections 6221 through 6231 and similar provisions of federal, state, local, or foreign law, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members. The Company shall make the election provided in Code Section 6231(a)(1)(B)(ii) to cause the Company to be subject to Code Sections 6221 through 6234. Richard A. Saffir is specifically authorized to act as the initial "Tax Matters Member" under the Code and in any similar capacity under state or local law.

(b) Tax Information. In the event that the Company requires information from the Members to complete any tax return, the Company shall provide a written request for such information to each Member and each member shall provide the requested information within thirty (30) days of the request. Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Fiscal Year of the Company but not later than July 15th immediately following the end of such Fiscal Year.

SECTION 8 - AMENDMENTS

Amendments to this Agreement may be proposed by any Manager or any Member. Following such proposal, the Board shall submit to the Members a verbatim statement of any proposed amendment, provided that counsel for the Company shall have approved of the same in writing as to form, and the Board shall include in any such submission a recommendation as to the proposed amendment. The Board shall seek the written vote of the Members on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. A proposed amendment shall be adopted and be effective as an amendment hereto only if it receives the affirmative vote of all of the Members. Notwithstanding the foregoing, this Agreement shall not be amended without the written/signed consent of each Member affected by such amendment (e.g., it modifies the limited liability of a Member or alters the interest of a Member in Profits, Losses, other Company items, or any Company distributions).

SECTION 9 - TRANSFERS

9.1 Restrictions on Transfers. Except as otherwise permitted by this Agreement, no Member shall Transfer all or any portion of its Units.

9.2 Permitted Transfers. Subject to the conditions and restrictions set forth in Section 9.3 hereof, a Member may at any time Transfer all or any portion of its Units to (a) any Wholly Owned Affiliate of the transferor, (b) any Purchaser in accordance with Section 9.4 hereof, and (c) any Member in accordance with Section 9.10 (any such Transfer being referred to in this Agreement as a "Permitted Transfer").

9.3 Conditions to Permitted Transfers. A Transfer shall not be treated as a Permitted Transfer under Section 9.2 hereof unless and until the following conditions are satisfied:

(a) Except in the case of a Transfer by operation of law, the transferor and transferee shall execute and deliver to the Company (i) such documents and instruments of conveyance as may be

necessary or appropriate in the opinion of counsel to the Company to effect such Transfer. In the case of a Transfer of Units by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. In all cases, the Company shall be reimbursed by the transferor and/or transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.

(b) The transferor and transferee shall furnish the Company with the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the Units transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any Transferred Units until it has received such information.

(c) Either (a) such Units shall be registered under the Securities Act, and any applicable state securities laws, or (b) the transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Board, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

(d) The transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the other Board, to the effect that such Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940.

(e) Unless otherwise approved by the Board, no Transfer of Units shall be made except upon terms which would not, in the opinion of the Company's legal counsel, result in the termination of the Company within the meaning of Section 708 of the Code or cause the application of the rules of Sections 168(g)(1)(B) and 168(h) of the Code or similar rules to apply to the Company. If the immediate Transfer of such Units would, in the opinion of such counsel, cause a termination within the meaning of Section 708 of the Code, then if, in the opinion of such counsel, the following action would not precipitate such termination, the transferor Member shall be entitled (or required, as the case may be) (i) immediately to Transfer only that portion of its Units as may, in the opinion of such counsel, be transferred without causing such a termination and (ii) to enter into an agreement to Transfer the remainder of its Units, in one or more Transfers, at the earliest date or dates on which such Transfer may be effected without causing such termination. The purchase price for the Units shall be allocated between the immediate Transfer and the deferred Transfer pro rata on the basis of the percentage of the aggregate Units being transferred, each portion to be payable when the respective Transfer is consummated, unless otherwise agreed by the parties to the Transfer. In the case of a Transfer by one Member to another Member, the deferred purchase price shall be deposited in an interest-bearing escrow account unless another method of securing the payment thereof is agreed upon by the transferor Member and the transferee Member(s). In determining whether a particular proposed Transfer will result in a termination of the Company, counsel to the Company shall take into account the existence of prior written commitments to Transfer made pursuant to this Agreement and such commitments shall always be given precedence over subsequent proposed Transfers.

(f) No notice or request initiating the procedures contemplated by Section 9.4 may be given by any Member, while any notice, purchase or Transfer is pending under Section 9.4 or Section 10, as the case may be, or after a Dissolution Event has occurred. If any Member is an Adverse Member, the other Members shall not be required to offer any portion of their Units pursuant to Section 9.4 until the purchase rights specified in Section 10.1 are either exercised (with the purchase/sale transaction associated therewith having been completed) or waived. No Member may sell any portion of its Units pursuant to Section 9.4 during any period that, as provided above, it may not give the notice initiating the procedures contemplated by such Section, or thereafter, until it has given such notice and otherwise complied with the provisions of such Section.

9.4 Right of First Refusal. In addition to the other limitations and restrictions set forth in this Section 9, except as permitted by Section 9.2 hereof, no Member shall Transfer all or any portion of its Units (the "Offered Units") unless such Member (the "Seller") first offers to sell the Offered Units pursuant to the terms of this Section 9.4.

(a) **Limitation on Transfers.** No Transfer may be made under this Section 9.4 unless the Seller has received a bona fide written offer (the "Purchase Offer") from a Person (the "Purchaser") to purchase the Offered Units for a purchase price (the "Offer Price") denominated and payable in United States dollars at closing or according to specified terms, with or without interest, which offer shall be in writing signed by the Purchaser and shall be irrevocable for a period ending no sooner than the Business Day following the end of the Offer Period, as hereinafter defined.

(b) **Offer Notice.** Prior to making any Transfer that is subject to the terms of this Section 9.4, the Seller shall give to the Company and each other Member holding Units written notice (the "Offer Notice") which shall include a copy of the Purchase Offer and an offer (the "Firm Offer") to sell the Offered Units to the other Members holding Units (the "Offerees") for the Offer Price, payable according to the same terms as (or more favorable terms to the Offerees than) those contained in the Purchase Offer, *provided* that the Firm Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchaser prior to closing, and without regard to any security (other than the Offered Interest) to be provided by the Purchaser for any deferred portion of the Offer Price.

(c) **Offer Period.** The Firm Offer shall be irrevocable for a period (the "Offer Period") ending at 11:59 P.M., local time at the Company's principal place of business, on the thirtieth (30th) day following the day of the Offer Notice.

(d) **Acceptance of Firm Offer.** At any time during the Offer Period, any Offeree may accept the Firm Offer as to all or any portion of the Offered Interest, by giving written notice of such acceptance to the Seller and each other Offeree, which notice shall indicate the maximum number of Offered Units that such Offeree is willing to purchase. In the event that Offerees ("Accepting Offerees"), in the aggregate, accept the Firm Offer with respect to all of the Offered Units, the Firm Offer shall be deemed to be accepted and each Accepting Offeree shall be deemed to have accepted the Firm Offer as to that portion of the Offered Units that corresponds to the ratio of the number of Offered Units that such Accepting Offeree indicated a willingness to purchase to the aggregate number of Offered Units all Accepting Offerees indicated a willingness to purchase. If Offerees do not accept the Firm Offer as to all of the Offered Units during the Offer Period, the Firm Offer shall be deemed to be rejected in its entirety.

(e) **Closing of Purchase Pursuant to Firm Offer.** In the event that the Firm Offer is accepted, the closing of the sale of the Offered Units shall take place within thirty (30) days after the Firm Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and all Accepting Offerees shall execute such documents and instruments as may be necessary or appropriate to effect the sale of the Offered Units pursuant to the terms of the Firm Offer and this Section 9.

(f) **Sale Pursuant to Purchase Offer If Firm Offer Rejected.** If the Firm Offer is not accepted in the manner hereinabove provided, the Seller may sell the Offered Units to the Purchaser after the ten (10) day period immediately following the last day of the Offer Period, and for thirty (30) days thereafter, *provided* that such sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer and provided further that such sale complies with other terms, conditions, and restrictions of this Agreement that are not expressly made inapplicable to sales occurring under this Section 9.4. In the event that the Offered Units are not sold in accordance with the terms of the preceding sentence, the Offered Units shall again become subject to all of the conditions and restrictions of this Section 9.4.

9.5 Prohibited Transfers. Any purported Transfer of Units that is not a Permitted Transfer shall be null and void and of no force or effect whatever; *provided that*, if the Company is required to recognize a Transfer that is not a Permitted Transfer (or if the Board, in its sole discretion, elects to

recognize a Transfer that is not a Permitted Transfer), the Units Transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the Transferred Units, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of such Units may have to the Company. In the case of a Transfer or attempted Transfer of Units that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified Members may incur (including, without limitation, incremental tax liabilities, lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

9.6 Rights of Unadmitted Assignees. A Person who acquires Units but who is not admitted as a substituted Member pursuant to Section 9.7 hereof shall be entitled only to allocations and distributions with respect to such Units in accordance with this Agreement, and except as required by law shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

9.7 Admission of Transferees as Members. Subject to the other provisions of this Section 9, a transferee of Units may be admitted to the Company as a Member only upon satisfaction of the conditions set forth in this Section 9.7:

(a) Either all of the Members consent to such admission, which consent may be given or withheld in the sole and absolute discretion of the Members, or the Units with respect to which the transferee is being admitted was acquired by means of a Permitted Transfer;

(b) The transferee of Units (other than, with respect to clauses (i) and (ii) below, a transferee that was a Member prior to the Transfer) shall, by written instrument in form and substance reasonably satisfactory to the Board (and, in the case of clause (iii) below, the transferor Member), (i) make representations and warranties to each non-transferring Member equivalent to those set forth in Section 6, (ii) accept and adopt the terms and provisions of this Agreement, including this Section 9, and (iii) assume the obligations of the transferor Member under this Agreement with respect to the Transferred Units. The transferor Member shall be released from all such assumed obligations except (x) those obligations or liabilities of the transferor Member arising out of a breach of this Agreement, (y) in the case of a Transfer to any Person other than a Member or any of its Affiliates, those obligations or liabilities of the transferor Member based on events occurring, arising or maturing prior to the date of Transfer, and (z) in the case of a Transfer to any of its Affiliates, any Capital Contribution or other funding obligation of the transferor Member under this Agreement;

(c) The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the Transferred Units; and

(d) If required by the Board, the transferee (other than a transferee that was a Member prior to the Transfer) shall deliver to the Company evidence of the authority of such Person to become a Member and to be bound by all of the terms and conditions of this Agreement, and the transferee and transferor shall each execute and deliver such other instruments as the Board reasonably deems necessary or appropriate to effect, and as a condition to, such Transfer, including amendments to the Certificate or any other instrument filed with the State of Delaware or any other state or governmental authority.

9.8 Representations Regarding Transfers: Legend. Each Member agrees that it will not Transfer any Units to any Person unless such Person agrees to be bound by this Section 9.8 and to Transfer such Units only to Persons who agree to be similarly bound, and, consistent with the foregoing, that each Member hereby represents and warrants to the Company and the other Members that such Member's acquisition of Units hereunder is made as principal for such Member's own account and not for

resale or distribution of such Units, and that the following legend may be placed upon any counterpart of this Agreement, the Certificate, or any other document or instrument evidencing ownership of Units:

The Company Units represented by this document have not been registered under any securities laws and the transferability of such Units is restricted. Such Units may not be sold, assigned, or transferred, nor will any assignee, vendee, transferee, or endorsee thereof be recognized as having acquired any such Units by the issuer for any purposes, unless (1) a registration statement under the Securities Act of 1933, as amended, with respect to such Units shall then be in effect and such transfer has been qualified under all applicable state securities laws, or (2) the availability of an exemption from such registration and qualification shall be established to the satisfaction of counsel to the Company.

The Units represented by this document are subject to further restriction as to their sale, transfer, hypothecation, or assignment as set forth in the Agreement and agreed to by each Member. Said restriction provides, among other things, that no Units may be transferred without first offering such Units to the other Members, and that no vendee, transferee, assignee, or endorsee of a Member shall have the right to become a substituted Member without the consent of a majority of the Members which consent may be given or withheld in the sole and absolute discretion of the Members.

9.9 Distributions and Allocations in Respect of Transferred Units. If any Units are Transferred during any Allocation Year in compliance with the provisions of this Section 9, Profits, Losses, each item thereof, and all other items attributable to the Transferred Units for such Allocation Year shall be divided and allocated between the transferor and the transferee by taking into account their varying Percentage Interests during the Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Board. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, *provided that*, if the Company is given notice of a Transfer at least ten (10) Business Days prior to the Transfer, the Company shall recognize such Transfer as of the date of such Transfer, and *provided further* that if the Company does not receive a notice stating the date such Units were transferred and such other information as the Board may reasonably require within thirty (30) days after the end of the Allocation Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Units on the last day of such Allocation Year. Neither the Company nor any Member shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 9.9, whether or not any Manager or the Company has knowledge of any Transfer of ownership of any Units.

9.10 Election to Terminate Business Association. If the Members are not able to reach a unanimous agreement on any decision set forth in paragraph (c) of Section 5.4 hereof, any Member that voted affirmatively to merge, consolidate, or sell the Company's assets (the "Terminating Member") may give notice (the "Termination Notice") to the other Members stating that the Terminating Member desires to terminate its business association with the Member and containing a stated total value of the Company (the "Termination Price").

(a) Upon receipt of the Termination Notice, the other Member (the "Other Member") shall be obligated to either (i) purchase the Units of the Terminating Member at a price equal to the amount that the Terminating Member would receive if the Company were to liquidate and the amount payable pursuant to Section 10.2 hereof, after application of Section 10.2(a) and Section 10.2(b), were equal to the Termination Price, or (ii) sell to the Terminating Member all of the Units held by the Other Member at a price equal to the amount that the Other Member would receive if the Company were to liquidate and the amount payable pursuant to Section 10.2 hereof, after application of Section 10.2(a) and Section 10.2(b), were equal to the Termination Price. The Other Member shall have a period of forty-five (45) days after the receipt of the Termination Notice within which to notify the Terminating Member in

writing (the "Reply Notice") whether the Other Member shall either (i) sell to the Terminating Member all of its Units, or (ii) purchase all of the Terminating Member's Units. In the event that the Reply Notice is not so given prior to the expiration of the forty-five (45) day period by the Other Member, then it shall be conclusively presumed that the Other Member has agreed to sell all of its Units to the Terminating Member, and the Terminating Member shall purchase all of the Other Member's Units for the amount set forth in clause (ii) of this Section 9.10(b).

(b) The purchasing Member shall pay to the selling Member the purchase price, as determined in Section 9.10(b), in cash not later than one hundred eighty (180) days after the earlier to occur of (i) receipt of the Reply Notice or (ii) the passage of the forty-five (45) day period described in Section 9.10(b).

SECTION 10 - DISSOLUTION AND WINDING UP

10.1 Dissolution Events.

(a) Dissolution. The Company shall dissolve and shall commence winding up and liquidating upon the first to occur of any of the following (each a "Dissolution Event"): (i) the unanimous vote of the Members to dissolve, wind up, and liquidate the Company; (ii) a judicial determination that an event has occurred that makes it unlawful, impossible or impractical to carry on the Business. The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event.

(b) Reconstitution. If it is determined, by a court of competent jurisdiction, that the Company has dissolved prior to the occurrence of a Dissolution Event, then within an additional ninety (90) days after such determination (the "Reconstitution Period"), all of the Members may elect to reconstitute the Company and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited liability company on terms identical to those set forth in this Agreement. Unless such an election is made within the Reconstitution Period, the Company shall liquidate and wind up its affairs in accordance with Section 10.2 hereof. If such an election is made within the Reconstitution Period, then:

(i) The reconstituted limited liability company shall continue until the occurrence of a Dissolution Event as provided in this Section 10.1(a);

(ii) Unless otherwise agreed to by a majority of the Members, the Certificate and this Agreement shall automatically constitute the Certificate and Agreement of such new Company. All of the assets and liabilities of the dissolved Company shall be deemed to have been automatically assigned, assumed, conveyed and transferred to the new Company. No bond, collateral, assumption or release of any Member's or the Company's liabilities shall be required; *provided* that the right of the Members to select successor managers and to reconstitute and continue the Business shall not exist and may not be exercised unless the Company has received an opinion of counsel that the exercise of the right would not result in the loss of limited liability of any Member and neither the Company nor the reconstituted limited liability company would cease to be treated as a partnership for federal income tax purposes upon the exercise of such right to continue.

10.2 Winding Up. Upon the occurrence of (i) a Dissolution Event or (ii) the determination by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Dissolution Event (unless the Company is reconstituted pursuant to Section 10.1(b) hereof), the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs, *provided* that all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding upon the Members until such time as the Property has been distributed pursuant to this Section 10.2 and the Certificate has been canceled pursuant to the Act. The Liquidator shall be responsible for overseeing the winding up and dissolution of the Company, which winding up and dissolution shall be completed within ninety (90) days of the occurrence of the

Dissolution Event and within ninety (90) days after the last day on which the Company may be reconstituted pursuant to Section 10.1(b) hereof. The Liquidator shall take full account of the Company's liabilities and Property and shall cause the Property or the proceeds from the sale thereof (as determined pursuant to Section 10.9 hereof), to the extent sufficient therefor, to be applied and distributed, to the maximum extent permitted by law, in the following order:

(a) First, to creditors (including Members and Managers who are creditors, to the extent otherwise permitted by law) in satisfaction of all of the Company's Debts and other liabilities (whether by payment or the making of reasonable provision for payment thereof), other than liabilities for which reasonable provision for payment has been made and liabilities for distribution to members under Section 18-601 or 18-604 of the Act;

(b) Second, except as provided in this Agreement, to members and former Members of the Company in satisfaction of liabilities for distribution under Sections 18-601 or 18-604 of the Act; and

(c) The balance, if any, to the Members in accordance with the positive balance in their Capital Accounts, after giving effect to all contributions, distributions and allocations for all periods.

No Member or Manager shall receive additional compensation for any services performed pursuant to this Section 10.

10.3 Compliance With Certain Requirements of Regulations: Deficit Capital Accounts.

In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), (a) distributions shall be made pursuant to this Section 10 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all Allocation Years, including the Allocation Year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 10 may be:

(a) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 10.2 hereof; or

(b) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, *provided* that such withheld amounts shall be distributed to the Members as soon as practicable.

10.4 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Section 11, in the event the Company is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Dissolution Event has occurred, the Property shall not be liquidated, the Company's Debts and other liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have distributed the Property in-kind to the Members, who shall be deemed to have taken subject to all Debts of the Company and other liabilities all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the Property in-kind to the Company, which shall be deemed to have taken subject to all such liabilities.

10.5 Rights of Members. Except as otherwise provided in this Agreement, each Member shall look solely to the Property of the Company for the return of its Capital Contribution and has no right or power to demand or receive Property other than cash from the Company. If the assets of the Company remaining after payment or discharge of the debts or liabilities of the Company are insufficient to return such Capital Contribution, the Members shall have no recourse against the Company or any other Member or Manager.

10.6 Notice of Dissolution/Termination.

(a) In the event a Dissolution Event occurs or an event occurs that would, but for provisions of Section 10.1, result in a dissolution of the Company, the Board shall, within thirty (30) days thereafter, provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Board) and shall publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the discretion of the Board).

(b) Upon completion of the distribution of the Company's Property as provided in this Section 10, the Company shall be terminated, and the Liquidator shall cause the filing of the Certificate of Cancellation pursuant to Section 18-203 of the Act and shall take all such other actions as may be necessary to terminate the Company.

10.7 Allocations During Period of Liquidation. During the period commencing on the first day of the Fiscal Year during which a Dissolution Event occurs and ending on the date on which all of the assets of the Company have been distributed to the Members pursuant to Section 10.2 hereof (the "Liquidation Period"), the Members shall continue to share Profits, Losses, gain, loss and other items of Company income, gain, loss or deduction in the manner provided in Section 3 hereof.

10.8 Character of Liquidating Distributions. All payments made in liquidation of the interest of a Member in the Company shall be made in exchange for the interest of such Member in Property pursuant to Section 736(b)(1) of the Code, including the interest of such Member in Company goodwill.

10.9 The Liquidator.

(a) **Definition.** The "Liquidator" shall mean a Person appointed by the Board to oversee the liquidation of the Company.

(b) **Fees.** The Company is authorized to pay a reasonable fee to the Liquidator for its services performed pursuant to this Section 10 and to reimburse the Liquidator for its reasonable costs and expenses incurred in performing those services.

(c) **Indemnification.** The Company shall indemnify, save harmless, and pay all judgments and claims against such Liquidator or any officers, directors, agents or employees of the Liquidator relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Liquidator, or any officers, directors, agents or employees of the Liquidator in connection with the liquidation of the Company, including reasonable attorneys' fees incurred by the Liquidator, officer, director, agent or employee in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, except to the extent such liability or damage is caused by the fraud, intentional misconduct of, or a knowing violation of the laws by the Liquidator which was material to the cause of action.

10.10 Form of Liquidating Distributions. For purposes of making distributions required by Section 10.2 hereof, the Liquidator may determine whether to distribute all or any portion of the Property in-kind or to sell all or any portion of the Property and distribute the proceeds therefrom.

SECTION 11 - POWER OF ATTORNEY

11.1 Managers as Attorneys-In-Fact. Each Member hereby makes, constitutes, and appoints each Manager, severally, with full power of substitution and resubstitution, its true and lawful attorney-in-fact for it and in its name, place, and stead and for its use and benefit, to sign, execute, certify, acknowledge, swear to, file, publish and record (i) all certificates of formation, amended name or similar certificates, and other certificates and instruments (including counterparts of this Agreement) which the Board may deem necessary to be filed by the Company under the laws of the State of Delaware or any other jurisdiction in which the Company is doing or intends to do business; (ii) any and all amendments, restatements or changes to this Agreement and the instruments described in clause (i), as now or hereafter amended, which the Board may deem necessary to effect a change or modification of the Company in accordance with the terms of this Agreement, including, without limitation, amendments, restatements or changes to reflect (A) any amendments adopted by the Members in accordance with the terms of this Agreement, (B) the admission of any substituted Member and (C) the disposition by any Member of its interest in the Company; (iii) all certificates of cancellation and other instruments which the Board deems necessary or appropriate to effect the dissolution and termination of the Company pursuant to the terms of this Agreement and (iv) any other instrument which is now or may hereafter be required by law to be filed on behalf of the Company or is deemed necessary by the Board to carry out fully the provisions of this Agreement in accordance with its terms. Each Member authorizes each such attorney-in-fact to take any further action which such attorney-in-fact shall consider necessary in connection with any of the foregoing, hereby giving each such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite to be done in connection with the foregoing as fully as such Member might or could do personally, and hereby ratify and confirm all that any such attorney-in-fact shall lawfully do, or cause to be done, by virtue thereof or hereof.

11.2 Nature of Special Power. The power of attorney granted to each Manager pursuant to this Section 12:

- (a) Is a special power of attorney coupled with an interest and is irrevocable;
- (b) May be exercised by any such attorney-in-fact by listing the Members executing any agreement, certificate, instrument, or other document with the single signature of any such attorney-in-fact acting as attorney-in-fact for such Members; and
- (c) Shall survive and not be affected by the subsequent Bankruptcy, insolvency, dissolution, or cessation of existence of a Member and shall survive the delivery of an assignment by a Member of the whole or a portion of its interest in the Company (except that where the assignment is of such Member's entire interest in the Company and the assignee, with the consent of the other Members, is admitted as a substituted Member, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling any such attorney-in-fact to effect such substitution) and shall extend to such Member's, or assignee's successors and assigns.

SECTION 12 - MISCELLANEOUS

12.1 Notices: Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the Person or to an officer of the Person to whom the same is directed, or (ii) when the same is actually received, if sent either by registered or certified mail, postage and charges prepaid, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, addressed as follows, or to such other address as such Person may from time to time specify by notice to the Members and Managers: (a) if to the Company, to the address determined pursuant to Article 1 hereof; (b) if to the Managers, to the address set forth in Article 4 hereof; or (c) if to a Member, to the address set forth in Section 2.1 hereof, or on the counterpart/jointer.

12.2 Binding Effect/Incorporation by Reference/Construction/Headings/Variation of Terms: Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, transferees, and assigns. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof. All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require. Every exhibit, schedule, and other appendix attached to this Agreement and referred to herein is not incorporated in this Agreement by reference unless this Agreement expressly otherwise provides.

12.3 Time: In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

12.4 Severability: Except as otherwise provided in the succeeding sentence, every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement. The preceding sentence of this Section 12.6 shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any Member to lose the material benefit of its economic bargain.

12.5 Governing Law/Waiver of Jury Trial/Specific Performance: The laws of the State of Delaware shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder. Each of the Members irrevocably waives to the extent permitted by law, all rights to trial by jury and all rights to immunity by sovereignty or otherwise in any action, proceeding or counterclaim arising out of or relating to this Agreement. Each Member agrees with the other Members that the other Members would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the non-breaching Members may be entitled, at law or in equity, the non-breaching Members shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement and specifically to enforce the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

12.6 Non-Confidential Transaction: Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure; provided however, that any such information shall be kept confidential to the extent required to comply with any applicable federal or state securities laws.

12.7 Tax Treatment: Notwithstanding anything contained in this Agreement to the contrary, (i) each Manager and Member shall each take any and all actions, and shall make all elections which are or may be required in order to ensure that the Company is treated as a "partnership" for federal and state tax purposes, and (ii) no Manager or Member shall take any action or make any election whatsoever which is or may be deemed to be inconsistent or contrary to the characterization and/or treatment of the Company as a "partnership" for federal and state tax purposes, or which results in the Company not being treated as a partnership for federal and state tax purposes.

12.8 Counterpart Execution/Facsimile and Electronic Copies Permitted: This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Facsimile copies or other similar electronic data or image of the executed document shall be equal to an originally executed version of the same.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement of the Company as of the day first above set forth.

signatures below

Peak Tower, LLC
Limited Liability Company Operating Agreement

Signed and agreed to, as of the Effective Date, by and among:

Progress Telecommunications Corporation, a Florida corporation

By: D. B. Fountaine

Name: David B. Fountaine

Title: President

Date: 6/11/10

Member: Peak Tower Investors, LLC, a California limited liability company

By: R. Saffir

Name: Rich Saffir

Title: MANAGING MEMBER

Date: 6/18/10

EXHIBIT A - DEFINITIONS

Capitalized words and phrases used in this Agreement have the following meanings:

"Accepting Offerees" shall have the meaning set forth in Section 9.4(d) hereof.

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et seq., as amended from time to time (or any corresponding provisions of succeeding law).

"Additional Capital Call Notice" has the meaning set forth in Section 2.3.

"Additional Capital Contributions" means, with respect to each Member, the Capital Contributions made by such Member pursuant to Section 2.3 hereof. In the event Units are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Additional Capital Contributions of the transferor to the extent they relate to the Transferred Units.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Allocation Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentences in Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Affiliate" means, with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person (ii) any officer, director, general partner, member or trustee of such Person or (iii) any Person who is an officer, director, general partner, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms "controlling," "controlled by" or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, general partners, or persons exercising similar authority with respect to such Person or entities.

"Agreement" means this Limited Liability Company Agreement of Peak Tower, LLC, including all Exhibits and Schedules attached hereto, as amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires.

"Allocation Year" means (i) the period commencing on the Effective Date and ending on December 31, 2010, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31 or (iii) any portion of the period described in clauses (i) or (ii) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Section 3 hereof.

"Acquiror" has the meaning set forth in Section 9.11 hereof.

"Bankruptcy" means, with respect to any Person, a "Voluntary Bankruptcy" or an "Involuntary Bankruptcy." A "Voluntary Bankruptcy" means, with respect to any Person (i) the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors,

(ii) the filing of any petition or answer by such Person seeking to adjudicate itself as bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its Property or (iii) corporate action taken by such Person to authorize any of the actions set forth above. An "Involuntary Bankruptcy" means, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation unless such proceeding is not terminated within one hundred eighty days (180) or the filing of any such petition against such Person which petition shall not be dismissed within one hundred eighty (180) days, or without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the Property of such Person which order shall not be dismissed within one hundred eighty (180) days.

"Board" or "Board of Managers" has the meaning set forth in Section 4.1 hereof.

"Business" means the development, construction and leasing of telecommunications towers and monopoles (i.e., antennae towers).

"Business Day" means a day of the year on which banks are not required or authorized to close in New York, New York.

"Capital Account" means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited (A) such Member's Capital Contributions, (B) such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 3 or Section 4 of Exhibit B hereof, and (C) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2);

(ii) To each Member's Capital Account there shall be debited (A) the amount of money and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 3 or Section 4 of Exhibit B hereto, and (C) the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company;

(iii) In the event Units are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Units; and

(iv) In determining the amount of any liability for purposes of subparagraphs (i) and (ii) above there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Board shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Members, are computed in order to comply with such Regulations, the Board may make such modification, *provided that* it is not likely to have a material effect on the amounts distributed to any Person pursuant to Section 11 hereof upon the dissolution of the Company. The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Capital Contributions" means, with respect to any Member, the amount of money and the initial Gross Asset Value of any Property (other than money) contributed to the Company with respect to the Units in the Company held or purchased by such Member, including Additional Capital Contributions.

"Certificate" means the certificate of formation filed with the Secretary of State of the State of Delaware pursuant to the Act as originally executed and amended, modified, supplemented, or restated from time to time, as the context requires.

"Certificate of Cancellation" means a certificate filed in accordance with 6 Del. C. § 18-203.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time.

"Company" means the limited liability company formed pursuant to this Agreement and the Certificate and the limited liability company continuing the business of this Company in the event of dissolution of the Company as herein provided.

"Debt" means (i) any indebtedness for borrowed money or the deferred purchase price of property as evidenced by a note, bonds, or other instruments, (ii) obligations as lessee under capital leases, (iii) obligations secured by any mortgage, pledge, security interest, encumbrance, lien or charge of any kind existing on any asset owned or held by the Company whether or not the Company has assumed or become liable for the obligations secured thereby, (iv) any obligation under any interest rate swap agreement, (v) accounts payable and (vi) obligations under direct or indirect guarantees of (including obligations (contingent or otherwise) to assure a creditor against loss in respect of) indebtedness or obligations of the kinds referred to in clauses (i), (ii), (iii), (iv) and (v), above *provided that* Debt shall not include obligations in respect of any accounts payable that are incurred in the ordinary course of the Company's business and are not delinquent or are being contested in good faith by appropriate proceedings.

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

"Dissolution Event" has the meaning set forth in Section 10.1 hereof.

"Effective Date" means the date hereof.

"Firm Offer" has the meaning set forth in Section 9.4(b) hereof.

"Fiscal Quarter" means (i) the period commencing on the Effective Date and ending on December 31, (ii) any subsequent three-month period commencing on each of July 1, October 1, January 1 and April 1 and ending on the last date before the next such date and (iii) the period commencing on the immediately preceding January 1, April 1, July 1, or October 1, as the case may be, and ending on the date on which all Property is distributed to the Members pursuant to Section 10 hereof.

"Fiscal Year" means (i) the period commencing on the Effective Date and ending on December 31, (ii) any subsequent twelve-month period commencing on January 1 and ending on December 31; and (iii) the period commencing on the immediately preceding January 1 and ending on the date on which all Property is distributed to the Members pursuant to Section 10 hereof.

"Funding Member" has the meaning set forth in Section 2.3(b) hereof.

"GAAP" means generally accepted accounting principles in effect in the United States of America from time to time.

"Gross Asset Value" means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Board *provided* that the initial Gross Asset Values of the assets contributed to the Company pursuant to Section 2.1 hereof shall be as set forth in such section;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as determined by the Board as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution or in connection with the performance of services; (B) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(i)(g), *provided* that an adjustment described in clauses (A) and (B) of this paragraph shall be made only if the Board reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution as determined by the Board; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (vi) of the definition of "Profits" and "Losses" or Section 3.3(c) hereof; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (ii) or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

"Involuntary Bankruptcy" has the meaning set forth in the definition of Bankruptcy.

"Issuance Items" has the meaning set forth in Section 3(h) of Exhibit B hereto.

"Liquidation Period" has the meaning set forth in Section 10.7 hereof.

"Liquidator" has the meaning set forth in Section 10.9(a) hereof.

"Losses" has the meaning set forth in the definition of "Profits" and "Losses."

"Manager" means any of the individuals elected by the Members to serve on the Board and **"Managers"** means all of such individuals.

"Member" (or collectively, **"Members"**) means any Person (1) (i) who is referred to as such in the introductory paragraph of this Agreement, (ii) who has become a substituted Member pursuant to the terms of this Agreement, or (iii) who has been issued Unrestricted or Restricted Units and has been admitted as a Member, and (2) who has not ceased to be a Member.

"Member Nonrecourse Debt" has the same meaning as the term "partner nonrecourse debt" in Section 1.704-2(b)(4) of the Regulations.

"Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

"Member Nonrecourse Deductions" has the same meaning as the term "partner nonrecourse deductions" in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

"Net Cash Flow" means the gross cash proceeds of the Company less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Board. "Net Cash Flow" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this definition.

"Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

"Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"Notice Members" has the meaning set forth in Section 9.1 hereof.

"Offer Notice" has the meaning set forth in Section 9.4(b) hereof.

"Offerees" has the meaning set forth in Section 9.4(b) hereof.

"Offer Period" has the meaning set forth in Section 9.4(c) hereof.

"Offer Price" has the meaning set forth in Section 9.4(a) hereof.

"Offered Units" has the meaning set forth in Section 9.4 hereof.

"Operating Committee" has the meaning set forth in Section 4.3 hereof.

"Operating Budget" has the meaning set forth in Section 4.3 hereof.

"Operating Plan" has the meaning set forth in Section 4.3 hereof.

"Original Capital Contribution" has the meaning set forth in Section 2.1 hereof.

"PTI" means Peak Tower Investors, LLC, a California limited liability company.

"Other Members" has the meaning set forth in Section 9.10(b) hereof.

"Parent" means any corporation, partnership, joint venture, limited liability company, association or other entity that, with respect to such Person, owns, directly or indirectly, fifty percent (50%) or more of the outstanding equity securities or interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such entity.

"Percentage Interest" means, with respect to any Member as of any date, the ratio (expressed as a percentage) of the number of Units held by such Member on such date to the aggregate Units held by all Members on such date. The Percentage Interest of each Member immediately after the Effective Date is set forth in Section 2.1 hereof.

"Permitted Transfer" has the meaning set forth in Section 9.2 hereof.

"Person" means any individual, Company (whether general or limited), limited liability company, corporation, trust, estate, association, nominee or other entity.

"Profits" and "Losses" mean, for each Allocation Year, an amount equal to the Company's taxable income or loss for such Allocation Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 3 or Section 4 of Exhibit B hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 3 and Section 4 of Exhibit B hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

"Property" means all real and personal property acquired by the Company, including cash, and any improvements thereto, and shall include both tangible and intangible property.

"PTC" means Progress Telecommunications Corporation, a Florida corporation.

"Purchase Offer" has the meaning set forth in Section 9.4(a) hereof.

"Purchaser" has the meaning set forth in Section 9.4(a) hereof.

"Reconstitution Period" has the meaning set forth in Section 10.1 hereof.

"Regulations" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations are amended from time to time.

"Regulatory Allocations" has the meaning set forth in Section 4 of Exhibit B hereto.

"Reply Notice" has the meaning set forth in Section 9.10(b) hereof.

"Securities Act" means the Securities Act of 1933, as amended.

"Seller" has the meaning set forth in Section 9.4 hereof.

"Tax Matters Member" has the meaning set forth in Section 7.3(a) hereof.

"Terminating Member" has the meaning set forth in Section 9.10(a) hereof.

"Termination Date" has the meaning set forth in Section 9.10(a) hereof.

"Termination Notice" has the meaning set forth in Section 9.10(a) hereof.

"Termination Price" has the meaning set forth in Section 9.10(a) hereof.

"Transfer" means, as a noun, any voluntary or involuntary transfer, sale, pledge or hypothecation or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge or hypothecate or otherwise dispose of.

"Units or Unit" means an ownership interest in the Company including any and all benefits to which the holder of such Units may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

"Voluntary Bankruptcy" has the meaning set forth in the definition of "Bankruptcy."

"Wholly Owned Affiliate" of any Person means an Affiliate of such Person (i) one hundred percent (100%) of the voting stock or beneficial ownership of which is owned directly by such Person, or by any Person who, directly or indirectly, owns one hundred percent (100%) of the voting stock or beneficial ownership of such Person, (ii) an Affiliate to such Person who, directly or indirectly, owns one hundred percent (100%) of the voting stock or beneficial ownership of such Person, and (iii) any Wholly Owned Affiliate of any Affiliate described in clause (i) or clause (ii).

EXHIBIT B - TAX ALLOCATIONS

Section 1. Profits. After giving effect to the special allocations set forth in Sections 3 and 4 of this Exhibit B, Profits for any Allocation Year shall be allocated to the Members as follows:

(a) First, to the Members in an amount equal to the remainder, if any, of (i) the cumulative Losses allocated pursuant to Section 5 of this Exhibit B for all prior Allocation Years, over (ii) the cumulative Profits allocated pursuant to this Section 1(a) for all prior Allocation Years;

(b) Second, to the Members in an amount equal to the remainder, if any, of (i) the cumulative Losses allocated pursuant to Section 2(b) of this Exhibit B for all prior Allocation Years, over (ii) the cumulative Profits allocated pursuant to this Section 1(b) for all prior Allocation Years; and

(c) The balance, if any, in proportion to their Percentage Interests.

Section 2. Losses. After giving effect to the special allocations set forth in Sections 3 and 4 of this Exhibit B and subject to Section 5 of this Exhibit B, Losses for any Allocation Year shall be allocated:

(a) First, to the Members in an amount equal and proportionate to the remainder, if any, of (i) the cumulative Profits allocated pursuant to Section 1(b) of this Exhibit B for all prior Allocation Years, over (ii) the cumulative Losses allocated pursuant to this Section 2(a) for all prior Allocation Years; and

(b) The balance, if any, to the Members in proportion to their Percentage Interests.

Section 3. Special Allocations. The following special allocations shall be made in the following order:

(a) **Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Exhibit B, if there is a net decrease in Company Minimum Gain during any Allocation Year, each Member shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 3(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) **Member Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Exhibit B, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 3(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 3(c) shall be made only if and to the extent that the

Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Exhibit B have been tentatively made as if this Section 3(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Allocation Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 3(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Exhibit B have been made as if Section 3(c) and this Section 3(d) were not in the Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) Allocations Relating to Taxable Issuance of Company Units. Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of Units by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

(i) Forfeiture Allocations. In the event of the forfeiture of any substantially nonvested Units that were issued to a Person (after final regulations under Regulation Section 1.704-1(b)(4)(xii) are published in the Federal Register (the "Forfeiture Allocation Regs")) in connection with the performance of services to the Company and with respect to which such Person ("Service Member") has timely elected under Code Section 83(b) to include in the Service Member's income the difference between (i) the fair market value of such Units when issued and (ii) the amount paid for such Units, then forfeiture allocations shall be made to the Service Member (consisting of a pro rata portion of each item) of gross income and gain or gross deduction and loss (to the extent such items are available) for the taxable year of the forfeiture in a positive or negative amount equal to—

(1) The excess (not less than zero) of the—

(i) Amount of distributions (including deemed distributions under Code Section 752(b) and the adjusted tax basis of any property so distributed) to the Service Member with respect to the forfeited Units (to the extent such distributions are not taxable under Code Section 731); over

(ii) Amounts paid for the Units and the adjusted tax basis of property contributed by the Service Member (including deemed contributions under Code Section 752(a)) to the Company with respect to the forfeited Units; minus

(2) The cumulative net income (or loss) allocated to the Service Member with respect to the forfeited Units.

For purposes of this Section 3(i), items of income and gain are reflected as positive amounts, and items of deduction and loss are reflected as negative amounts. Forfeiture allocations may be made out of the Company's items for the entire taxable year of the forfeiture.

Section 4. Curative Allocations. The allocations set forth in Sections 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g) and 5 of this Exhibit B (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 4. Therefore, notwithstanding any other provision of this Exhibit B (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 1, 2, and 3(h) of this Exhibit B.

Section 5. Loss Limitation. Losses allocated pursuant to Section 2 of this Exhibit B shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Allocation Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 2, the limitation set forth in this Section 5 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(i)(d) of the Regulations.

Section 6. Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Exhibit B and hereby agree to be bound by the provisions of this Exhibit B in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their Percentage Interests.

To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Board shall endeavor to treat distributions of Net Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

Section 7. Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the traditional method. In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code

Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 7 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

Section 8. Gain or Loss from Revaluation of Property. In the event the value of Company Property is adjusted on the Company's books to reflect the fair market value in accordance with the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such property for federal income tax purposes and its value on the Company's books in the same manner as under Code Section 704(c).

EXHIBIT C
MEMBER NAMES, ADDRESSES,
CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS

<u>Names and Address</u>	<u>Original Capital Contribution</u>	<u>Percentage Interest</u>	<u>Units</u>
Progress Telecommunications Corporation, a Florida corporation 410 South Wilmington Street, Raleigh, NC 27601	\$ 468,000	51%	510,000 Units
Peak Tower Investors, LLC 550 Lytton Avenue, Suite 200 Palo Alto, CA 94301	\$ 392,000	49%	490,000 Units

Exhibit O - Information regarding any similar operations in other states

PeakNet is a certificated carrier in the States of Florida, North Carolina, South Carolina, Kentucky and Indiana. Application is in good standing in each state.

Exhibit P - Verification that the applicant will maintain local telephony records separate and apart from any other accounting records in accordance with the GAAP

Applicant maintains its books in accordance GAAP, but verifies it will adhere to any separate FCC accounting requirements, if applicable.

Exhibit Q - Explanation as to which service areas the applicant currently has an approved interconnection or resale agreement

Applicant does not intend to enter into negotiations for an interconnection agreement at this time.

Exhibit R - A notarized affidavit accompanied by bona fide letters requesting negotiation pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and a proposed timeline for construction, interconnection and offering of service to end users

Not applicable.

Exhibit S - For CLECs, List of Ohio LEC Exchanges the applicant intend to serve

Applicant intends to provide service to carrier customers statewide.