

OPERATING AGREEMENT

OF

OPENBAND AT BROADLANDS LLC

between

BROADLANDS COMMUNICATIONS, L.L.C.

and

OPENBAND SPE II, LLC

as of

November 16, 2001

provisions or shall by reason of any such provisions make any claim with respect to any debt, liability, obligation or claim against the Company or any of the Members.

4.8 **Service Office.** It is acknowledged that (i) the funds necessary to build the Service Office shall be provided independently of this Agreement and shall not be part of nor funded by OSPE's Capital Contribution, (ii) in the event that any Cure Loan is made to cure a financing default pursuant to Section 4.5 of this Agreement, neither the Company nor BAC, subject to the Company's or BAC's subrogation rights, shall acquire any ownership interest in the Service Office, and (iii) OSPE intends to use the Service Office to provide Services to the Development, but the Service Office is not a necessary component to actually provide Services to the Development at any time, including without limitation, after Termination of the Operating Agreement, Services Agreement or Construction Agreement or after commitment of a Level Two Condition of the Services Agreement or if a third party provider begins to provide Services to the Development. Notwithstanding anything contained herein to the contrary, OpenBand shall have the right to build the Service Office at, or move the Service Office to, an alternate site selected by OpenBand (and not on the Development) so long as the Customers are not affected thereby; in such event, BAC's Guaranteed Payment shall be modified as described in Section 5.1(a)(iii). In the event that the Service Office is located outside of the Development, the Parties shall meet and confer to negotiate any modification to the Three Agreements and any applicable Ancillary Agreements, consistent with any applicable express terms of the Three Agreements and Ancillary Agreements, necessary to preserve and effectuate the intent of the Three Agreements. If the Parties have not agreed to necessary modifications within one hundred twenty (120) days of OpenBand giving written notice that it has elected to locate the Service Office outside the Development, then the Parties shall submit the dispute to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement.

## SECTION V DISTRIBUTIONS TO MEMBERS

5.1 **Guaranteed Payments and Distributions to Members.** Except as otherwise provided in this Agreement with respect to distributions to be made upon the dissolution and liquidation of the Company, guaranteed payments (to BAC) and distributions (to OSPE) shall be made by the Company as follows:

- (a) BAC shall be paid as "Guaranteed Payments":
  - (i) eight percent (8%) of the collected Revenue for any Services provided to Customers within the Development,
  - (ii) twelve percent (12%) of the collected Revenue for Supplemental Services provided to Customers within the Development,
  - (iii) an amount equal to the Opportunity Fee pursuant to Section 4.8(b) of the Services Agreement,
  - (iv) all amounts owing pursuant to Section 7.8(a) of this Agreement as a consequence of a "Level Two Condition", and

weather, an act of God, fire, lockout, strike (or other labor dispute), riot, act of terrorism, government action or inaction, failure of performance by a common carrier, failure of performance by a public utility, vandalism, or failure of performance by an entity providing prerequisite services related to the provision of Services to the Development.

**14.15 Notice.** Any notice, request, demand, report, consent or other document or instrument which may be required or permitted to be furnished to or served upon a Party shall be in writing which shall be personally delivered or sent by facsimile (with a duplicate copy sent by any other permitted method), or deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the Party entitled to receive the same at its address set forth below (or such other address as such Party shall designate by notice to the other Party given in the manner set forth herein):

**To BAC:**

Broadlands Communications, L.L.C.  
42935 Waxpool Road  
Ashburn, Virginia 20148  
Facsimile: (703) 858-7380  
Attn: President

**With a copy to:**

Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, N.W.  
Sixth Floor  
Washington, D.C. 20036  
Facsimile: (202) 745-0916  
Attn: Lawrence R. Freedman

And

**SOLD TO VAN METRE**

Terrabrook  
3030 LBJ Freeway, Suite 1500  
Dallas, Texas 75234  
Facsimile: (972) 443-6190  
Attention: Cynthia Stephens

And

Van Metre  
5252 Lyngate Court  
Burke, Virginia 22015  
Facsimile: (703) 239-0395  
Attn: Laurence Bensignor

**To OSPE:**

3725 Concorde Parkway, Suite 100  
P.O. Box 220870  
Chantilly, Virginia 20151  
Facsimile: (703) 502-7996  
Attn: William Dean

**With a copy to:**

Shaw Pittman  
2300 N. Street, N.W.  
Washington, DC 20037-1128  
Facsimile: (202) 663-8007  
Attn: Tina Reynolds

Such notice shall be effective, (i) if sent by facsimile transmission, when confirmation of effective delivery is received (or upon date of refusal or acceptance of delivery of the confirmation hard copy, whichever shall occur first), or (ii) if mailed or sent by courier, upon the date of delivery or refusal as shown by the return receipt therefor. Notice to the Company shall