

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate  
to provide competitive local exchange  
telecommunications service by  
Home Town Telephone, LLC.

DOCKET NO.: 0300765 - TX

ISSUED: SEPTEMBER 22, 2003

FILED: FRIDAY, OCTOBER 3, 2003

**PETITION FOR A FORMAL PROCEEDING AND OBJECTIONS TO APPLICATION**

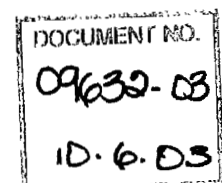
COMES NOW the Petitioner, KEITH KRAMER, ("KRAMER") by and through his undersigned Counsel and files his Petition seeking a formal proceeding and evidentiary hearing on the proposed Agency Order No.: PSC-03-1045-PAA-TX on the Application by Home Town Telephone, LLC. ("HOME TOWN") for certification to provide Competitive Local Exchange Telecommunication (CLEC) service, and files his Objections to the Application by HOME TOWN for Certification to Provide Competitive Local Exchange Telecommunication Service:

**Name and Address of Agency and Identification Number:**

1. The name and address of the agency affected by this Petition is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.
2. The Docket number before the Florida Public Service Commission on the Application by HOME TOWN is 030765-TX.
3. The Order Number of the Florida Public Service Commission granting the Certificate is ID PSC-03-1045-PAA-TX issued September 22, 2003.
4. The Certificate Number granted by the Florida Public Service Commission to HOME TOWN is Certificate Number 8393.

Petitioner is not aware of any other file or identification number for this matter.

**Name and Address of Petitioner and Petitioner's Representative**



**Statement of Substantial Interest Affected:**

5. The name, address and telephone number of the Petitioner is Keith Kramer, 18459 NW 9<sup>th</sup> Street, Pembroke Pines, FL33029, (954-252-1003)
6. The name, address and telephone number of Petitioner's Representative is Alan C. Gold, Esquire, Law Offices of Alan C. Gold, P.A., 1320 South Dixie Highway, Suite 870, Coral Gables, FL 33146 (305) 667-0475.
7. Petitioner's substantial interest will be seriously and materially affected by the agencies determination in granting a Certificate to HOME TOWN in the following manner:
  - a. Petitioner is a member/principal of IDS Telecom, LLC., ("IDS") a Florida Limited Liability company who currently holds a certificate to provide competitive Local Exchange Telecommunications Service from the Florida Public Service Commission, and which is managed by Joseph Millstone ("Millstone"), Michael Noshay ("Noshay") and Anthony Petrone ("Petrone"), who are also members/principals of IDS.
  - b. Petrone, Millstone and Noshay are also managers and members/principals of HOME TOWN
  - c. HOME TOWN is seeking the certificate in order to become a competitor of IDS and to improperly divert assets, resources and business opportunities away from IDS into HOME TOWN.
  - d. This competition by HOME TOWN through Millstone, Noshay and Petrone is in violation of the Third Amended and Restated Operating Agreement of

IDS and is in direct violation of Florida Statutes § 608.4225 (1) (a) 3, which prohibits the Managers “from competing with the limited liability company in the conduct of the limited liability company business before the dissolution of the limited liability company.

- e. The actions by these three managers (Millstone, Noshay and Petrone) also violates their duty of loyalty and fiduciary duties to IDS and its members, including Kramer, both under Florida statutory and case law. In fact, Kramer has sought leave to file an Amended Complaint against these individual managers in the Circuit of the Eleventh Judicial Circuit Court of Miami-Dade County, Florida complaining of the formation of HOME TOWN and its seeking a certificate to enable it to provide competitive local exchange telecommunication services. (A copy of the proposed Amended Counterclaim by Kramer is attached hereto and incorporated herein as Exhibit “1”).
- f. Kramer’s interest as a member and an equity holder in IDS will be adversely affected by HOME TOWN receiving its Certificate from the Florida Public Service Commission and competing with IDS.
- g. Petitioner, Kramer’s interest as a member of the public will also be adversely affected by the granting of this Application for the following reasons:
  - i. The granting of a Certificate of Authority is not necessary nor warranted due to the fact that IDS, a company affiliated with HOME TOWN through commonality of ownership in part, and management is already authorized by the Florida Public Service Commission to

provide Competitive Local Exchange Telecommunication Services.

- ii. The managerial capacity of HOME TOWN is suspect due to the flagrant disregard of its managers for the Florida Statutes, contractual obligations and fiduciary obligations.
- iii. The financial capability of HOME TOWN is also suspect and is not clearly set forth in HOME TOWN's application, but is rather based upon projections and no concrete financial information was provided.

**When and How Notice of Agency's Action was Received:**

- 8. Petitioner received notice of the Florida Public Service Commission's decision granting the Application by HOME TOWN on or about September 22, 2003, when it obtained a copy of the Notice of Proposed Agency Action over the internet.
- 9. Petitioner was actually aware that the Petition was pending and that an Order was forthcoming several weeks prior to the entry of the Order.

**Disputed Issues of Fact:**

- 10. Petitioner does not know what facts will be disputed by HOME TOWN; however, anticipates that HOME TOWN would dispute certain facts.
- 11. It appears it will be undisputed that the managers of IDS and HOME TOWN are the same; namely, Petrone, Noshay and Millstone. According to the Application by HOME TOWN the principals of both IDS and HOME TOWN are at least, in part, the same.
- 12. Petitioner believes that Anthony Petrone, Michael Noshay and Joseph Millstone and possibly MCG Capital Corporation have an equity interest in both IDS and HOME

TOWN, and that the above will be undisputed.

13. It should be undisputed that IDS has a Certificate from the Florida Public Service Commission to provide Competitive Local Exchange Telecommunication Services.
14. Petitioner believes that HOME TOWN might attempt to dispute that it is in competition with IDS and diverting assets and opportunities from IDS; however, those facts and breaches are apparent.
15. Petitioner alleges that HOME TOWN does not have sufficient managerial capacity to provide the service, and anticipates HOME TOWN will dispute the same.
16. Petitioner alleges that HOME TOWN does not have sufficient financial ability as shown in its Application, and anticipates HOME TOWN will dispute the same.
17. Petitioner alleges that the granting of the Certificate to HOME TOWN would not be in the public interest, and anticipates that HOME TOWN will dispute the same.

**Ultimate Facts Which Warrant Reversal of Agency Action:**

18. A concise statement of the ultimate facts alleged including the specific facts Petitioner contends warrants reversal or modification of the Agency's proposed action was set forth immediately above in this Petition in paragraph 8 herein, which paragraph is hereby incorporated herein by reference. Specifically, Petitioner claims that the Certificate to provide Competitive Local Exchange Telecommunication Service granted to HOME TOWN directly, unfairly and unlawfully competes with Petitioner's ownership interest in IDS, that the managers of HOME TOWN have breached statutory and fiduciary obligations to IDS and Petitioner. Moreover, Petitioner contends demonstrated that HOME TOWN does not have the sufficient financial or

managerial capacities to provide the telecommunication services. Additionally, Petitioner contends that the granting of the certificate is not necessary or warranted due to the fact that an affiliated company of HOME TOWN, namely, IDS, already holds a certificate with the Florida Public Service Commission and provides competitive local exchange telecommunication services.

**Statement of Specific Rules and Statute which Require Reversal:**

19. The Agency's proposed action violates Florida Statutes § 364.337 in that there is no showing that HOME TOWN has sufficient technical, financial and managerial capacity to provide such service.
20. Additionally, the granting of the Certificate to HOME TOWN is detrimental to the public interest and a violation of Florida Statutes § 364.337 due to the fact that an affiliated company of HOME TOWN is already the holder of such Certificate.
21. Furthermore, the managers of HOME TOWN violated Florida Statutes § 608.4225, and their duties of loyalty as managers of IDS, and breach of fiduciary duty to IDS and its members.

**Statement of Relief Sought:**

22. Petitioner seeks the following relief:
  - a. This Agency grant a proceeding pursuant to Florida Statutes § 120.569 and 120.57 and hold an evidentiary hearing on HOME TOWN's Petition and Kramer's Objections,
  - b. The Order approving the Application For Certificate be rescinded,
  - c. HOME TOWN's Application For Certificate to provide Competitive

Local Exchange Telecommunication Service be denied,

- d. Petitioner be granted all relief to which he is entitled.

Respectfully submitted,

ALAN C. GOLD, P.A.  
Gables One Tower  
1320 South Dixie Highway  
Suite 870  
Coral Gables, FL 33146  
(305) 667-0475 (office)  
(305) 663-0799 (telefax)



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BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875  
JAMES L. PARADO, ESQUIRE  
Florida Bar Number: 0580910



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KEITH KRAMER

**CERTIFICATE OF MAILING**

I hereby certify that the foregoing **Petition For a Formal Proceeding and Objection To Application** was mailed via U.S. Mail on October 3, 2003, to:


**HOME TOWN TELEPHONE, LLC.**  
1525 NW 167<sup>th</sup> Street  
Suite 200  
Miami, FL 33186

and via Overnight Delivery on October 3, 2003 to:

**DIRECTOR, DIVISION OF THE COMMISSION CLERK AND  
ADMINISTRATIVE SERVICES**  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

and was mailed via U.S. Mail on October 3, 2003 to:

**FLORIDA PUBLIC SERVICE COMMISSION  
DIVISION OF COMMISSION CLERK and  
ADMINISTRATIVE SERVICES**  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

  
BY: ALAN C. GOLD, ESQUIRE  
FLORIDA BAR #304875



IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 02-30251 CA 11

IDS TELCOM, LLC.

Plaintiff,

vs.

KEITH KRAMER, SATURN  
COMMUNICATIONS, INC.,  
SATURN BANDWIDTH &  
FIBER, INC. and SATURN  
TELECOMMUNICATION  
SERVICES, INC.

Defendants.

---

KEITH KRAMER, individually and  
on behalf of IDS TELECOM, LLC,

Counterplaintiffs,

vs.

IDS TELECOM, LLC, a Florida limited liability  
company, HOME TOWN TELEPHONE, LLC, a  
Florida limited liability company, MICHAEL  
NOSHAY, JOSEPH MILLSTONE, ANTHONY  
PETRONE,

Counterdefendants.

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**COUNTERPLAINTIFF'S MOTION FOR LEAVE TO AMEND  
COUNTERCLAIM**

**COMES NOW**, Counterplaintiff, KEITH KRAMER, individually and on behalf  
of IDS TELECOM, LLC, by and through the undersigned Counsel, and submits this

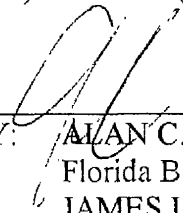
*Exhibit "A"*

MOTION FOR LEAVE TO AMEND COUNTERCLAIM and in support thereof states the following:

1. Counterplaintiff desires to amend his counterclaim and requests that this Honorable Court grant him authority to amend. (A copy of the Verified Amended Counterclaim is attached as Plaintiff's Exhibit "1")
2. In accordance with Florida Rules of Civil Procedure, Rule 1.190(a) motions to amend a counterclaim should be freely given.
3. Newly discovered facts and circumstances have arisen which present the need to amend the Counterclaim, and in the interest of justice and equity, leave to amend should be granted.
4. Additional counts added to Counterplaintiff's Counterclaim will not cause a delay in this suit going to trial.

**WHEREFORE**, Counterplaintiff KEITH KRAMER, individually and on behalf of IDS TELECOM, LLC, respectfully requests this Court to Grant his Motion for Leave To Amend Counterclaim and for all other relief this court deems just and proper.


Respectfully submitted,  
ALAN C. GOLD, P.A.  
Gables One Tower  
1320 South Dixie Highway  
Suite 870  
Coral Gables, FL 33146  
(305) 667-0475 (office)  
(305) 663-0799 (telefax)

BY:   
ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875  
JAMES L. PARADO, ESQUIRE  
Florida Bar Number: 0580910

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed this 22  
day of September 2003 to:

Mitchell L. Feldman, Esquire  
Silver, Levy & Feldman  
1408 Westshore Boulevard  
Suite 806  
Tampa, FL 33607

  
BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875  
JAMES L. PARADO, ESQUIRE

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 02-30251 CA 11

IDS TELCOM, LLC.

Plaintiff,

vs.

KEITH KRAMER, SATURN  
COMMUNICATIONS, INC.,  
SATURN BANDWIDTH &  
FIBER, INC. and SATURN  
TELECOMMUNICATION  
SERVICES, INC.

Defendants.

---

KEITH KRAMER, individually and  
on behalf of IDS TELECOM, LLC,

Counterplaintiffs,

vs.

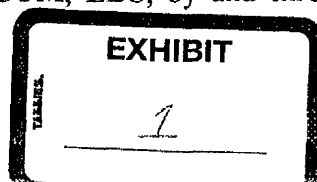
IDS TELECOM, LLC, a Florida limited liability  
company, HOME TOWN TELEPHONE, LLC, a  
Florida limited liability company, MICHAEL  
NOSHAY, JOSEPH MILLSTONE, ANTHONY  
PETRONE,

Counterdefendants.

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**VERIFIED AMENDED COUNTERCLAIM & DEMAND FOR JURY TRIAL**

**COMES NOW** the Defendant / Counterplaintiff, KEITH KRAMER ("KRAMER"),  
individually and on behalf of IDS TELECOM, LLC, by and through his undersigned Counsel



and files his Amended Counterclaim against Counterdefendants, IDS TELCOM, LLC. ("IDS"), HOMETOWN TELEPHONE, LLC ("HOMETOWN"), MICHAEL NOSHAY ("NOSHAY"), JOSEPH MILLSTONE ("MILLSTONE"), and ANTHONY PETRONE ("PETRONE"), and states as follows:

**GENERAL ALLEGATIONS AS TO ALL COUNTS**

1. This is an Amended Counterclaim for damages in excess of \$15,000.00 exclusive of costs and interest, and for injunctive relief.
2. KRAMER is an individual, *sui juris*, who resides in Broward County, Florida.
3. IDS is a limited liability company organized and existing under the laws of the State of Florida, which has its principal place of business in Miami-Dade County, Florida and is licensed as an Alternative Local Exchange Company in the State of Florida, and an Interstate Exchange Carrier in the State of Florida.
4. HOMETOWN is a limited liability company organized and existing under the laws of the State of Florida, which has its principal place of business in Miami-Dade County, Florida.
5. NOSHAY is an individual, *sui juris*, who resides in Broward County, Florida.
6. MILLSTONE is an individual, *sui juris*, who resides in Broward County, Florida.
7. PETRONE is an individual, *sui juris*, who resides in Broward County, Florida.
8. At all times material hereto, KRAMER was a member of IDS holding in excess of a 7% membership interest. (a copy of the Third Amended and Restated Operating Agreement of IDS evidencing KRAMER's membership interest is attached hereto as Exhibit A) ("Operating Agreement")

9. At all times material hereto, NOSHAY, MILLSTONE AND PETRONE were managers of IDS, and are continuing to be managers of IDS.
10. On or about July 18, 2003, NOSHAY, MILLSTONE, and PETRONE formed HOMETOWN TELEPHONE, LLC, with the intent to compete with IDS, and in order to divert opportunities assets, employees and resources of IDS to HOMETOWN.
11. On August 29, 2003, KRAMER made demand on IDS through its managers, NOSHAY, MILLSTONE, and PETRONE, pursuant to Fla. Stat. § 608.601(2) that IDS take steps to correct the wrongdoings of IDS (A copy of the demand to correct is attached hereto as Exhibit "B").
12. IDS and its managers have ignored said demand above-mentioned in paragraph 11 and/or refused to take any action. Any further demands on NOSHAY, MILLSTONE, and PETRONE to correct IDS's wrongdoings would have been futile.
13. KRAMER has performed all conditions precedent to the bringing of this action, if any, or such conditions have been waived or are excused

**COUNT I: INSPECTION OF BOOKS & RECORDS AGAINST IDS BY KRAMER**  
**INDIVIDUALLY**

14. KRAMER individually realleges and reavers paragraphs 1 through 13 herein as if the same were set forth fully herein
15. This is a Count by KRAMER individually for court ordered inspections of IDS's books and records pursuant to Florida Statutes § 608.4101, common law and the operating agreement.

16. Section 12.2 of the Operating Agreement of IDS provided:

At all times during the continuance of the Company, the company shall maintain at its registered office and principal place of business all records and materials referred to in Florida Act § 608.4101 or any successors statute including without limitation, separate books for the company that 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 operation of the company. Said books of account together with a true copy of this Agreement and the Articles shall at *all times* be maintained at the principal place of business of the company and shall *be open to inspection and audit at any time by each member and its duly authorized representative for any purpose.*

17. On October 30, 2002, KRAMER made demand on IDS pursuant to Fla. Stat. §608.4101 for inspection of certain of IDS's books and records, scheduling the same for inspection on November 21, 2002. (A copy of the demand for inspection is attached hereto as Exhibit "C")
18. On or about November 13, 2002, IDS through its counsel replied denying the inspection of the requested documents; however, stated that it would allow the inspection of the records specified in Florida Statutes § 608.4101 (A copy of said letter is attached as Exhibit "D").
19. KRAMER through counsel attempted to schedule the limited inspection (A copy of said letter is attached as Exhibit "E").

20. Despite IDS's letter of November 13, 2002 agreeing to a limited inspection of the books and records, to date, IDS has failed and refused to allow KRAMER to inspect any of the books and records of IDS.
21. IDS's refusal to allow KRAMER to inspect the books and records was wrongful.
22. KRAMER is entitled to inspect the books and records pursuant to Florida Statutes § 608.4101, common law and the express provision of the Operating Agreement.

**WHEREFORE**, Defendant / Counterplaintiff, KEITH KRAMER, individually requests that this Honorable Court enter its order requiring Plaintiff / Counterdefendant, IDS TELECOM, LLC to allow Plaintiff to inspect and copy the records as set forth in its request, for court costs, and for such other relief as the Court deems just and proper.

**COUNT II: BREACH OF FIDUCIARY DUTY AGAINST NOSHAY, MILLSTONE & PETRONE BY KRAMER ON BEHALF OF IDS**

23. KRAMER on behalf of IDS realleges and reavers paragraphs 1 through 13 herein as if the same were set forth fully herein.
24. As managers of IDS, NOSNAY, MILLSTONE, and PETRONE owed IDS and its members a duty of loyalty and good faith and to refrain from self-dealing unless fully disclosed and/or in the best interest of IDS.
25. Fla. Stat. §608.4225 states that managers must refrain from competing with the limited liability company in the conduct of the limited liability company business and that each manager and managing member shall exercise any rights consistent with the obligation of good faith and fair dealing.
26. Commencing on or about July 2003, and continuing through the date of this Verified Amended Complaint, NOSHAY, MILLSTONE, and PETRONE have



breached and continue to breach their fiduciary duty to IDS, by using the assets, employees, and resources of IDS to set up HOMETOWN, a competing business, owned and/or controlled by NOSHAY, MILLSTONE, and PETRONE, and by diverting corporate opportunities available to IDS to HOMETOWN.

27. As further breach of their fiduciary duty, NOSHAY, MILLSTONE, and PETRONE have filed applications for HOMETOWN to become an Alternative Local Exchange Company with the Florida Public Service Commission, and an Interstate Exchange Carrier with the Florida Public Service Commission and Federal Communications Commission, in order to for HOMETOWN to directly compete with IDS, and divert business and business opportunity away from IDS.
28. Upon information and belief, NOSHAY, MILLSTONE and PETRONE have further breached their fiduciary duty to IDS by diverting assets and corporate opportunities of IDS to GRAYCOM, LLC., ("GRAYCOM") a Florida liability company, owned and/or controlled by NOSHAY, MILLSTONE and PETRONE
29. As a result of NOSHAY, MILLSTONE and PETRONE'S breach of fiduciary duty, IDS has been damaged and is continuing to incur damages.
30. KRAMER has hired the undersigned attorney to file this member derivative action and KRAMER is entitled to his attorney's fees pursuant to Fla. Stat. §608.601(6).

**WHEREFORE**, Counterplaintiff, KEITH KRAMER, on behalf of IDS TELECOM, LLC, requests that this Honorable Court enter judgment against Counterdefendants, MICHAEL NOSHAY, JOSEPH MILLSTONE, and ANTHONY PETRONE, for damages, award Counterplaintiff his costs, attorney's fees pursuant to Fla Stat. §608.601(6), and such other

damages and relief as the Court deems appropriate.

**COUNT III: MISAPPROPRIATION AGAINST NOSHAY, MILLSTONE, AND  
PETRONE BY KRAMER ON BEHALF OF IDS**

31. KRAMER on behalf of IDS realleges and reavers paragraphs 1 through 13 herein as if the same were set forth fully herein.
32. NOSHAY, MILLSTONE, and PETRONE, as managers of IDS diverted and continue to divert assets, employees and resources, and corporate opportunities of IDS to their newly formed limited liability company, HOMETOWN and to their company, GRAYCOM.
33. The actions taken by NOSHAY, MILLSTONE, and PETRONE in diverting the corporate assets, employees, resources, and opportunities of IDS constitutes misappropriation of IDS corporate assets.
34. As a result of the misappropriation of corporate assets by NOSHAY, MILLSTONE, and PETRONE, Counterplaintiff, KRAMER, and IDS has been damaged and is continuing to incur damages.
35. KRAMER has hired the undersigned attorney to file this member derivative action and KRAMER is entitled to his attorney's fees pursuant to Fla Stat. §608.601(6).

**WHEREFORE**, Counterplaintiff, KEITH KRAMER on behalf of IDS TELECOM, LLC, requests that this Honorable Court enter judgment against Counterdefendants, MICHAEL NOSHAY, JOSEPH MILLSTONE, and ANTHONY PETRONE for damages, attorney's fees pursuant to Fla. Stat. §608.601(6), prejudgment interest, costs and such other relief as this Court deems proper

**COUNT VI: BREACH OF OPERATING AGREEMENT AGAINST NOSHAY,**

**MILLSTONE, AND PETRONE BY KRAMER ON BEHALF OF IDS**

36. KRAMER on behalf of IDS realleges and reavers paragraphs 1 through 13 herein as if the same were set forth fully herein.
37. On or about October 18, 2001, NOSHAY, MILLSTONE, and PETRONE entered into the Operating Agreement. (See Exhibit A)
38. Article 11, Section 11.2, at page 22 of the Operating Agreement provides that the Supervisors, which include NOSHAY, MILLSTONE, and PETRONE, shall not engage as an officer, director, shareholder, owner, partner, joint venturer or in a managerial capacity, whether as an employee, independent contractor, consultant or advisor or as a sales representative in any business in direct competition with the business of the IDS.
39. NOSHAY, MILLSTONE, and PETRONE have breached Article 11, Section 11.2 of the Operating Agreement by forming HOMETOWN, a competing business to IDS, by diverting assets, employees, corporate opportunities, and resources of IDS to HOMETOWN, by filing applications for HOMETOWN to become an Alternative Local Exchange Carrier and an Interstate Exchange Carrier in the State of Florida, and by diverting assets and corporate opportunities to GRAYCOM
40. As a result of NOSHAY, MILLSTONE, and PETRONE'S breach, IDS has been damaged and is continuing to be damaged.

**WHEREFORE**, Counterplaintiff, KEITH KRAMER on behalf of IDS TELECOM, LLC requests that this Honorable Court enter judgment against Counterdefendants, MICHAEL

NOSHAY, JOSEPH MILLSTONE, and ANTHONY PETRONE for damages, prejudgment interest, costs and such other relief as this Court deems proper.

**COUNT VII: CONVERSION AGAINST HOMETOWN BY KRAMER**

**ON BEHALF OF IDS**

41. KRAMER on behalf of IDS realleges and reavers paragraphs 1 through 13 herein as if the same were set forth fully herein.
42. NOSHAY, MILLSTONE, and PETRONE, as managers of HOMETOWN diverted and continue to divert assets, employees, corporate opportunities and resources of IDS to HOMETOWN, with intent to deprive IDS of said assets, employees, corporate opportunities, and resources
43. At all times relevant to this action, IDS had a right of possession to said assets, employees, corporate opportunities, and resources.
44. HOMETOWN, through its managers, wrongfully converted said assets, employees, corporate opportunities, and resources for its own benefit.
45. These wrongful acts referred to in paragraph 42 done by HOMETOWN, through its managers, were done and continue to be done willfully and wantonly, for HOMETOWN'S personal benefit, without regard for the rights of IDS.
46. These wrongful acts were done and continue to be done with the intent to harm IDS.
47. As a result of HOMETOWN'S breach, IDS has been damaged and is continuing to be damaged.
48. Despite requests by KRAMER on behalf of IDS, HOMETOWN and its managers refuse to return the assets, employees, corporate opportunities, and resources to IDS.

49. KRAMER has hired the undersigned attorney to file this member derivative action and KRAMER is entitled to his attorney's fees pursuant to Fla. Stat. §608.601(6).

**WHEREFORE**, Counterplaintiff, KEITH KRAMER on behalf of IDS TELECOM, LLC, requests that this Honorable Court enter judgment against Counterdefendant, HOMETOWN for damages, attorney's fees pursuant to Fla. Stat. §608.601(6), prejudgment interest, costs and such other relief as this Court deems proper.

**COUNT VIII: INJUNCTIVE RELIEF BY KRAMER ON BEHALF OF IDS**

50. KRAMER on behalf of IDS realleges and reavers paragraphs 1 through 13 herein as if the same were set forth fully herein.

51. NOSHAY, MILLSTONE, and PETRONE diverted and continue to divert assets, employees, corporate opportunities and resources of IDS to their newly formed limited liability company, HOMETOWN and to GRAYCOM, with intent to deprive IDS of their assets, employees, corporate opportunities and resources of IDS; and they have filed applications to be licensed as an Alternative Local Exchange Company Application by the Florida Public Service Commission and an Interstate Exchange Carrier by the Florida Public Service Commission and Federal Communications Commission in order to compete against IDS

52. As a result of the diversion of corporate assets by NOSHAY, MILLSTONE, PETRONE and HOMETOWN, Counterplaintiff, IDS has been and will continue to be irreparably harmed.

53. IDS does not have an adequate remedy at law to prevent the continued diversion of the corporate assets of IDS to HOMETOWN

54. KRAMER has hired the undersigned attorney to file this member derivative action and KRAMER is entitled to his attorney's fees pursuant to Fla. Stat. §608.601(6).

**WHEREFORE**, Counterplaintiff, KEITH KRAMER on behalf of IDS TELECOM, LLC requests that this Honorable Court grant injunctive relief, both temporarily during the pending of this action and permanently; against Counterdefendants, MICHAEL NOSHAY, JOSEPH MILLSTONE, ANTHONY PETRONE, and HOMETOWN TELEPHONE, LLC, preventing the diversion of corporate assets, employees, opportunities, and resources; enjoining Defendants from unfairly competing against IDS; enjoining Defendants from continuing with its Alternative Local Exchange Company application for HOMETOWN with the Florida Public Service Commission, enjoining Defendants from continuing with its Interstate Exchange Carrier Application for HOMETOWN with Florida Public Service Commission and Federal Exchange Communications Commission and such other relief as this Court deems proper.

**DEMAND FOR ATTORNEY'S FEES AGAINST IDS**

55 KRAMER has hired the services of the undersigned attorney to file this Member's Derivative Action and KRAMER is entitled to recover his attorney's fees in prosecuting this derivative action from IDS pursuant to Florida Statutes 606 601(6)

**WHEREFORE**, KRAMER, individually demands judgment against IDS for attorney's fees and any such further relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

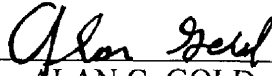
Defendant/Counterplaintiff demands trial by jury on all issues so triable



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed this 22 day of September 2003 to:

Mitchell L. Feldman, Esquire  
Silver, Levy & Feldman  
1408 Westshore Boulevard  
Suite 806  
Tampa, FL 33607

  
BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875  
JAMES L. PARADO, ESQUIRE  
Florida Bar Number: 0580910



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THIRD AMENDED AND RESTATED

OPERATING AGREEMENT

OF

IDS TELCOM LLC

(a Florida Limited Liability Company)

Dated: October 18, 2001

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**THIRD AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**  
**OF**  
**IDS TELCOM LLC**

**WHEREAS**, by agreement dated November 6, 2000, but effective July 14, 2000, **IDS LONG DISTANCE, INC.**, a Florida corporation, **ANTHONY L. PETRONE, INC.**, a Florida corporation, and **JOSEPH C. MILLSTONE, LLC**, a Florida limited liability company (hereinafter collectively referred to as the "**Members**"), adopted an Operating Agreement for **IDS TELCOM LLC**, a Florida limited liability company; and

**WHEREAS**, the aforesaid Operating Agreement was amended and restated by agreement dated December 28, 2000, but effective July 14, 2000, to add **KEITH KRAMER** as a new Member and to make certain other revisions and further amended and restated by Agreement dated as of August 8, 2001; and

**WHEREAS**, Section 7.5 of the aforesaid Operating Agreement provides that it can be amended by a document in writing; and

**WHEREAS**, all of the Members wish to further amend and restate the aforesaid Operating Agreement.

**NOW, THEREFORE**, the Members do hereby agree that the following shall be the Third Amended and Restated Operating Agreement for **IDS TELECOM LLC**.

**THIRD AMENDED AND RESTATED**  
**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**  
**OF**  
**IDS TELCOM LLC**

This Third Amended and Restated Limited Liability Company Operating Agreement (this "**Agreement**") of **IDS TELCOM LLC** (the "**Company**") is made as of and is effective as of the date hereof, by and between **IDS LONG DISTANCE, INC.**, a Florida corporation (hereinafter referred to as "**IDS, Inc.**"), **ANTHONY L. PETRONE, INC.**, a Florida corporation (hereinafter referred to as "**ALP, Inc.**"), **JOSEPH C. MILLSTONE, LLC** (hereinafter referred to as "**Millstone LLC**"), a Florida limited liability company, and **KEITH KRAMER** (hereinafter referred to as "**Kramer**"), as the members of the Company.

**NOW THEREFORE**, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

## ARTICLE 1

### DEFINED TERMS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article shall, for the purposes of this Agreement, have the meanings herein specified.

(a) "Affiliate" means with respect to a Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, the specified Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise. Ownership of more than 50% of the beneficial interests of an entity shall be conclusive evidence that control exists.

(b) "Agreement" means this Limited Liability Company Operating Agreement, as amended, modified, supplemented or restated from time to time. References in the Florida Act to "operating agreement" shall mean this Agreement.

(c) "Anthony" means ANTHONY L. PETRONE.

(d) "Articles" means the Articles of Organization of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the office of the Secretary of State of the State of Florida pursuant to the Florida Act.

(e) "Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with the provisions of Article 4 hereof.

(f) "Capital Contribution" means, with respect to any Member, the aggregate amount of money and the initial Gross Asset Value of any property (other than money) contributed to the General Partnership prior to the date of this Agreement or to the Company after the date of this Agreement.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Agreement.

(h) "Covered Person" means a Member; a Manager; any officers, directors, shareholders, partners, employees, representatives or agents of a Member or Manager; any Affiliate of a Member or Manager; any employee or agent of the Company or its Affiliates; or an officer of the Company that is not an employee.

(i) "Current Operating Expenditures" means the expenditures of the Company for each Fiscal Year, or part thereof, arising from the ordinary course of the Company's business, including, but not limited to, the following:

(i) general operating expenses including, but not limited to, management, legal, accounting and other professional fees, wages, salaries and other compensation in connection with its business operations, monies expended to comply with and perform contractual and other obligations, and any other expenses expended on behalf of the Company in relation to its general administrative and management needs;

(ii) payments of principal and interest upon any indebtedness of the Company (whether third-party indebtedness or loans made by Members to the Company pursuant to this Agreement);

(iii) any other cash expended by the Company for business operations;  
and

(iv) the establishment of appropriate reserves for debt service, to provide working capital or any other contingency of the Company.

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

(k) "**Fiscal Year**" means each annual period of the Company ending on December 31<sup>st</sup> of each calendar year.

(l) "**Florida Act**" means Chapter 608, Florida Statutes, as amended from time to time.

(m) "**General Partnership**" means IDS Telcom, a Florida general partnership.

(n) "**Gross Asset Value**" means, with respect to any asset, such 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 agreed to by the contributing Member and the Managers;

(ii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers, 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; (b) the distribution by the Company to a Member of more than a de minimis amount of Company assets

as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Treasury Regulation §1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to Clause (a) and Clause (b) of this sentence shall be made only if the Managers reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as determined by the Manager; and

(iv) The Gross Asset Values of Company assets shall be adjusted 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 Regulation §1.704-1(b)(2)(iv)(m).

- If the Gross Asset Value of an asset has been determined or adjusted pursuant to Paragraph (i) or Paragraph (ii) above, 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.

(o) "**Gross Revenue**" means the gross revenue of the Company for each Fiscal Year, or part thereof, arising from the ordinary course of the Company's business. Gross revenue shall not include Capital Contributions or loan proceeds.

(p) "**Initial Managers**" means Anthony, Joseph, and Michael.

(q) "**Joseph**" means JOSEPH C. MILLSTONE.

(r) "**Kramer**" means KEITH KRAMER.

(s) "**Managers**" mean Anthony, Joseph, and Michael, or so many of said individuals who remain as Managers under this Agreement, or any replacement Manager elected pursuant to Section 8.7.

(t) "**Member**" means any Person named as a member of the Company on Schedule A hereto and MCG Finance Corporation ("MCG"), upon exercise of any of its outstanding Units (as such term is defined in Section 5.1(c) hereof) and includes any Person subsequently admitted as a new Member pursuant to the provisions of this Agreement, in such Person's capacity as a Member of the Company, and "**Members**" means two (2) or more of such Persons when acting in their capacities as Members of the Company. For purposes of the Florida Act, the Members shall constitute one (1) class or group of members.

(u) "**Membership Interest**" means all the right, title and interest of a Member in the Property and in the Company, including the rights of the Members to the return of their Capital Contributions, return of any advances and payment of any interest thereon, distribution of the assets of the Company and all other rights under and interest in the Company as set forth in this Agreement.



(v) "**Michael**" means MICHAEL NOSHAY.

(w) "**Net Cash Flow**" means, for each calendar month, Fiscal Year or other period of the Company for which it must be determined, the Gross Revenue of the Company from all sources other than Capital Contributions, less Current Operating Expenditures.

(x) "**Person**" includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

(y) "**Profits**" or "**Losses**" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with §703(a) of the Code (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to §703(a)(1) of the Code), with the following adjustments:

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

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

(iii) in the event the Gross Asset Value of any Company asset is adjusted in accordance with Paragraph (i) or Paragraph (ii) of the definition of "Gross Asset Value" above, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) gain or loss resulting from any disposition of any asset of the Company 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 asset disposed of, notwithstanding that the adjusted tax basis of such asset 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 Fiscal Year or other period, computed in accordance with the definition of "Depreciation" above; and

(vi) notwithstanding any other provisions of this definition, any items which are specially allocated pursuant to Section 6.2 hereof shall not be taken into account in computing Profits or Losses.

(z) "**Property**" means all of the assets and property now owned or hereafter acquired by the Company.

(aa) "**Tax Matters Representative**" has the meaning set forth in Section 14.4.

(bb) "Treasury Regulations" means the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

## ARTICLE 2

### FORMATION AND TERM

#### Section 2.1 Formation.

(a) IDS Telcom, a Florida general partnership, converted to the Company on July 14, 2000. Pursuant to and in furtherance of such conversion and the Operating Agreement dated November 6, 2000 and this Agreement, the Members have agreed to form and operate the Company as a limited liability company pursuant to the provisions of the Florida Act, and agree that the rights, duties and liabilities of the Members shall be as provided in the Florida Act, except as otherwise provided herein.

(b) The name and mailing address of each Member shall be listed on Schedule A attached hereto. The Managers shall be required to update Schedule A from time to time as necessary to accurately reflect the information therein. Any amendment or revision to Schedule A made in accordance with this Agreement shall not be deemed an amendment to this Agreement. Any reference in this Agreement to Schedule A shall be deemed to be a reference to Schedule A as amended and in effect from time to time.

(c) The Members, or an authorized person on their behalf, shall execute, deliver and file the Articles and any and all amendments thereto and restatements thereof.

Section 2.2 Name. The business and affairs of the Company shall be conducted under the name "IDS TELCOM LLC" and such name shall be used at all times in connection with the Company's business and affairs.

Section 2.3 Term. The Company shall exist perpetually, unless sooner dissolved in accordance with this Agreement.

Section 2.4 Registered Agent and Office. The Company's registered agent shall be Michael and the registered office shall be located at 1525 N.W. 167<sup>th</sup> Street, Suite 200, Miami, Florida 33169. At any time, the Managers may designate another registered agent and/or registered office.

Section 2.5 Principal Place of Business. The principal place of business of the Company shall be 1525 N.W. 167<sup>th</sup> Street, Suite 200, Miami, Florida 33169. At any time, the Managers may change the location of the Company's principal place of business.

Section 2.6 Qualification in Other Jurisdictions. The Managers shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

## ARTICLE 3

### PURPOSE AND POWERS OF THE COMPANY

#### Section 3.1 Purpose.

(a) The Company is organized for the purpose of operating a telecommunications business. The Company shall have the power and right to engage in any and all activities and transactions as the Managers may deem necessary and advisable in connection therewith. This Company is created solely for the purposes specified in this Section 3.1.

(b) In no event shall this Agreement be held or construed to imply the existence of a general partnership or joint venture among the Members with regard to matters, trades or businesses or enterprises outside the scope of the Company, and no Member shall have any power or authority under this Agreement to act as the agent or representative of the Company or any other Member with regard to any matter beyond the scope of the Company. Notwithstanding the foregoing, it is the intention and agreement of the Members that the Company shall be capable of holding title to the Property as a Florida limited liability company.

Section 3.2 Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes set forth in Section 3.1, including, but not limited to, the power:

(a) to conduct the business of the Company, carry on its operations and have and exercise the powers granted to a limited liability company by the Florida Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(b) to acquire by purchase, lease, contribution of property or otherwise, own, hold, operate, maintain, finance, improve, lease, sell, convey, pledge, mortgage, transfer, demolish or dispose of any, real or personal property (including the Property) that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(c) to enter into, perform and carry out contracts of any kind, including contracts with any Member or Affiliate thereof, necessary to the accomplishment of the purpose of the Company;

(d) to sue and be sued, make claims and defend, and participate in administrative or other proceedings, in its name;

(e) to appoint employees and agents of the Company, and define their duties and fix their compensation;

(f) subject to the provisions of Article 14, to indemnify certain Persons in accordance with the Florida Act and to obtain any and all types of insurance;

(g) to borrow money and issue evidences of indebtedness, including loans from any Member or Affiliate thereof, and to secure any of the same by a mortgage, pledge or other lien on the assets of the Company;

(h) to pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Company or to hold such proceeds against the payment of contingent liabilities; and

(i) to make, execute, acknowledge and file any and all documents or instruments necessary, convenient or incidental to the accomplishment of the purpose of the Company.

Section 3.3 Title to Company Property. Except as otherwise set forth herein, legal title to the Property and all other Company property and assets shall be taken and at all times held in the name of the Company.

#### ARTICLE 4

#### CAPITAL CONTRIBUTIONS, MEMBERSHIP INTERESTS, AND CAPITAL ACCOUNTS

Section 4.1 Capital Contributions. The Members have previously contributed capital to the General Partnership, and no additional capital contributions shall be required to be made to the Company unless agreed to unanimously by all of the Members. The current capital contributions of the Members are set forth on Schedule A.

Section 4.2 Loans. The Members may make such loans to the Company as they and the Managers mutually agree upon from time to time.

Section 4.3 Membership Interests. Each Member shall have the Membership Interest set forth in Schedule A. A Member's Membership Interest shall for all purposes be personal property. A Member has no interest in specific Company property, unless and until distributed to such Member. Unless otherwise agreed by all of the Members, no adjustment to the Membership Interests of the Members shall be made except as otherwise set forth in this Agreement or as a result of a permitted transfer of a Member's Membership Interest or a portion thereof pursuant to the express terms hereof.

Section 4.4 Status of Capital Contributions.

(a) Except as otherwise provided herein, no portion of the capital of the Company may be withdrawn at any time without the written approval of all of the Members.

(b) No Member or Affiliate thereof shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or for services rendered or resources provided on behalf of the Company, except as otherwise specifically provided in this Agreement.

(c) No Member shall have any personal liability for the repayment of any Capital Contribution or advances of any other Member.

Section 4.5 Capital Accounts.

(a) A separate Capital Account shall be established and maintained for each Member. The initial Capital Accounts of the Members shall be the same as existed with respect to the General Partnership immediately prior to the formation of the Company.

(b) The original Capital Account established for any Member who acquires a Membership Interest by virtue of an assignment in accordance with the terms of this Agreement shall be in the same amount as, and shall replace, the Capital Account of the assignor of such Membership Interest, and, for purposes of this Agreement, such Member shall be deemed to have made the Capital Contributions made by the assignor of such Membership Interest (or made by such assignor's predecessor in interest). To the extent such Member acquires less than the entire Membership Interest of the assignor, the original Capital Account of such Member and its Capital Contributions shall be in proportion to the Membership Interest it acquires, and the Capital Account of the assignor who retains a partial Membership Interest, and the amount of its Capital Contributions, shall be reduced in proportion to the Membership Interest it retains.

(c) The Capital Account of each Member shall be maintained in accordance with the following provisions:

(i) to such Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits, special allocations of income and gain, and the net amount of any Company liabilities that are assumed by such Member or that are secured by any Company assets distributed to such Member;

(ii) to such Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses, special allocations of loss and deduction, and the net amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and

(iii) adjustments to the Capital Accounts shall be in accordance with Treasury Regulation §1.704-1(b)(2)(iv).

Section 4.6 Capital Accounts Generally.

(a) Except as otherwise provided in this Agreement, whenever it is necessary to determine the Capital Account of any Member for any purpose hereunder, the Capital Account of such Member shall be determined after giving effect to all adjustments provided for in Section 4.5 for the current Fiscal Year in respect of transactions effected prior to the date such determination is to be made.

(b) No Member shall be entitled to withdraw any part of its Capital Account, or to receive any distribution from the Company, except as specifically provided in this Agreement.

## ARTICLE 5

### DISTRIBUTIONS TO MEMBERS

Section 5.1 Distributions. Distributions of the Net Cash Flow or from any other sources, and including distributions upon liquidation, (collectively, "Distributions") during any Fiscal Year shall be made at such times as the Managers direct, in the manner set forth below in this Section 5.1. Additionally, the following provisions shall also control the division amongst the Members upon the sale of all of the Membership Interests (for purposes hereof, such sale shall also be defined for this Section 5.1 as "Distributions"):

- (a) Subject to the provisions of Section 5.1(b), after providing for the satisfaction of the current debts and obligations of the Company (other than loans from the Current Members (as such term is defined below in subsection (c)), the Managers shall, as expeditiously as possible and not less often than monthly, make such Distributions, to the extent available, as are necessary to pay pro rata to the Members who made loans to the Company all unpaid principal of and all accrued and unpaid interest on such loans in proportion to the total amount of principal and interest payable on such loans, such distributions being treated first as in payment of accrued interest on such loans and next as in payment of principal on such loans.

(b) Notwithstanding the foregoing, the Members agree that in all events, within ninety (90) days after the end of each Fiscal Year, the Managers shall make Distributions to each Member in an amount equal to the excess, if any, of (a) the product of (i) the net income from operations of the Company allocated to such Member pursuant to Article 6 for the preceding Fiscal Year and (ii) the highest combined marginal federal and state income tax rate applicable to such Member for such preceding fiscal year, over (b) all previous Distributions to such Member attributable to such preceding fiscal year.

(c) Next, to the holders of any Units (the "Warrant Members") issued pursuant to the Amended, Restated and Consolidated Warrant Agreement dated December 28, 2000, as amended (the "Warrant Agreement") and the Amended, Consolidated and Restated Option and Warrant Agreement between IDS Telcom and MCG dated December 28, 2000 (the "Option and Warrant Agreement"), in proportion to their Membership Interests, and to the remaining Members (the "Current Members") in proportion to their collective Membership Interests vis-a-vis the Warrant Holder, but allocated 20% to Millstone, LLC, 60% to IDS, Inc., 10% to ALP, Inc. and 10% to Kramer, until the aggregate amount distributed to the Current Members under this Section 5.1(c) equals Ten Million Dollars (\$10,000,000). [By way of example, if (i) the Warrant Members collectively own an eleven percent (11%) Membership Interest, (ii) the Current Members collectively own an eighty-nine percent (89%) Membership Interest, and (iii) the sum of \$11,235,955 is available for distribution under this Section 5.1(c), such amount would be distributed \$1,235,955 to the Warrant Members, \$2,000,000 to Millstone LLC, \$6,000,000 to IDS, Inc., \$1,000,000 to ALP, Inc. and \$1,000,000 to Kramer.]

(d) Next, to the Warrant Members in proportion to their Membership Interests and to the Current Members, in proportion to their collective Membership Interests vis-a-vis the Warrant Members, but allocated 100% with respect to the Current Members to IDS, Inc. until the aggregate amount distributed to IDS, Inc. under this Section 5.1(d) equals Ten Million Dollars (\$10,000,000).

(e) The balance, if any, to the Members in proportion to each Member's Membership Interest.

Section 5.2 Demand for Distributions. No Member shall be entitled to demand and receive a distribution of Property in return for such Member's Capital Contributions.

Section 5.3 Limitations on Distribution. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member (a) in violation of the those certain loan agreements between the Company and MCG or (b) on account of its Membership Interest if such distribution would violate the solvency standards under Section 608.426 of the Florida Act (or any successor statute) or other applicable insolvency or fraudulent conveyance laws.

## ARTICLE 6

### ALLOCATIONS

Section 6.1 Profits and Losses.

(a) For each Fiscal Year of the Company, after giving effect to the special allocations required in Section 6.2, net Profits for any Fiscal Year shall be allocated as follows:

(i) First, to all Members who have negative Capital Account balances, in proportion to their respective Capital Account balances, until such Capital Account balances are increased to zero;

(ii) Second, among all Members, in an aggregate amount equal to, and in proportion to, amounts previously distributed to the Members under Article V hereof; and

(iii) Then, to the Members in proportion to each Member's Membership Interest.

(b) For each Fiscal Year of the Company, after giving effect to the special allocations required by Section 6.2 hereof, net Losses for any Fiscal Year shall be allocated as follows:

(i) First, between the Members in proportion to and to extent of their positive Capital Account balances; and

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

Section 6.2 Special Allocations.

(a) The Company shall make the qualified income offset allocation required by the alternate test for economic effect under §1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(b) In the event any Member has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Member is obligated to restore to the Company pursuant to §1.704-1(b)(2)(ii)(c) of the Treasury Regulations, (ii) the amount such Member is deemed to be obligated to restore pursuant to the next to the last sentence of §1.704-2(g)(1) of the Treasury Regulations and (iii) the amount such Member is deemed to be obligated to restore pursuant to the next to the last sentence of §1.704-2(i)(5) of the Treasury Regulations, 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 6.2(b) shall be made if and only to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article have been tentatively made as if Section 6.2(a) and this Section 6.2(b) were not in the Agreement.

(c) The Company shall make all (i) Member Nonrecourse Deduction Allocations; (ii) Member Minimum Gain Chargeback Allocations; and (iii) Company Minimum Gain Chargeback Allocations. "Member Nonrecourse Deduction Allocations" mean the allocations required by §1.704-2(i)(2) of the Treasury Regulations. "Member Minimum Gain Chargeback Allocations" mean the allocations required by §1.704-2(i)(3) of the Treasury Regulations. "Company Minimum Gain Chargeback Allocation" means the allocations required by §1.704-2(f) of the Treasury Regulations.

(d) The Company shall make all Nonrecourse Deduction Allocations to the Members in proportion to their Membership Interests. "Nonrecourse Deduction Allocations" means the nonrecourse deductions (as defined in §1.704-2(c) of the Treasury Regulations

(e) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code §734(b) or Code §743(b) is required, pursuant to §1.704-1(b)(2)(iv)(m) of the Treasury Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to the 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 a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(f) The allocations set forth in this Section 6.2 (collectively the "Regulatory Allocations") are intended to comply with certain requirements of §1.704-1 and -2 of the Treasury Regulations. Notwithstanding any other provisions of this Article (other than the Regulatory Allocations), the Managers shall, with the advice and assistance of the Company's tax accountants, take the Regulatory Allocations into account in allocating other Profits, Losses, and items of income, gain, loss, deduction and Code §705(a)(2)(B) expenditures among the Members so that, to the extent possible, the net amount of such allocations of other Profits, Losses, and other items and the Regulatory Allocations to each Member shall be equal to the net



amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

Section 6.3 Allocation Rules.

(a) In the event Members are admitted to the Company pursuant to this Agreement on different dates, the Profits (or Losses) allocated to the Members for each Fiscal Year during which Members are so admitted shall be allocated among the Members in proportion to their Membership Interests during such Fiscal Year in accordance with §706 of the Code, using any convention permitted by law and selected by the Managers.

(b) 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 Managers using any method that is permissible under §706 of the Code and the Treasury Regulations thereunder.

(c) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits and Losses for the Fiscal Year in question.

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

Section 6.4 Other Tax Allocations: Section 704(c) of the Code.

(a) In accordance with §704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for income 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 in Section 1.1).

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Paragraph (ii) of the definition of "Gross Asset Value" contained in Section 1.1, 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 §704(c) of the Code and the Treasury Regulations thereunder.

(c) Any elections or other decisions relating to allocations under this Section 6.4, including the selection of any allocation method permitted under Treasury Regulation §1.704-3, shall be made by the Managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 6.4 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.

## ARTICLE 7

### MEMBERS, MEETINGS AND AMENDMENTS

Section 7.1 Powers of Members. The Members shall have the power to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Agreement.

Section 7.2 Withdrawal. Except as expressly provided in this Agreement, a Member may not withdraw from the Company prior to the dissolution and winding up of the Company. If a Member withdraws in violation of the foregoing prohibition, such Member shall not be entitled to receive any compensation or distributions and shall not otherwise be entitled to receive the fair market value of its Membership Interest except as otherwise expressly provided for in this Agreement or separate written compensation plan for such Member.

Section 7.3 Meetings or other Approvals of the Members.

(a) Meetings of the Members may be called at any time by the Managers or any Member.

(b) Each meeting of Members shall be conducted by the Managers, and such a meeting shall be called with at least two (2) days but not more than thirty (30) days notice, specifying the agenda for the meeting. Such notice may be waived by any of the Members at any time, and will be deemed to have been waived if the Member participates in the meeting and has been provided with a written agenda for the meeting. Meetings may also be held telephonically whereby each of the Members can hear each of the other Members. The Managers, in their sole discretion, shall establish all other provisions relating to meetings of Members, including the time, place or purpose of any meeting at which any matter is to be voted on by any Members, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote; provided, however, any Member shall have the right to introduce agenda items for each meeting. Except as expressly provided in this Agreement, decisions of the Members shall be made upon the vote of a majority in Membership Interest of the Members. Action by the Members may also be taken and represented by a unanimous written consent.

Section 7.4 Additional Members.

(a) By approval of all of the Members, the Company is authorized to admit any Person as an additional member of the Company (each, an "Additional Member" and collectively, the "Additional Members"). Each such Person shall be admitted as an Additional Member at the time such Person (i) executes this Agreement or a counterpart of this Agreement and (ii) is named as a Member on an amended Schedule A hereto. The Membership Interest of the Additional Member shall be determined by the unanimous agreement of the existing Members and the Additional Member.

(b) Additional Members shall not be entitled to any retroactive allocation of the Company's income, gains, losses, deductions, credits or other items; provided that, subject to the restrictions of §706(d) of the Code, Additional Members shall be entitled to their respective share of the Company's income, gains, losses, deductions, credits and other items arising under contracts entered into before the effective date of the admission of any Additional Members to

the extent that such income, gains, losses, deductions, credits and other items arise after such effective date. To the extent consistent with §706(d) of the Code and Treasury Regulations promulgated thereunder, the Company's books may be closed at the time Additional Members are admitted (as though the Company's tax year had ended) or the Company may credit to the Additional Members pro rata allocations of the Company's income, gains, losses, deductions, credits and items for that portion of the Company's Fiscal Year after the effective date of the admission of the Additional Members.

Section 7.5 Amendments. Any amendment to this Agreement or the Articles shall be adopted and be effective as an amendment thereto only if it receives the affirmative vote of all of the Members, or such amendment is in writing and executed by all of the Members.

## ARTICLE 8

### MANAGEMENT

Section 8.1 Managers. The Company shall be managed by one or more Managers. The initial Managers shall be Anthony, Joseph, and Michael. A Manager shall serve until such Manager is removed or resigns in accordance with this Article, or, with respect to an individual Manager, dies or becomes disabled.

Section 8.2 Resignation. A Manager may resign by giving at least five (5) days written notice to the other Managers (if any) and all of the Members of the Company (or such shorter time period acceptable to a majority in Membership Interest of the Members). Unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.3 Removal. A Manager may be removed only by the affirmative vote of all of the Members at a properly scheduled meeting of the Members.

Section 8.4 Managers' Authority. The Managers shall have full, exclusive and complete discretion, right, power, and authority to manage, control and make all decisions affecting the business and affairs of the Company and to do or cause to be done any and all acts, at the expense of the Company on the terms provided herein, deemed by the Managers to be necessary or appropriate to effectuate the business, purposes and objectives of the Company as set forth in this Agreement. The Managers shall act by a majority vote with each Manager having one vote; provided; however, that, if at any time there are no more than two Managers serving, then the vote of the Manager who directly (or indirectly through his ownership interest in a Member, with his ownership interest in a Member constituting, for this purpose, an indirect pro rata ownership of that Member's Membership Interest) controls the larger Membership Interest in the Company shall be the act of the Managers. Notwithstanding anything to the contrary set forth herein, the consent of a majority in Membership Interest of the Members shall be required for the following actions:

(a) to enter into any loan agreement or other agreement on behalf of the Company which would, either alone, or together with any then existing such agreement, result in indebtedness of the Company in excess of \$5,000,000;

(b) to purchase equipment on behalf of the Company whose purchase price exceeds One Hundred Thousand Dollars (\$100,000); or

(c) to sell, convey, liquidate or otherwise dispose of, any substantial portion of the Company's assets or business (including a sale of all of the Membership Interests). In the event such a sale or disposition is approved, then all of the Members (including those whose Membership Interests may not have voted to approve such transaction) hereby agree to consent to and raise no objections against any such sale or disposition and shall take all actions necessary or advisable to assist the Company in effecting such sale or disposition, provided, further, that once such sale or disposition has been approved as set forth above, each Member hereby agrees that one of the acting Managers at the time shall constitute such Member's power of attorney to sign any action by written consent or any other documents necessary to effectuate the approved sale or disposition, including but not limited to, the transfer of the Membership Interests.

Section 8.5 No Authority of Members or Other Persons. No Members or other Person other than the-Managers and their authorized agents shall take part in the management, or the operation or control of, the business and affairs of the Company. Except as expressly delegated by the Managers or as required by the Florida Act, no Person other than the Managers and the authorized agents of the Company shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

Section 8.6 Compensation. The Managers shall be reimbursed for all reasonable expenses incurred in managing the Company and shall be entitled to reasonable compensation, in an amount to be determined from time to time as determined by a majority in Membership Interest of the Members.

Section 8.7 Replacement Manager. If a Manager is not then serving, then the Members shall elect a replacement Manager at a properly scheduled meeting of the Members. The affirmative vote of a majority in Membership Interest of the Members shall be required to elect a replacement Manager.

Section 8.8 Death Benefit Upon the death of any Manager or Kramer, if they are then still employed with the Company, the surviving spouse (if any) of that individual shall be entitled to receive a death benefit from the Company in the annual amount of \$100,000 paid in accordance with the normal payroll practices of the Company.

## ARTICLE 9

### ASSIGNABILITY OF MEMBER INTERESTS

Section 9.1 Assignability of Interests.

(a) No Member may assign the whole or any part of its Membership Interest without the prior written consent of the majority of the Managers. If such prior written consent of a majority of the Managers is obtained for any such assignment, such assignment shall, nevertheless, not entitle the assignee to become a new Member or to be entitled to exercise or receive any of the rights, powers or benefits of a Member other than the right to receive

distributions to which the assigning Member would be entitled, unless the assigning Member designates, in a written instrument delivered to the other Members, its assignee to become a new Member; and provided further, that such assignee shall not become a new Member without having first executed an instrument reasonably satisfactory to a majority the Managers, accepting and agreeing to the terms and conditions of this Agreement.

(b) If a Member assigns all or part of its Membership Interest in the Company and the assignee is entitled to become a new Member, such assignee shall be admitted to the Company effective immediately prior to the effective date of the assignment (as set forth in Section 9.4), and, immediately following such admission, the assigning Member shall cease to be a Member of the Company to the extent of the portion of the Interest assigned hereunder.

Section 9.2 Additional Permitted Transfers. Notwithstanding Section 9.1, any transfer of a Membership Interest pursuant to Section 10.1, Section 10.3, or Section 10.4 shall be a permitted transfer. However, no such transfer shall be effective, and the transferee shall not become a Member, unless and until the transferee acknowledges in writing to the Company its receipt of a copy of this Agreement and its agreement to comply herewith and be bound hereby.

Section 9.3 Recognition of Assignment by Company or Other Members. No assignment, or any part thereof, that is in violation of this Article shall be valid or effective, and neither the Company nor the Manager or any Member shall recognize the same for any purpose of this Agreement, including the purpose of making distributions of Net Cash Flow pursuant to this Agreement with respect to such Interest or part thereof. Neither the Company nor the Manager shall incur any liability as a result of refusing to make any such distributions to the assignee of any such invalid assignment.

Section 9.4 Effective Date of Assignment. Any valid assignment of a Member's Membership Interest, or part thereof, pursuant to the provisions of this Article, shall be effective as of the close of business on the day preceding the closing of the transaction evidencing the assignment, unless all necessary consents have not been obtained, in which case the effective date shall be on such date all of the necessary written consents to such assignment have been obtained, or such other date as the assigning Member and all other Members agree upon. The Company shall, from the effective date of such assignment, thereafter pay all further distributions on account of the Membership Interest (or part thereof), so assigned, to the assignee of such Interest, or part thereof. As between any Member and its assignee, Profits and Losses for the Fiscal Year of the Company in which such assignment occurs shall be apportioned for federal income tax purposes in accordance with any convention permitted under §706(d) of the Code and selected by the Managers.

## ARTICLE 10

### ACT OF INSOLVENCY; RIGHT OF FIRST REFUSAL; MANDATORY BUY-SELL PROVISIONS

Section 10.1 Act of Insolvency.

(a) If any Member (hereinafter called an "Insolvent Member") shall at any time commit or suffer an Act of Insolvency (as hereinafter defined), then the other Members

shall have the right and option, exercisable by notice to the Insolvent Member, at any time up to ninety (90) days after the date such other Members are given notice by the Insolvent Member of the occurrence of an Act of Insolvency, to purchase all or part of the Membership Interest in the Company then held by the Insolvent Member. If the other Members exercise the option to purchase the Insolvent Member's Membership Interest, such Membership Interest shall be purchased by the other Member's in proportion to their respective Membership Interests. However, if one or more of the other Members does not wish to purchase its pro-rata portion, then the other Members may purchase all or part of such portion of the Insolvent Member's Membership Interest. Such purchase shall be on a proportionate basis unless otherwise agreed to by the other Members who wish to purchase such portion.

(b) In the event the other Members exercise the option provided herein (the "**Purchasing Members**"), the Insolvent Member shall be entitled to receive an amount equal to the amount of cash that would have been received by the Insolvent Member under Section 15.4 with respect to the Membership Interest that is purchased by the other Members if all of the assets of the Company were sold for a purchase price equal to their fair market value. The closing of the purchase and sale of the Insolvent Member's Membership Interest (which interest shall be transferred free and clear of all liens) shall take place within forty-five (45) days from the date such option is exercised. At the closing, the Insolvent Member shall (i) execute and deliver to the Purchasing Members an assignment of its Membership Interest and any other instruments that the Purchasing Member may reasonably require, to vest in the Purchasing Member good and clear title to all of the Insolvent Member's Membership Interest, and (ii) pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of its Membership Interest to the Purchasing Member. Each Member shall bear its own legal costs and expenses, and all other costs and expenses (except as provided above) shall be split equally by the Members. The sale by any Insolvent Member of its Membership Interest pursuant to this Section 10.1 shall be subject to all liabilities and obligations of the Company, whether matured or unmatured, absolute or contingent, and, upon the consummation of such sale, the Purchasing Member shall execute and deliver to the Insolvent Member, in form reasonably satisfactory to the Insolvent Member, an instrument assuming all of the aforesaid liabilities and obligations of the Company, together with a covenant to hold the Insolvent Member harmless from and against all such liabilities and obligations.

Section 10.2 Insolvency. As used in this Agreement, an "Act of Insolvency" shall occur upon the following:

- (a) The Member is dissolved or liquidated;
- (b) The Members admits in writing its inability to pay its debts generally as they become due;
- (c) The Member makes an assignment for the benefit of its creditors;
- (d) The institution by or against a Member of a case or other proceeding under any section or chapter of the Federal Bankruptcy Code (Title 11 of the Interested States Code) as now existing or hereafter amended or becoming effective, or any similar order or decree under any federal or state law now in existence or hereafter enacted having the same general purpose,

and which, if involuntary, such proceeding or such order or decree is not dismissed, stayed, discharged or vacated within sixty (60) days thereafter;

(e) The Member causes, suffers, permits or consents to the appointment of a receiver, custodian, trustee, administrator, conservator, sequestrator, liquidator or similar official in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets and such appointment is not revoked or terminated and such official is not discharged of his duties within sixty (60) days of his appointment; or

(f) The attachment, execution or other judicial seizure of all or any substantial part of a Member's assets or of a Member's Membership Interest or any part thereof, remaining undismissed or undischarged for a period of fifteen (15) days after the levy thereof.

### Section 10.3 Right of First Refusal.

(a) Bona Fide Offer. In the event that any Member (the "Selling Member") receives a "Bona Fide Offer", as defined below, to purchase all, but not less than all, of the Membership Interests owned by the Selling Member (the "Offered Interest") and the Selling Member desires to accept such Bona Fide Offer, the Selling Member shall promptly send notice (the "Notice") to the Company and to the other Members (for purposes of this Section 10.3, the "Remaining Members") first irrevocably offering to sell all, but not less than all, of the Offered Interest to the Company (the "Company's Option") and then to the Remaining Members (the "Remaining Members' Option"), at the same price and upon the same terms and conditions as are contained in the Bona Fide Offer. The Notice shall contain a true and complete copy of the Bona Fide Offer, setting forth the price and all other terms and conditions thereof as well as the names, addresses and businesses or other occupations of the offeror or offerors. The Company and the Remaining Members shall then have such rights and privileges, for the prescribed time periods, as are set forth below. For purposes of this Agreement, the term "Bona Fide Offer" shall mean a bona fide offer in writing from an independent unaffiliated party (who must be financially capable of carrying out the terms of such Bona Fide Offer), in a form legally enforceable against the offeror or offerors, accompanied by a cash down payment equal to ten percent (10%) or more of the purchase price set forth in the Bona Fide Offer.

(b) Agreement of Selling Member. The Selling Member agrees, if so requested in writing by the Company or the Remaining Members, that it shall vote or cause a vote to be made (as a Member) in favor of (i) the exercise by the Company of the Company's Option and/or (ii) the exercise by the Remaining Members of the Remaining Members' Option. In the event that the exercise of the Company's Option or the Remaining Members' Option requires an amendment of this Agreement or a reduction of its capital or a reappraisal of its assets and/or any other action, the Selling Member agrees, if so requested by the Company or Remaining Members, as the case may be, that it shall vote or cause a vote to be made (as a Member) in favor of any such action as may be lawfully taken.

(c) Procedures.

(i) In the event that a Bona Fide Offer to purchase the Offered Interest has been received, and the Notice has been sent by the Selling Member to the Company and the

Remaining Members, the Company shall have the right, for a period of thirty (30) days from its receipt of such Notice (the "**Company's Option Period**"), at its sole option, to purchase all, but not less than all, of the Offered Interest at the price and on the same terms and conditions as set forth in the Bona Fide Offer. If the Company shall not elect to purchase all of the Offered Interest within the Company's Option Period for any reason whatsoever, then the Remaining Members shall have the right, at their sole option, for a period of thirty (30) days after the expiration of the Company's Option Period (the "**Remaining Members' Option Period**") to purchase all, but not less than all, of the Offered Interest in proportion to the Membership Interests they own. However, if one or more of the Remaining Members does not wish to exercise such option, then the other Remaining Members must purchase all but not less than all of the remaining Membership Interest of the Selling Member in order for the exercise of such option to be effective. Such purchase shall be on a proportionate basis unless otherwise agreed to be the other Remaining Members who wish to exercise such option.

(ii) In the event that the Company or the Remaining Members, as the case may be, shall have elected to purchase all of the Offered Interest, the Company or the Remaining Members, as the case may be, shall give the Selling Member written notice of such election, which notice shall specify the identity of the purchaser of the Offered Interest and a closing date and time, which closing shall occur no later than thirty (30) days after the expiration of the Company's Option Period or the Remaining Members' Option Period, as the case may be. The closing shall be held at the Company's offices or at any other location designated by the purchaser.

(iii) In the event that neither the Remaining Members nor the Company shall elect, within the prescribed periods, to purchase all of the Offered Interest, the Selling Member shall have the right to accept the Bona Fide Offer in whole (but not in part) with respect to the Offered Interest in the Company and to sell the Offered Interest to the Offeror, but (i) only in strict accordance with all of the provisions of the Bona Fide Offer; and (ii) only if the sale is fully consummated within thirty (30) days after the expiration of the Remaining Members' Option Period (the "**Final Date**"). The Selling Member shall furnish such proof of the completion of the sale and the terms thereof as the Company may request.

(iv) If the Selling Member has not sold the Offered Interest by the Final Date, all of the restrictions on the sale, transfer or assignment set forth in this Agreement shall again be in effect with respect thereto.

(v) Except with respect to Membership Interests acquired by the Company, in the event of any transfer pursuant to this Article at any time and from time to time, the transferee shall take such Membership Interests pursuant and subject to all of the provisions, conditions and agreements set forth in this Agreement, and, as a condition precedent to the transfer of such Membership Interests to the transferee, the transferee shall agree, for and on behalf of itself, its legal representatives, and its transferees and assigns, in writing, to be bound by all such provisions, conditions and agreements contained in this Agreement.



#### 10.4 Mandatory Buy/Sell of Membership Interests.

(a) Right to Initiate Mandatory Buy/Sell. A Member shall have the right to initiate a mandatory purchase or sale of Membership Interests by the Members. If any Member wishes to exercise such right, such Member (the "**Offeror**") shall deliver to the other Members (the "**Offerees**") an offer in writing stating a cash purchase price (the "**Total Purchase Price**") attributable to one hundred percent (100%) of the Membership Interests in the Company, on the basis of which the Offeror is willing to purchase the Membership Interests then owned by the Offerees (the "**Offer**"). Each of the Offerees shall then be obligated either:

(i) to purchase the Membership Interests of the Offeror for cash in an amount equal to (i) the Total Purchase Price, MULTIPLIED BY, (ii) the Membership Interest of the Offeror.

(ii) to sell to the Offeror the Membership Interests of the Offeree for cash in an amount equal to (i) the Total Purchase Price, MULTIPLIED BY, (ii) the Membership Interest of the Offeree.

(b) Procedures. The Offerees shall give written notice of such election to the Offeror within forty-five (45) days after receipt of the Offer. If the Offerees exercise the option described in Section 10.4(a)(i), all of the Membership Interests of the Offeror shall be purchased by the Offerees in proportion to their respective Membership Interests. However, if an Offeree does not wish to exercise the option described in Section 10.4(a)(i), then the other Offerees must purchase all but not less than all of the remaining Membership Interest of the Offeror in order for the option under Section 10.4(a)(i) to be effective. Such purchase shall be on a proportionate basis unless otherwise agreed to be the other Offerees who wish to exercise the option described in Section 10.4(a)(i). If the Offerees exercise the option described in Section 10.4(a)(i), then such notice shall be accompanied by an irrevocable standby letter of credit for the benefit of the Offeror or other reasonably satisfactory evidence of its ability to consummate the purchase. Failure of the Offerees to give the Offeror notice that the Offerees have made an election under Section 10.4(a)(i) within such 45-day period shall be conclusively deemed to be an election under Section 10.4(a)(ii). The closing of a purchase pursuant hereto shall be held at a mutually acceptable place and on a mutually acceptable date not sooner than ninety (90) days nor more than one hundred and eighty (180) days after expiration of the 45-day period following receipt of the Offer. At such closing the selling Member shall assign to the purchasing Members the Membership Interest free and clear of all liens, and shall execute all other documents that may be reasonably necessary or advisable to effectuate the transactions contemplated hereby, and the purchasing Members shall pay the purchase price therefor in cash, by a cashier's or certified check from a bank qualified as aforesaid or by wire transfer. All closing costs shall be borne by the purchasing Members. At such closing, the purchasing Members shall assume all of the obligations of the selling Member under this Agreement and the selling Member shall be provided with releases for all obligations, provided, however, if releases cannot be obtained from third party obligees, the purchasing Member shall provide the selling Member with an indemnification for liability from such obligations and such other reasonable assurances as the selling Member may require.

## ARTICLE 11

### NON-COMPETITION AND NON-SOLICITATION

Section 11.1 Protection of Proprietary Information. The Initial Managers and Kramer (hereinafter referred to collectively as "**Supervisors**") acknowledge that during the course of each of the Supervisors' respective employment, each of the Supervisors will receive confidential and proprietary information from and concerning the Company. Each of the Supervisors also acknowledges that the Members and Company will make substantial investments in the development of the Company's goodwill and in the Supervisors' professional development. The capital expended to develop this goodwill directly benefits each of the Supervisors and should continue to do so in the event that the relationship between the Company and any of the Supervisors is terminated. Likewise, other capital investments made or to be made by the Members and Company to assist in the Supervisors' professional development (including but not limited to those items listed below) have conferred and will confer a direct economic benefit on each of the Supervisors. During the course of each of the Supervisors' tenure with the Company, each of the Supervisors will have received the following economic benefits as a result of capital expenditures by the Members or the Company:

- (a) Marketing support enabling each of the Supervisors to expand each of the Supervisors' own professional development and to become known by additional industry personnel.
- (b) Financial support to facilitate business growth.
- (c) Participation in proprietary strategic planning sessions which focus on professional and business growth opportunities.
- (d) Cross-selling, synergy and business expansion opportunities from being part of the Company.

Each of the Supervisors agree that the Company is entitled to protect these business interests and investments and to prevent each of the Supervisors from using or taking advantage of the foregoing economic benefits to the Company's and Members' detriment.

Section 11.2 Prohibited Activities. Each of the Supervisors agree that, except for services and duties performed for or on behalf of the Company pursuant to this Agreement, each of the Supervisors will not, during each of the Supervisors' respective period of employment with the Company and for a period of two (2) years immediately following the termination of each of the Supervisors' employment under this Agreement (the "**Restricted Period**") for any reason whatsoever, directly or indirectly, for himself or on behalf of or in conjunction with any other person, persons, company, partnership, corporation or business of whatever nature:

- (a) engage, as an officer, director, shareholder, owner, partner, joint venturer or in a managerial capacity, whether as an employee, independent contractor, consultant or advisor or as a sales representative, in any business in direct competition with the business of the Company or any subsidiary or affiliate of any of the Members, within the United States or within 100 miles of any other geographic area in which the Company or any of the Members' affiliates

or subsidiaries conducts business, including any territory serviced by the Company or any of such affiliates or subsidiaries (the "Territory");

(b) solicit any person who is, at that time, or who has been within one (1) year prior to that time, an employee of any of the Members or the Company (including the respective affiliates or subsidiaries thereof) for the purpose or with the intent of enticing such employee away from or out of the employ either of the Members (including the respective affiliates or subsidiaries thereof) or the Company;

(c) solicit any person or entity which is, at that time, or which has been within one (1) year prior to that time, a customer or supplier of one of the Members (including the respective affiliates or subsidiaries thereof) or the Company for the purpose of soliciting or selling products or services in direct competition with one of the Members or any affiliate or subsidiary of one of the Members within the Territory; or

(d) solicit any prospective acquisition candidate, on one of the Supervisors' own behalf or on behalf of any competitor or potential competitor, which candidate was, to the Supervisor's knowledge, either called upon by the Company or the Members (including the respective affiliates or subsidiaries thereof) or for which one of the Members or the Company made an acquisition analysis, for the purpose of acquiring such entity.

Notwithstanding the above, the foregoing covenant shall not be deemed to prohibit any of the Supervisors from acquiring as an investment not more than two percent (2%) of the capital stock of a competing business, whose stock is traded on a national securities exchange or over-the-counter.

Section 11.3 Remedies for Breach. In recognition of the substantial nature of the potential damages and the difficulty of measuring economic losses to the Members and Company as a result of a breach of the foregoing covenants, and because of the immediate and irreparable damage that could be caused to the Members and Company for which they would have no other remedy, each of the Supervisors agrees that in the event of breach by any of the Supervisors of the foregoing covenant, the Members and Company shall be entitled to specific performance of this provision and co-injunctive and other equitable relief, as well as other remedies available at law.

Section 11.4 Application to New Locations or Businesses. It is agreed by the parties that the foregoing covenants in this Article impose a reasonable restraint on each of the respective Supervisors in light of the activities and businesses of the Company and each of the Members (including the Members' other subsidiaries) on the date of the execution of this Agreement and the current plans of the Company and Members (including the Members' affiliates or subsidiaries); but it is also the intent of each of the Company and Members and Supervisors that such covenants be construed and enforced in accordance with the changing activities, business and locations of the Company and Members (including the Members' affiliates and subsidiaries) throughout the term of the Restricted Period, whether before or after the date of termination of the employment of each of the Supervisors. For example, if, at any time prior to the termination of the term of the Restricted Period, the Members (including the Members' other subsidiaries) engages in new and different activities, or establishes new

locations for its current activities or business and any of the Supervisors is involved with providing such new services, then such Supervisors will be precluded from soliciting the customers or employees of such new activities or business or from such new location and from directly competing with such new business within 100 miles of its then-established operating location(s) through the term of the Restricted Period.

Section 11.5 Covenants are Independent and Severable. The covenants in this Article are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of competent jurisdiction shall determine that the scope, time or territorial restrictions set forth in this Article are unreasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent which the court deems reasonable, and the Agreement shall be reformed in accordance therewith.

Section 11.6 Independent Agreement; Continuing Agreement. All of the covenants in this Article shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of any of the Supervisors against the Company or Members, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company and Members of such covenants. Further, this Article shall survive the termination of this Agreement and the termination of each of the Supervisors' respective employment with the Company and Members. It is specifically agreed that the period of two (2) years following termination of such employment set forth in Section 11.2, during which the agreements and covenants of each of the Supervisors made in this Article shall be effective, shall be computed by excluding from such computation any time during which each of the Supervisors is in violation of any provision of this Article.

Section 11.7 Exception for Change of Control. The restrictive covenant contained in this Article shall terminate and shall no longer apply upon the occurrence of a "Change of Control" of the Company. For the purposes of this Article, a "Change of Control" is defined as IDS, Inc., ALP, Inc., Millstone LLC and Kramer collectively ceasing to own and control at least 50% of the Membership Interests of the Company.

## ARTICLE 12

### BOOKS AND RECORDS

Section 12.1 Inspection Rights Pursuant to Law. Without limiting any right which the Members enjoy under the Florida Act, it is agreed that the Company shall have obligations to the Members as set forth in this Article respecting books, records and financial statements of the Company.

Section 12.2 Books and Records. At all times during the continuance of the Company, the Company shall maintain, at its registered office and principal place of business, all records and materials referred to in Florida Act Section 608.4101 (or any successor statute), including without limitation, separate books of account for the Company that 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 operation of the Company. Such books

of account, together with a true copy of this Agreement and the Articles, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection, examination and audit at any time by each Member and its duly authorized representatives for any purpose.

Section 12.3 Statements of Financial Condition. Unless otherwise agreed by the Members, the Managers shall prepare or cause to be prepared, at the Company's expense, a statement of the financial condition of the Company as of the last day of each quarter of each Fiscal Year as well as quarterly income and expense reports with respect to the Company. Each statement of financial condition and each income and expense report shall be prepared in accordance with generally accepted accounting principles ("GAAP"). Copies of such statements and reports shall be furnished to each of the Members within forty-five (45) days after the end of each quarter to the extent feasible. In addition, the Managers shall prepare or cause to be prepared an annual statement of the financial condition of the Company and income and cash flow statements, which statements shall, if mutually agreed by the Members, be reviewed by the Company's independent accountants and furnished to each of the Members within ninety (90) days after the close of each Fiscal Year to the extent feasible. These annual statements shall be prepared in accordance with GAAP.

Section 12.4 Accounting Method. For both financial and tax reporting purposes and for purposes of determining Profits and Losses, the books and records of the Company shall be kept on such method of accounting as determined by the Managers and shall reflect all Company transactions and be appropriate and adequate for the Company's business.

Section 12.5 Other Accounting Decisions. All major accounting decisions for the Company (other than those specifically provided for in other Sections of this Agreement) shall be approved by the Managers. The Company shall engage as independent auditors for the Company a recognized firm of independent certified public accountants approved by the Managers.

## ARTICLE 13

### TAX MATTERS

Section 13.1 Taxation as Partnership. The Company shall be treated as a partnership for U.S. federal income tax purposes.

Section 13.2 Tax Returns.

(a) The Managers shall cause to be prepared, at the expense of the Company, for each Fiscal Year (or part thereof), Federal tax returns in compliance with the provisions of the Code and any required state and local tax returns.

(b) Copies of all tax returns of the Company shall be furnished to each of the Members for its review and approval at least fifteen (15) days prior to the statutory date for filing, including extensions thereof, if any. If any Member shall fail to approve any such return at least five (5) days prior to the statutory date for filing, the Managers shall file or cause to be filed an application for extension of time to file such return. If any Member shall thereafter fail

to approve any such return at least five (5) days prior to the expiration of the last lawful extension, the Managers shall, nevertheless, file such return on behalf of the Company.

Section 13.3 Member Tax Return Information. The Managers, at the Company's expense, shall cause to be delivered to each Member such information as shall be necessary (including a statement for that year of each Member's share of net income, net losses and other items of the Company) for the preparation by the Members of their Federal, state and local income and other tax returns.

Section 13.4 Tax Matters Representative.

(a) The Managers shall act as "Tax Matters Representative" of the Company for purposes of §6231(a)(7) of the Code and shall have the power to manage and control, on behalf of the Company, any administrative proceeding at the Company level with the Internal Revenue Service relating to the determination of any item of Company income, gain, loss, deduction or credit for federal income tax purposes.

(b) The Tax Matters Representative shall, within five (5) business days of the receipt of any notice from the Internal Revenue Service in any administrative proceeding at the Company level relating to the determination of any Company item of income, gain, loss, deduction or credit, mail a copy of such notice to each Member.

Section 13.5 Right to Make Section 754 Election. The Tax Matters Representative may, upon receiving the written consent of each other Member, make or revoke, on behalf of the Company, an election in accordance with §754 of the Code, so as to adjust the basis of Company property in the case of a distribution of property within the meaning of §734 of the Code, and in the case of a transfer of a Company Interest within the meaning of §743 of the Code. Each Member shall, upon request of the Tax Matters Representative, supply the information necessary to give effect to such an election.

## ARTICLE 14

### LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 14.1 Liability.

(a) Pursuant to Florida Statutes §608.439(5), the conversion of the General Partnership into the Company shall not affect any obligations or liabilities of the General Partnership prior to its conversion to the Company or the personal liability of any person incurred prior to such conversion. Accordingly, notwithstanding anything in this Agreement to the contrary, the provisions of this Article shall be subject to the provisions of Florida Statutes §608.439(5).

(b) Except as otherwise provided by the Florida Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(c) Except as otherwise expressly required by law, a Member, in its capacity as Member, shall have no liability in excess of (i) the amount of its Capital Contributions, (ii) its share of any assets and undistributed profits of the Company, (iii) its obligation to make other payments expressly provided for in this Agreement, and (iv) the amount of any distributions wrongfully distributed to it.

Section 14.2 Exculpation.

(a) No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits, Losses or Net Cash Flow or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

Section 14.3 Indemnification. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person provided that: (i) any such action was undertaken in good faith on behalf of the Company and in a manner reasonably believed to be in, or not opposed to, the best interests of the Company, (ii) any such action was reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, and (iii) with respect to any criminal action or proceeding, such Covered Person had no reasonable cause to believe his action or omission was unlawful, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 14.3 shall be provided out of and to the extent of Company assets only (including the proceeds of any insurance policy obtained pursuant to Section 14.5 hereof), and no Covered Person shall have any personal liability on account thereof.

Section 14.4 Expenses. To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Section 14.3.

Section 14.5 Insurance. The Company shall purchase and maintain insurance, to the extent and in such amounts as the Managers shall, in their sole discretion, deem reasonable, on behalf of Covered Persons and such other Persons as the Managers shall determine, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company or such indemnities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement. The Managers and the Company may enter into indemnity contracts with Covered Persons and such other Persons as the Managers shall determine and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under Section 14.4 and containing such other procedures regarding indemnification as are appropriate.

Section 14.6 Payments to Third Parties. The Members shall indemnify and hold harmless each other in respect of payments to any third party for valid Company debts within the permitted scope of the Company that any Member makes in excess of its pro rata share thereof as determined in accordance with their Membership Interests existing at the time of the payment in question.

Section 14.7 Certain Liabilities. Each Member agrees to be liable for the Capital Contributions required to be made by such Member, and subject to the other provisions of this Agreement, in the event a Member becomes liable for any liabilities of the Company, the Members shall bear such liability in proportion to their then existing Membership Interests. Each Member agrees to indemnify and save harmless the other Members to the extent that any Member bears a disproportionate share of any such losses or liabilities of the Company. Notwithstanding the above, no Member shall be indemnified and held harmless by the other Members to the extent that such losses or liabilities arise from fraud, gross negligence, or dishonest conduct on the part of such Member.

Section 14.8 Acts Performed Outside the Scope of the Company. Each Member (the "Indemnitor") shall indemnify, defend, save and hold harmless the other Members (the "Indemnitee") from any and all claims, liabilities, demands, actions and rights of action that shall or may arise by virtue of any act or thing done or omitted to be done by the Indemnitor (directly or through agents or employees) outside the scope of, or in breach of, the terms of this Agreement; provided, however, that the Indemnitor shall be properly notified of the existence of the claim, demand, action or right of action, and shall be given reasonable opportunity to cure any act or omission causing liability, and participate in the defense thereof. The Indemnitee's failure to give such notice shall not affect the Indemnitor's obligations hereunder, except to the extent of any actual prejudice arising therefrom.

Section 14.9 Liability of Members to Company. Unless otherwise provided in this Agreement, no Member shall be liable to any other Member or to the Company by reason of such Member's actions in connection with the Company, except in the event of a violation of any provision of this Agreement, fraud, gross negligence or dishonest conduct.

Section 14.10 Attorneys' Fees. All of the indemnities provided in this Agreement shall include reasonable attorneys' fees, including appellate attorneys' fees, and court costs.



Section 14.11 Subordination of Other Rights to Indemnity. The interests of the Members in any proceeds of the Company by way of repayment of loans, return of any Capital Contributions, or any distributions from the Company, shall be subordinated to the right of Member to the indemnities provided by this Article.

Section 14.12 Survival of Indemnity Provisions. Except as otherwise specifically provided herein, all of the indemnity provisions contained in this Agreement shall survive a Member's ceasing to be a Member hereunder.

## ARTICLE 15

### DISSOLUTION, LIQUIDATION AND TERMINATION

Section 15.1 No Dissolution. The Company shall not be dissolved by the admission of a new Member in accordance with the terms of this Agreement, or the withdrawal of a Member.

Section 15.2 Events Causing Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events:

- (a) at such time as there are no Members;
- (b) the entry of a decree of judicial dissolution under of the Florida Act; or
- (c) the written consent of a majority of the Managers.

Section 15.3 Notice of Dissolution. Upon the dissolution of the Company, the Manager shall promptly notify the Members of such dissolution.

Section 15.4 Liquidation. Upon dissolution of the Company, the Managers shall carry out the winding up of the Company and shall immediately commence to wind up the Company's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The Members shall continue to share Profits and Losses and other items during liquidation in the same manner, as specified in this Agreement, as before liquidation. The proceeds of liquidation shall be distributed in the following order and priority:

(i) First, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, and consistent with the subordination or other terms and conditions therein pertaining to priority of satisfaction of such indebtedness, in full satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof);

(ii) Next, to the setting up of such reserves as the Managers reasonably may deem necessary for any contingent liabilities or obligations of the Company; provided that (i) any such reserves shall be held by the Managers or an agent appointed by the Managers for such period as the Managers or such agent shall deem advisable for the purpose of applying such reserves to the payment of such liabilities or obligations as they become due and (ii) at the

expiration of such period, the balance of such reserves, if any, shall be distributed as hereinafter provided in this Section;

(iii) Next, pro rata to all Members who made loans to the Company, in an amount equal to the unpaid principal of and interest on such loans, in proportion to the total amount of principal and interest payable on such loans, such distributions being treated first as in payment of accrued interest on such loans and next as in payment of principal on such loans; and

(iv) Thereafter among the Members in accordance with Section 5.1 hereto.

Section 15.5 Termination. The Company shall terminate when all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article and Company has taken all actions required by the Florida Act.

Section 15.6 Claims of the Members. The Members and former Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against the Company or any other Member; provided, however, that nothing contained herein shall be deemed to limit the rights of a Member under applicable law.

Section 15.7 Distributions In-Kind. If any assets of the Company shall be distributed in kind, such assets shall be distributed to the Member(s) entitled thereto as tenants-in-common in the same proportions as such Member(s) would have been entitled to cash distributions if (i) such assets had been sold for cash by the Company at the fair market value of such property (taking the Gross Asset Value definition herein and Code Section 7701(g) into account) on the date of distribution, (ii) any unrealized income, gain, loss and deduction inherent in such property (that has not been reflected in the Capital Accounts previously) that would be realized by the Company from such sale were allocated among the Member(s) as Profits or Losses in accordance with this Agreement, and (iii) the cash proceeds were distributed to the Member(s) in accordance Section 15.4. The Capital Accounts of the Member(s) shall be increased by the amount of any unrealized income or gain inherent in such property or decreased by the amount of any loss or deduction inherent in such property that would be allocable to them, and shall be reduced by the fair market value of the assets distributed to them under the preceding sentence.

## ARTICLE 16

### MISCELLANEOUS

Section 16.1 Notices. All notices provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail or by recognized overnight delivery or courier service (e.g., Federal Express), as follows:

(i) if given to the Company, in care of the Managers at the principal place of business of the Company set forth in Section 2.5 hereof with a copy to:

Greenberg Traurig, P.A.  
515 E. Las Olas Blvd., Suite 1500  
Fort Lauderdale, FL 33301  
Attn: Francis B. Brogan, Jr.

(ii) if given to any Member, at the following address, or at such other address as such Member may hereafter designate by written notice to the Company:

If to IDS, Inc.: IDS Long Distance, Inc.  
1525 N.W. 167<sup>th</sup> Street  
Suite 200  
Miami, Florida 33169

If to ALP, Inc.: Anthony L. Petrone, Inc.  
1525 N.W. 167<sup>th</sup> Street  
Suite 200  
Miami, Florida 33169

If to Millstone LLC: Joseph C. Millstone, LLC  
1525 N.W. 167<sup>th</sup> Street  
Suite 200  
Miami, Florida 33169

If to Kramer: Keith Kramer  
1525 N.W. 167<sup>th</sup> Street  
Suite 200  
Miami, Florida 33169

Section 16.2 Failure to Pursue Remedies. The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 16.3 Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 16.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, legal representatives and assigns.

Section 16.5 Interpretation. Throughout this Agreement, nouns, pronouns and verbs shall be construed as masculine, feminine, neuter, singular or plural, whichever shall be applicable. All references herein to "Articles," "Sections" and "Paragraphs" shall refer to corresponding provisions of this Agreement.

Section 16.6 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 16.7 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

Section 16.8 Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 16.9 Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Florida, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws. The parties hereto agree to submit to the jurisdiction of the federal or state courts sitting in Florida in connection with any claims or controversy arising out of this Agreement and that venue for such actions shall be in Miami-Dade County or Broward County, Florida.

Section 16.10 Dealings in Good Faith; Best Efforts. Except as otherwise expressly set forth herein, each party hereto agrees to act in good faith with respect to the other party in exercising its rights and discharging its obligations under this Agreement. Each party further agrees to use its best efforts to ensure that the purposes of this Agreement are realized and to take all steps as are reasonable in order to implement the operational provisions of this Agreement. Each party agrees to execute, acknowledge, if necessary, deliver and file any document or instrument necessary or advisable to realize the purposes of this Agreement.

Section 16.11 Partition of the Property. Each Member agrees that it shall have no right to partition the Property, or any portion thereof, and each Member agrees that it shall not make application to any court or authority having jurisdiction in the matter to commence or prosecute any action or proceeding for partition of the Property, or any portion thereof. Upon the breach of this Section by any Member, the other Members, in addition to all other rights and remedies in law and equity, shall be entitled to a decree or order dismissing the application, action or proceeding.

Section 16.12 Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed, to confer upon or give any person, firm or corporation other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement, or result in their being deemed a third party beneficiary of this Agreement.

Section 16.13 Outside Activities of Members. Except as otherwise set forth in this Agreement, any Member or any Affiliate thereof, may engage in or possess an interest in other

business partnerships or other persons of every nature or description, independently or with others, including, without limitation, in competition with the Company, and neither the Company nor any other Member shall have any right by virtue of this Agreement in or to such independent partnership or persons or in or to the income derived therefrom.

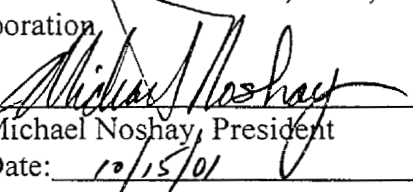
Section 16.14 Ability to Seek Separate Counsel. The Members acknowledge that this Agreement was prepared by Greenberg Traurig, P.A., as counsel for the Company, and that the Members have had the opportunity to retain separate and independent counsel to represent their interests in connection with this Agreement. The Members agree that they are executing this Agreement after due consideration of the issues presented and that they have elected not to seek separate and independent counsel to represent their respective interests.

Section 16.15 Effective Date. This Agreement shall be effective as of \_\_\_\_\_, 200\_\_.

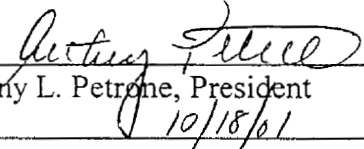
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**MEMBERS:**

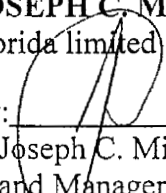
**IDS LONG DISTANCE, INC.**, a Florida corporation

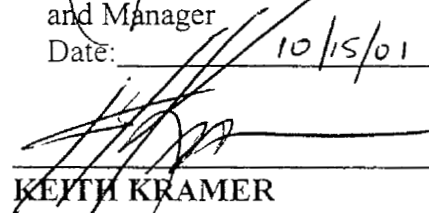
By:   
Michael Noshay, President  
Date: 10/15/01

**ANTHONY L. PETRONE, INC.**, a Florida corporation

By:   
Anthony L. Petrone, President  
Date: 10/18/01

**JOSEPH C. MILLSTONE, LLC**, a Florida limited liability company

By:  MG12  
Joseph C. Millstone, as the sole Member and Manager  
Date: 10/15/01

  
**KEITH KRAMER**

Addendum (B)  
Employment Agreement  
3/28/00

Title Change: Effective March 29, 2000, Keith Kramer will be employed as Senior Vice President of IDS Telcom by the decision of the Managing Partners.

Salary: (Current) One Hundred Sixty Thousand Dollars (\$160,000) annually.  
Once IDS Telcom attains 10,000 access lines through the Combinations Agreement between BellSouth and IDS Telcom, salary will increase to One Hundred Eighty Thousand Dollars (\$180,000) annually.

When IDS Telcom attains 30,000 access lines, salary will increase to Two Hundred Thousand Dollars (\$200,000) annually.

Profit Sharing: Paid at the option of the Managing Partners.

EMPLOYEE

IDS TELCOM, a Florida General Partnership  
By: IDS Long Distance, Inc. a General Partner

Signature \_\_\_\_\_

Print \_\_\_\_\_

Date \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date \_\_\_\_\_

Initial \_\_\_\_\_  
Initial \_\_\_\_\_

**Keith Kramer**  
c/o Alan C. Gold, P.A.  
1320 South Dixie Highway  
Suite 870  
Coral Gables, FL 33146

August 29, 2003

**CERTIFIED RETURN RECEIPT REQUESTED,  
AND REGULAR US MAIL**

Mr. Joseph C. Millstone  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

Mr. Anthony Petrone  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

Mr. Michael Noshay  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

IDS Telcom, LLC  
Attention: Michael Noshay  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

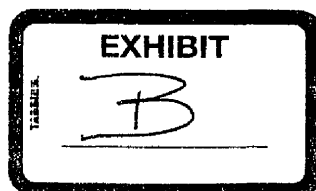
Gentlemen:

This letter is being written pursuant to Florida Statutes § 608.601 demanding that IDS Telcom, LLC, take action against Joseph Millstone, Michael Noshay and Anthony Petrone for violation of the Third Amended and Restated Operating Agreement of IDS Telcom, LLC., breach of the duty of loyalty, breach of fiduciary duty and violation of Florida Statutes § 608.4225. Unless action is taken within ten (10) days, and you advise us of said action, the undersigned will have no alternative except to file a Members' Derivative Action against the above-mentioned people pursuant to Florida Statutes § 608.601. My complaints are based upon the fact that the above Members have formed and are Managers of Hometown Telephone, LLC, a Florida Limited Liability Corporation, which have filed a Petition before the Florida Service Commission seeking a Certificate to provide competitive local exchange telecommunication services. This is in direct competition with IDS Telcom, LLC, and will directly and adversely impact upon the value of the Company and my interest in the same.

Florida Statutes §608.4225 sets the general standards for managers of a LLC which includes a duty of loyalty. Section 1(a) 3 of that Statute requires that the Managers refrain from competing with the Limited Liability Company.

Additionally, the Third Amended and Restated Operating Agreement of IDS Telcom, LLC., which is the Operating Agreement presently in force, prohibits this type of competition with IDS.

Demand is hereby made that IDS take immediate action to prohibit the above-mentioned Managers





from competing with IDS Telcom, LLC. either through Hometown Telephone, LLC. or through any other entity. IDS Telcom, LLC. should also take steps to demand that Hometown Telephone, LLC. withdraw its pending application with the Florida Public Service Commission. The additional steps that IDS Telcom, LLC. should take include, but are not limited to filing an action seeking injunctive relief against the above-named individuals, including any and all damages sustained by the Company. Unless the Petition before the Florida Public Service Commission is withdrawn, IDS should take all steps necessary to oppose and have the Petition rejected. Also, IDS should investigate whether any of its funds have been used for the formation of Hometown Telephone, LLC., to pay fees and costs associated with the application by Hometown Telephone, LLC. with the Florida Public Service Commission and/or the purchase of the switch or other equipment, which was to be utilized by Hometown Telephone, LLC. You should also ascertain whether other assets of IDS including its employees were used to benefit Hometown Telephone, LLC. If any corporate monies were spent on the above, the responsible individuals should be required to immediately repay the same or suit should be filed against them.

Additionally, the actions of the above-cited Managers are in violation of the various agreements with MCG Capital Corporation. Demand is hereby made that the actions taken by the Managers be immediately disclosed to MCG Capital and that steps are taken to bring the Company back into compliance with the various agreements with MCG Capital.

As stated above, unless these demands are complied with, and suitable action is taken by the IDS Telcom, LLC., within the time limits set forth above, the undersigned will file a suit against the above-named individuals and Hometown Telephone, LLC. on behalf of IDS Telcom, LLC. as well as take the necessary action on behalf of IDS Telcom, LLC. to prevent the licensing of Hometown Telephone by the Public Service Commission.

Sincerely,



KEITH KRAMER

cc: Alan C. Gold, Esquire

Keith Kramer  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

October 30, 2002

**CERTIFIED RETURN RECEIPT REQUESTED,  
REGULAR US MAIL, FACSIMILE TRANSMITTED**

Mr. Joseph C. Millstone  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

Mr. Anthony Petrone  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

Greenberg Traurig, P.A.  
515 E. Las Olas Boulevard  
Suite 1500  
Ft. Lauderdale, FL 33301

IDS Long Distance, Inc.  
Attention: Michael Noshay  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

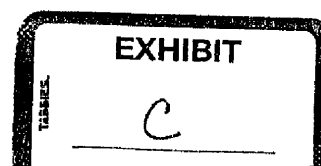
IDS Telcom, LLC  
Attention: Michael Noshary  
1525 NW 167 Street  
Second Floor  
Miami, FL 33169

Gentlemen:

As you are aware, I am a member of IDS Telcom, LLC holding a 7% membership interest in the company.

Pursuant to Article 12.2 of the Operating Agreement of IDS Telcom, LLC, all members are entitled to inspect the books and records of the company. Further, inspection of the books and records of the company by a member is required under § 608.4101, Florida Statutes. Additionally, under the common law in Florida a person is entitled to inspect the books and records of a company in which he has an interest. Please consider this to be my request for inspection of the following described records of IDS Telcom, LLC, pursuant to Florida Statutes § 608.4101, the Operating Agreement of IDS Telcom, LLC, and common law. We request that the inspection take place on November 21, 2002 at 10:00 a.m. at IDS Telcom, LLC, 1525 NW 167 Street, Second Floor, Miami, FL 33169. If the time, date or location are not convenient or acceptable, please advise of a reasonable location, time or date.

If I fail to hear from you prior to the date above-specified, we will assume that the inspection will occur on the date, time and location specified and, accordingly, will be there to inspect the records. I plan to have my attorney, Alan C. Gold or another member of his Firm present at the inspection. I also may have an accountant present as well.



There are numerous reasons why I need to inspect the books and records which include the following. I am concerned that there has been misappropriation and misuse of company funds. Since I was improperly terminated from IDS Telcom, LLC., there has been a complete failure to provide information as to what is transpiring regarding the company's business. You have made proposals to purchase my interest in the company and I need to review the books and records to ascertain the fair market value. I also understand there has been discussions with prospective purchasers and with MCG Financial Group, Inc. regarding the loan. All documents concerning the same must be received in order to determine the value of my membership interest. I would like to ascertain what has been going on with IDS Telcom, LLC, as well as determine whether the company has been properly run. I also desire to inspect the records to determine whether any dividends or other distributions have been improperly made to any of its members or anyone else, and determine the accuracy of the K-1. Finally, I desire to inspect the books and records for all other purposes incident to my ownership in the company. The records which I desire to inspect are the following:

1. A current list of the full name and last known business address, resident and/or mailing address of all members, managers and managing members of the company, IDS Telcom, LLC. (hereinafter referred to as "Company").
2. A copy of the Articles of Organization, and any amendments, modifications, or corrections thereto.
3. All certificates of conversion
4. All documents filed with the Department of State concerning IDS Telcom, LLC together with executed copies of any Powers of Attorney pursuant to which any Articles of Organizations or Certificates were executed
5. Copies of the Company's Federal, State and Local income tax, if any, since the inception of the Company
6. Copies of the effective Operating Agreement for the "Company" as of the date of this correspondence
7. Any and all financial statements of the "Company" since its inception
8. The amount of cash and description and statement of the agreed value of any property or services contributed by each member in which each member has agreed to contribute.
9. The time at which, or events of the happening on which any additional contributions agreed to be made by each member are to be made
10. Any events upon, the happening of which, the limited liability Company is to be dissolved and its affairs wound up
11. All records showing all members of the "Company" since its inception

12. All records showing all managers and managing members of the "Company" since its inception.
13. The minutes of any members meetings and records of all actions taken by the members with or without a meeting since the inception of the "Company".
14. All minutes of any managers meetings and records of all actions taken by the managers or managing members with or without a meeting since the inception of the "Company".
15. All accounting records of the "Company".
16. All resolutions of the "Company".
17. All bank and checking account statements of the "Company".
18. All checks issued by the "Company".
19. All wire transfers sent to or received from the "Company".
20. The "Company"'s checkbook(s).
21. The accounts payable ledger of the "Company".
22. The check ledger of the "Company".
23. All cancelled checks of the "Company" since the inception of the "Company".
24. List of all salaries of all employees since the inception of the "Company".
25. List of all dividends or bonuses paid to all employees, managers or members since the inception of the "Company".
26. List of all outstanding loans, notes or other outstanding financial obligations of the "Company".
27. The value of all inventory since the inception of the "Company".
28. The accounts receivable ledger of the "Company".
29. The accounts payable ledger of the "Company".
30. All trial balances of the "Company" issued since the inception of the "Company".
31. All profit and loss statements of the "Company" since its inception.

32. All statements of any brokerage house.
33. All audits, reconciliations or accounting summaries of the "Company".
34. All drafts of financial statements of the "Company".
35. All balance sheets of the "Company".
36. All documents indicating what assets were in the "Company" at any time since the inception of the "Company", whether or not said assets currently remain in the "Company".
37. All records indicating all liabilities of the "Company".
38. All records indicating all expenditures of the "Company".
39. All documents in connection with any financing including loan applications.
40. All documents indicating any lawsuit by or against the "Company".
41. All documents indicating any arbitration proceedings initiated by or against the "Company".
42. All documents in connection with any claims for money made against the "Company".
43. All records prepared by any accountant or bookkeeper concerning or relating to the financial condition of the "Company" or any losses or gains allegedly sustained by the "Company".
44. All contracts entered into by the "Company".
45. All contracts which are currently pending.
46. All payroll ledgers of the "Company".
47. All business plans, pro-forma statements and/or projections for the "Company".
48. All invoices, contracts and other writings indicating what work the "Company" performed or is obligated to perform since the inception and the charges for the same.
49. All statements for all years the "Company" was in operation for each member's share of net income and net losses of the "Company".
50. All correspondence and documents and/or writings exchanged between the "Company", its members, managers, agents, representatives and attorneys on the one hand, and MCG Financial Group, Inc., its agents, representations and attorneys on the other hand.
51. All documents and writings concerning or relating to any proposed purchase or sale of IDS Telcom, LLC, any membership interest in IDS Telcom, LLC, or assets of IDS Telcom, LLC.

52. Copy of lawsuits filed against the "Company".
53. Copy of all claims and demands for money or damages filed against the "Company".
54. Copy of all lawsuits, arbitrations or alternative dispute matters in which IDS Telecom, LLC is a party.

Very truly yours,



KEITH KRAMER

cc: Alan C. Gold, Esquire

LAW OFFICES  
**STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.**

MUSEUM TOWER  
150 WEST FLAGLER STREET  
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FT. LAUDERDALE OFFICE  
SUITE 1900  
200 EAST BROWARD BOULEVARD  
FORT LAUDERDALE, FLORIDA 33301

(954) 462-9500

MARTIN S. SIMKOVIC  
DIRECT LINE (305) 789-3231  
email:msimkovic@swmwas.com

November 13, 2002

Alan C. Gold, Esq.  
Alan C. Gold, P.A.  
Gables One Tower  
1320 South Dixie Highway, Suite 8870  
Coral Gables, FL 33146

*Via Facsimile & Mail*

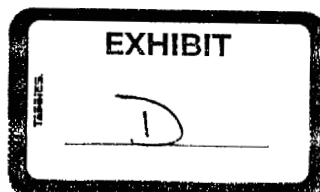
Re: Keith Kramer's Letter of October 30, 2002

Dear Mr. Gold:

Our firm represents IDS Telcom, LLC (hereinafter, the "Company") with respect to your client's letter of October 30, 2002, in which he asks to inspect virtually all of the Company's books and records. Insofar as your client seems familiar with the provisions of Section 608.4101 of the Florida Statutes, he should likewise be aware that this section only allows him to inspect certain records – those records referenced in subsections (1)(a) through (1)(d) of the statute.

Furthermore, as we have been advised that your client is actively advising businesses that compete directly with the Company, the Company – under Section 608.4101 – has "the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business..." It is likewise important that your client understands that under the common law, his inspection rights are no greater than those delineated in Section 608.4101.

Your client's demand to inspect 54 different categories of documents is wholly unreasonable, is not authorized under Section 608.4101, and is a purposeful and wholly improper attempt on your client's part to impose an undue burden and hardship on the company to further his own economic interests. Because we need to resolve the issues

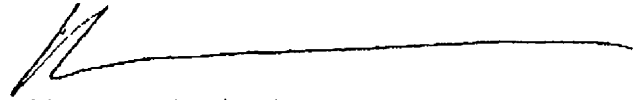


Alan C. Gold, Esq.  
November 13, 2002  
Page 2

regarding your client's inspection rights prior to any inspection actually taking place, the inspection cannot go forward on November 21, 2002.

Kindly contact me upon receipt of this letter so that we can schedule an inspection for a mutually convenient time and determine the reasonable statutory fee that your client will be charged for the inspection. At the inspection, the Company will allow your client to inspect the records specified in Section 608.4101, but will not allow your client to inspect any other records. We look forward to hearing from you to resolve these issues.

Sincerely,



Martin S. Simkovic

MSS/ws

J:\mss\36375.000\Kramer-1.doc



*Alan C. Gold, P.A.*  
Attorney at Law

One Tower  
South Dixie Highway  
# 870  
Miami Gables, FL 33146

Email: agold@kcl.net

Telephone:  
(305) 667-0475 (Ext. 1)

Fax:  
(305) 663-0799

November 25, 2002

**Via Facsimile Transmission  
and U.S. Mail**

Martin S. Simkovic, Esquire  
Stearns, Weaver, Miller, Weissler  
Alhadeff & Sitterson, P.A.  
Museum Tower  
150 West Flagler Street  
Miami, FL 33130

RE: Keith Kramer's Inspection of Records of IDS Telcom, LLC.

Dear Mr. Simkovic:

This acknowledges receipt of your letter of November 13, 2002. We strongly disagree with your interpretation of Florida Statutes §608.401. The statute clearly requires the limited liability company to keep at its principal office the documents listed in 1(a) through 1(d) of the statute. The statute does not limit the right of inspection to the documents listed in section 1. Please review section 2 of the statute.

Further, you are mistaken that the statute requires a "statutory fee". The statute does not provide a fee for the inspection, but rather only allows a fee to be charged if the records are copied. Please see section 2 of Florida Statutes §608.4101. We view your request for statutory fee as another excuse to deny access to the books and records.

Please advise of available dates within the next two (2) weeks in which we may conduct an inspection. We will attempt to arrange our schedule to coordinate with yours. Also, since the records you are producing do not appear to be too voluminous, it would appear to be more practical to just make copies of the inspection. Please advise what copying charge you would impose. The same should not be more than the price charged by a legitimate copying service. To make matters easier, we would be more than happy to send a copying service to pick up the records, copy the same and return them to your clients. In that way, your clients would not incur any copying charges. My firm normally uses Blacks Copy Services, however, if you prefer a different service, please advise and we will make the necessary arrangements.

Our inspection of the books and records you are providing is without waiving our right to seek inspection of the other books and records listed. Perhaps after reviewing the plain and clear language of the statute, you would reconsider your position.

Very truly yours,

ALAN C. GOLD

ACG:ms

