

**OPERATING AGREEMENT**  
**OF**  
**BROADWAY MEDIA LS, LLC**

THIS OPERATING AGREEMENT is made and entered into effective the 18<sup>th</sup> day of April, 2014, by the persons whose names and signatures appear below, hereinafter referred to collectively as the “Members” and separately as a “Member.”

**RECITALS**

- A. The Members have formed a Utah limited liability company in accordance with Title 48, Chapter 2c, of the Utah Code, sometimes known as the Utah Revised Limited Liability Company Act (the “Old Act”), for the purposes and on the terms, covenants and conditions set forth herein.
- B. The Members have caused to be executed the Articles of Organization for the Company and have forthwith caused the same to be filed with the Division of Corporations and Commercial Code of the Department of Commerce, State of Utah on or about August 8, 2013.
- C. The Members have each reviewed this Agreement, in its entirety, and desire to cause the same to be adopted as and for the Operating Agreement of the Company, and for the Company to be governed by the new Utah Revised Uniform Limited Liability Company Act, which became effective in the State of Utah on January 1, 2014.

NOW, THEREFORE, pursuant to the Act, and all other pertinent laws of the State of Utah and its political subdivisions, the undersigned mutually agree and covenant as follows:

**ARTICLE 1**

**DEFINITIONS**

1.01. **Scope.** For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended, capitalized terms have the meanings specified in Section 1.02.

## 1.02. **Defined Terms.**

(a) “Act” means the Utah Revised Uniform Limited Liability Company Act codified at Utah Code Annotated Section 48-3a-101.

(b) “Agreement” means this Operating Agreement, including any amendments.

(c) “Articles” means the articles of organization filed with the Division to organize the Company as a limited liability company, including any amendments. Pursuant to the Act, effective the date of this Agreement, the Company’s Articles shall automatically be deemed to be Company’s Certificate of Organization under the Act.

(d) “Bankruptcy,” with respect to a Member, means (1) the Member’s general assignment for the benefit of creditors, (2) the filing of a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, protection or similar relief in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding or (3) the filing of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding.

(e) “Capital Account” of a Member means the capital account maintained for the Member in accordance with Section 4.05.

(f) “Certificate” means the Company’s Certificate of Organization, which were originally styled “Articles of Organization” under the Old Act.

(g) “Code” means the Internal Revenue Code of 1986, as amended.

(h) “Company” means BROADWAY MEDIA LS, LLC and any successor limited liability company.

(i) “Contribution” means anything of value that a Member contributes to the Company as a prerequisite for or in connection with membership, including any combination of cash, property, services rendered, a promissory note or any other obligation to contribute cash or property or render services.

(j) “Dissolution,” with respect to an Entity, means (1) the filing of articles of dissolution on the Entity’s behalf, (2) the Entity’s administrative dissolution, unless the Entity is reinstated within the time period prescribed by applicable law, or (3) any other event that initiates the Entity’s winding up under applicable law.

(k) “Dissociation” means a complete termination of a Member’s membership in the Company in consequence of an event described in Section 3.07.

(l) “Distribution” means the Company’s direct or indirect transfer of money or other property with respect to a Membership Interest, other than (1) issuance of a Membership Interest, (2) issuance of evidence of indebtedness, (3) reasonable compensation for past or present services or (4) reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(m) “Division” means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(n) “Effective Date” means August 8, 2013.

(o) “Entity” means an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a domestic or foreign corporation, nonprofit corporation, limited liability company, general partnership, limited partnership, limited liability partnership, business trust, association, trust, estate, joint venture, cooperative or governmental unit.

(p) “Manager” means a Person, whether or not a Member, who is vested with authority to manage the Company in accordance with Article 5.

(q) “Member” means those Persons admitted as Company Members on or before the date of this Agreement, and any Person who is admitted as an additional or substitute Member after the date of this Agreement, in accordance with Section 3.01(c).

(r) “Membership Interest” means a Member’s percentage interest in the Company, consisting of the Member’s right to share in Profits, receive Distributions, participate in the Company’s governance, approve the Company’s acts, participate in the designation and removal of a Manager and receive information pertaining to the Company’s affairs. The Membership Interests of the Members are set forth on Exhibit “A.” Changes in Membership Interests after the date of this Agreement, including those necessitated by the admission and Dissociation of Members, will be reflected in the Company’s records and on a revised Exhibit “A.” The allocation of Membership Interests reflected in the Company’s records from time to time is presumed to be correct for all purposes of this Agreement and the Act.

(s) “Membership Units” mean units of the Company to be issued to and owned by the Members. The Membership Units of the Members are set forth on Exhibit “A.” Changes in Membership Units after the date of this Agreement, including those necessitated by the admission and Dissociation of Members, will be reflected in the Company’s records and on a revised Exhibit “A.” The allocation of Membership Units reflected in the Company’s records from time to time is presumed to be correct for all purposes of this Agreement and the Act.

(t) “Minimum Gain” means minimum gain as defined in sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

(u) “Permitted Transferee,” means (i) a trust, family limited liability company, or family limited partnership of an existing Member; or (ii) an existing Member.

(v) “Person” means a natural person or an Entity.

(w) “Pledge” means to pledge, assign or hypothecate a Membership Interest in the Company as collateral for a loan or to otherwise secure an obligation of a Member.

(x) “Profit,” as to a positive amount, or “Loss,” as to a negative amount, means, for a Taxable Year, the Company’s net taxable income or loss for the Taxable Year, as determined in accordance with section 703(a) of the Code, with the following adjustments: (1) all items required to be separately stated pursuant to section 703(a)(1) of the Code will be accounted for in the aggregate, (2) any income that is exempt for federal income tax purposes will be included; and (3) any item that is specially allocated pursuant to Section 4.02(b) will be disregarded.

(y) “Regulations” means proposed, temporary or final regulations promulgated under the Code by the Department of the Treasury, as amended.

(z) “Taxable Year” means the Company’s taxable year as determined in accordance with Section 6.02.

(aa) “Transfer,” as a noun, means a transaction or event by which ownership of a Membership Interest is changed, including, without limitation, a sale, exchange, distribution, abandonment, gift, devise or foreclosure. “Transfer,” as a verb, means to affect a Transfer.

(bb) “Transferee” means a Person who acquires a Membership Interest by Transfer from a Member or another Transferee and is not admitted as a Member.

## ARTICLE 2

### THE COMPANY

2.01. **Status.** The Company is a Utah limited liability company organized under the Act.

2.02. **Name.** The Company’s name is BROADWAY MEDIA LS, LLC.

2.03. **Term.** The Company’s existence began on the Effective Date and will continue in perpetuity thereafter or until earlier terminated under this Agreement.

2.04. **Purposes.** The Company’s purposes are (a) to own various AM and FM radio station licenses; and (b) to engage in any other lawful activity for which a limited liability company may be organized under the Act. The Company may take any action incidental and conducive to the furtherance of those purposes.

**2.05. Registered Office and Registered Agent.**

(a) The Company's Registered Office is located at 595 South Riverwoods Parkway, Suite 400, Logan, Utah 84321 and its registered agent at that location is Joe Saxton.

(b) The Company at any time may change the location of its Registered Office or the identity of its registered agent by filing a statement of change with the Division within thirty (30) days after the effective date of the change. However, the location of the registered agent's business office must remain the same as the location of the Company's Registered Office.

(c) If the location of the registered agent's business office changes, the registered agent may change the location of the Company's Registered Office by giving written notice of the change to the Company and filing a statement of change with the Division within thirty (30) days after the effective date of the change.

**2.06. Subject to the Act.** By their signatures below, the Company Members and Manager hereby agree that the Company shall be subject to the Act as authorized by Section 48-3a-1405 of the Act.

## **ARTICLE 3**

### **MEMBERS**

**3.01. Identification.**

(a) Members. The name, Membership Units and Membership Interests of the Members are as follows:

See Exhibit "A" attached

The schedule of Members, Membership Units and Membership Interests attached as Exhibit "A" may be revised from time to time to reflect the addition of new Members and the departure of Dissociated Members, all in accordance with the terms and conditions set forth in this Agreement, without any requirement that all Members execute an amendment to this Agreement, so long as such transfers and changes are otherwise documented in accordance with the terms of this Agreement.

(b) Member Addresses. The Company shall keep on file an address for each Member to which any notice provided hereunder shall be sent by the Company. Any Member may change its address or contact person on the books and records of the Company by providing written notice of a change of address to the Registered Agent of the Company at the address specified in Section 2.05(a). Each Member has the duty and responsibility to ensure that the Company has a current address for such Member.

(c) Additional and Substitute Members. The Company may admit additional or substitute Members only with the approval of Members holding more than fifty percent (50%) of all Membership Units; provided, however, that Permitted Transferees may be admitted with the consent of the Company Manager without a Member vote, so long as no Member suffers dilution of its ownership percentage in the Company due to such transfer. Any new Member shall be required to execute and deliver an Acknowledgment and Acceptance of Operating Agreement, whereby such new Member agrees in writing to be bound by the terms of the Company's Operating Agreement, in such form as the Manager may approve. Any and all Acknowledgment and Acceptance of Operating Agreement documents shall be kept in the books and records of the Company, and the Schedule of Company Members attached hereto as Exhibit "A" shall be modified accordingly.

(d) Rights of Additional or Substitute Members. A Person admitted as an additional or substitute Member has all the rights and powers and is subject to all the restrictions and obligations of a Member under this Agreement and the Act.

**3.02. Verification of Membership Interests.** Within ten (10) days after receipt of a Member's written request, the Company will provide the Member with a statement of the Member's Membership Interest. The statement will serve the sole purpose of verifying the Member's Membership Interest, as reflected in the Company's records, and will not constitute for any purpose a certificated security, negotiable instrument or other vehicle by which a Transfer of a Membership Interest may be affected.

### **3.03. Manner of Acting.**

#### (a) Meetings.

(1) Right to Call. A Manager or any Member or combination of Members whose Membership Interest equals or exceeds fifty percent (50%) may call a meeting of Members by giving written notice to all Members not less than ten (10) nor more than sixty (60) days prior to the date of the meeting. The notice must specify the date of the meeting and the nature of any business to be transacted. Notice of any such meeting may be waived by the Members.

(2) Proxy Voting. A Member may act at a meeting of Members through a Person authorized by a written proxy signed by the Member and filed with the secretary of the meeting before or at the time of the meeting.

(3) Quorum. Members whose aggregate Membership Interests equal or exceed seventy percent (70%) of the outstanding Membership Interests will constitute a quorum at a meeting of Members. No action may be taken in the absence of a quorum.

(4) Required Vote. The vote of Members present whose aggregate Membership Interests exceed seventy percent (70%) of the outstanding Membership Interests of the Company will constitute the act of the Members at a meeting of Members.

(b) Written Consent. The Members may act without a meeting by written consent describing the action and signed by either (a) all Members; or (b) Members holding over fifty percent (50%) of the total Membership Interests of the Company; provided, however, that in such event, the Company Manager sends written notice of such statement of majority consent to all Members within ten (10) days after the effective date of such statement of majority consent.

3.04. **Limitation on Individual Authority.** A Member who is not also a Manager has no authority to bind the Company. A Member whose unauthorized act obligates the Company to a third party will indemnify the Company for any costs or damages the Company incurs as a result of the unauthorized act.

3.05. **Negation of Fiduciary Duties.** A Member who is not also a Manager owes no fiduciary duties to the Company or to the other Members solely by reason of being a Member.

3.06. **Transfer or Pledge of Membership Interest.**

(a) Restrictions on Transfer or Pledge. A Member may Transfer or Pledge a Membership Interest only in compliance with this Section 3.06. An attempted Transfer or Pledge of any Membership Interest that is not in compliance with this Section 3.06 is null and void.

(b) Right of First Refusal.

(1) If at any time a Member proposes to sell a Membership Interest pursuant to a bona fide written offer from a third-party purchaser who is not a Permitted Transferee, the Member (the "Seller") will make a written offer to sell the Membership Interest first to the Company, and then to the remaining Members, for the same price and on the same terms as those contained in the offer from the third party.

(2) If the Company chooses to accept the Seller's offer, it must accept the Seller's offer by written notice delivered to the Seller within thirty (30) days after the offer is received.

(3) If the Company does not accept the Seller's offer, the Seller must make the same written offer to the remaining Members. If the remaining Members choose to accept the Seller's offer, they must accept the Seller's offer by written notice delivered to the Seller within thirty (30) days after the offer is received by the remaining Members. The remaining Members may divide the Membership Interest in any manner to which they all agree. In the absence of agreement, they will divide the Membership Interest in proportion to their Membership Interests, as of the time the offer is received.

(4) If the remaining Members do not accept the Seller's offer, as to the entire Membership Interest being offered, the Seller may sell the Membership Interest to the third-party purchaser on the terms specified in the original offer, provided the Company is reasonably satisfied that all of the other conditions prescribed by this Section 3.06 are met. However, if the remaining Members do not accept the Seller's offer and the Seller does not complete the sale to the third-party purchaser within thirty (30) days after the remaining

Members' right to accept the offer terminated, the Seller must make a new offer first to the Company, and then to the remaining Members, and the provisions of this Section 3.06 again will apply.

(c) Transferor's Membership Status. If a Member Transfers less than all of the Membership Interest, the Member's rights with respect to the transferred portion, including the right to vote or otherwise participate in the Company's governance and the right to receive Distributions, will terminate as of the effective date of the Transfer. However, the Member will remain liable for any obligation with respect to the transferred portion that existed prior to the effective date of the Transfer, including any costs or damages resulting from the Member's breach of this Agreement. If the Member Transfers all of the Membership Interest, the Transfer will constitute an event of Dissociation for purposes of Section 3.07.

(d) Transferee's Status.

(1) Admission as a Member. A Member who Transfers a Membership Interest has no power to confer on the Transferee the status of a Member. A Transferee may be admitted as a Member only in accordance with the provisions of Section 3.01(c). A Transferee who is not admitted as a Member has only the rights described in Section 3.06(e)(2) below.

(2) Rights of Non-Member Transferee. A Transferee who is not admitted as a Member in accordance with the provisions of Section 3.01(c), (i) has no right to vote or otherwise participate in the Company's governance, (ii) is not entitled to receive information concerning the Company's affairs or inspect the Company's books and records, (iii) with respect to the transferred Membership Interest, is entitled to receive the Distributions to which the Member would have been entitled had the Transfer not occurred and (iv) is subject to the restrictions imposed by this Section 3.06 to the same extent as a Member.

(e) Pledge of Membership Interest. No Member shall Pledge any Company Membership Units or Membership Interests unless such Member has first received the written consent of the Manager and Members holding more than seventy-five percent (75%) of the outstanding Membership Units in the Company.

### **3.07. Dissociation.**

(a) Events of Dissociation. A Member's Dissociation from the Company occurs upon:

- (1) The Member's Transfer of its entire Membership Interest;
- (2) The Member's Bankruptcy;
- (3) As to a Member that is an individual, the Member's death; and
- (4) As to a Member that is an Entity, the Entity's Dissolution.

(b) Rights of Member Following Dissociation.

(1) After the effective date of the Member's Dissociation, (i) the Member will have no right to vote or otherwise participate in the Company's governance and affairs, (ii) except as provided in Section 6.01(b), the Member will not be entitled to receive information concerning the Company's affairs or inspect the Company's books and records and (iii) if the event that results in the Member's Dissociation does not terminate the Member's entire interest in the Company's profits and capital, then, with respect to the interest the Member retains, the Member will be entitled to receive the Distributions to which the Member would have been entitled had the Dissociation not occurred. Except as provided in this paragraph, a Dissociating Member will have no right to receive Distributions or otherwise participate in the Company's financial affairs.

(2) Notwithstanding the foregoing provisions of this Section 3.07(b), a Dissociating Member will remain liable for any obligation to the Company that existed prior to the effective date of the Dissociation, including any costs or damages resulting from the Member's breach of this Agreement.

**3.08. Redemption of Dissociating Member's Interest.**

(a) Optional Redemption. If a Member's Dissociation is a result of Bankruptcy, death or Dissolution, then at any time within ninety (90) days after the effective date of the Dissociation, the Company may (but shall not be required to) redeem not less than all of the Member's Membership Interest on the terms set forth in subsections 3.08(b) and 3.08(c) below. The Company must exercise its right to redeem the Membership Interest by giving written notice to the Member or the Member's successor in interest within the ninety (90) day exercise period. The notice must specify the redemption price and payment terms and indicate a closing date within sixty (60) days after the date the notice is delivered.

(b) Redemption Price.

(1) Except as otherwise set forth herein, the redemption price of the Membership Interest will be an amount equal to the Company's value as of the effective date of the Dissociation, multiplied by the Dissociating Member's Membership Interest.

(2) For the purpose of determining the redemption price under this Section 3.08(b), the Company's value will be the value determined by agreement of a majority of the Members annually, as reflected on the books and records of the Company.

(3) If the Members fail to redetermine the Company's value for a successive year, the redemption price will be an amount equal to the Company's fair market value as of the effective date of the Dissociation, as determined by an appraiser selected by the Company. In determining the fair market value of the Membership Interest, the appraiser will consider only those factors that are relevant to the valuation of the interest as an interest in a going concern and will be guided by the Business Valuation Standards of the American Society of Appraisers.

(4) The Company will pay all costs associated with the determination of the redemption price, unless the value of the Company is contested by the Dissociating Member. If the value of the Company is contested by the Dissociating Member, the Dissociating Member may obtain another appraisal performed by an appraiser, at the Dissociating Member's expense, and the value of the Company shall be the average of the values determined by the Company's appraisal and the Dissociating Member's appraisal. If the Company's appraisal and the Dissociating Member's appraisal differ by more than ten percent (10%), then, unless the Company and Dissociating Member otherwise agree, a third appraiser shall be appointed jointly by the Company's appraiser and the Dissociating Member's appraiser. Upon completion of this third appraisal, the closest two of the three appraisals will be averaged to arrive at a Company value, and the party whose appraisal was not included in the average shall pay the costs of the third appraisal.

(c) Payment Terms. The Company will pay the redemption price at the closing by paying cash for twenty-five percent (25%) of the purchase price, with the balance in the form of a Company promissory note in the principal amount of seventy-five percent (75%) of the purchase price payable in three (3) equal annual installments, with interest compounded annually at the mid-term annual applicable Federal rate in effect under Code §1274(d) for an obligation with the same terms, determined as of the date the Company gives the Dissociating Member (or its legal representative) notice of the redemption, unless other payment terms are agreed to by the Company and the Dissociating Member (or its legal representative). The promissory note shall provide that the Company may prepay any sums due under such note without penalty.

**3.09. Departing Members.** Any Member who transfers its Membership Interest in the Company such that such Member is no longer the owner of any Membership Interest in the Company, shall execute and deliver an Acknowledgment of Transfer of Membership Interest, in a form satisfactory to the Company Manager, whereby such Member provides written notice of its transfer of Membership Interest, and acknowledges in writing that such Member is no longer a Member of the Company. Any and all Acknowledgment of Transfer documents shall be kept in the books and records of the Company, and the Schedule of Company Members attached hereto as Exhibit "A" shall be modified accordingly.

## ARTICLE 4

### FINANCE

#### 4.01. **Contributions.**

(a) Members. The Members have each made capital contributions to the Company in consideration for their Membership Interests, in such amounts as are reflected on the Company's books and records.

(b) Additional Contributions.

(1) Permitted. The Company may authorize additional Contributions at such times and on such terms and conditions as it determines to be in its best interest.

(2) Required.

(i) If at any time the Manager determines that the Company's financial resources are insufficient to meet the reasonable needs of its business, the Manager may require the Members to make additional Contributions sufficient to meet those needs. The Members will make the additional Contributions in proportion to their Membership Interests.

(ii) The Company must give each Member written notice of the obligation to contribute additional capital. The notice must explain the need for additional capital, specify the amount the Member is required to contribute and establish a due date that is ten (10) days after the date of the notice. The Member will make the Contribution in immediately available funds on or before the due date specified in the notice.

(3) Default Remedies. In the event a Member does not contribute the Member's share of a required additional Contribution within ten (10) days after the date of notice, the following provisions will apply:

(i) The Company will offer any unsubscribed Membership Units to the funding Members, on a pro-rata basis, in accordance with their Membership Interests, and all such funding Members shall have ten (10) days after the date of notice to fund such additional Contributions and receive a portion of the unsubscribed Membership Units;

(ii) If any unsubscribed Membership Units remain after the procedure set forth in Subsection 4.01(b)(3)(i) above, the Company will offer all remaining unsubscribed Membership Units to those Members who funded under Subsection 4.01(b)(3)(i), in such amounts as may be selected by the Manager, up to the full unfunded Contributions, and all such funding Members shall have ten (10) days after the date of notice to fund such additional Contributions; and

(iii) Upon completion of these funding events, the Membership Interests of the defaulting Member shall be reduced and such defaulting Member shall be subject to dilution of its Membership Interests, and the Membership Interests of the funding Members shall be increased in accordance with the amounts paid.

(4) Creditors' Rights. A Member's obligation to make additional contributions extends only to the Company and may not be enforced by the Company's creditors without the Member's written consent.

(c) Contributions Not Interest Bearing. A Member is not entitled to interest or other compensation with respect to any cash or property the Member contributes to the Company.

(d) No Return of Contribution. A Member is not entitled to the return of any Contribution prior to the Company's dissolution and winding up.

#### 4.02. **Allocation of Profit and Loss.**

(a) General Allocation. The Company's Profit or Loss for a Taxable Year, including the Taxable Year in which the Company is dissolved, will be allocated among the Members in proportion to their Membership Interests.

(b) Special Allocations.

(1) If a Member unexpectedly receives an adjustment, allocation, or distribution described in sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations that creates or increases a deficit in the Member's Capital Account as of the end of a Taxable Year, a pro rata portion of each item of the Company's income, including gross income and gain for the Taxable Year and, if necessary, for subsequent years will be allocated to the Member in an amount and manner sufficient to eliminate the deficit in the Member's Capital Account as quickly as possible.

(2) If a Member would have a deficit in its Capital Account at the end of a Taxable Year that exceeds the sum of (i) the amount the Member is required to pay the Company pursuant to an obligation described in section 1.704-1(b)(2)(ii)(c) of the Regulations and (ii) the Member's share of Minimum Gain, a pro rata portion of each item of the Company's income, including gross income and gain, for the Taxable Year will be allocated to the Member in an amount and manner sufficient to eliminate the deficit in the Member's Capital Account as quickly as possible.

(3) If there is a net decrease in the Company's Minimum Gain during a Taxable Year, the items of the Company's income, including gross income and gain, for the Taxable Year and, if necessary, for subsequent Taxable Years will be allocated to the Members in proportion to their shares of the net decrease in Minimum Gain. If the allocation made by this paragraph would cause a distortion in the economic arrangement among the Members and it is expected that the Company will not have sufficient income to correct that distortion, the Company may seek to have the Internal Revenue Service waive the requirement for the allocation in accordance with section 1.704-2(f)(4) of the Regulations.

(4) Items of the Company's loss, deductions and expenditures described in section 705(a)(2)(B) of the Code that are characterized as "partner nonrecourse deductions" under section 1.704-2(i) of the Regulations will be allocated to the Members according to the ratio in which the Members bear the economic risk of loss with respect to the nonrecourse liabilities to which such items are attributable.

(5) Items of income, gain, loss and deduction with respect to property contributed to the Company's capital will be allocated between the Members so as to take into account any variation between book value and basis, to the extent and in the manner prescribed

by section 704(c) of the Code and related Regulations. The Manager is hereby authorized to elect the method of allocation as permitted by the Regulations.

(6) If the special allocations required by this Section 4.02(b) result in Capital Account balances that are different from the Capital Account balances the Members would have had if the special allocations were not required, the Company will allocate other items of income, gain, loss and deduction in any manner it considers appropriate to offset the effects of the special allocations on the Members' Capital Account balances. Any offsetting allocation required by this paragraph is subject to and must be consistent with the special allocations.

(c) Effect of Transfers During Year. The Company will prorate items attributable to a Membership Interest that is the subject of a Transfer during a Taxable Year between the transferor and the Transferee based on the portion of the Taxable Year that elapsed prior to the Transfer, unless such allocation differs significantly from an allocation based on the cut-off method, in which case, the cut-off method shall be used.

**4.03. Tax Allocations.** For federal income tax purposes, unless the Code or Regulations otherwise requires, each item of the Company's income, gain, loss or deduction will be allocated to the Members in proportion to their allocations of the Company's Profit or Loss.

**4.04. Distributions.**

(a) Pro-Rata Distributions. All Profits shall be distributed between the Members in accordance with their respective Membership Interests in the Company.

(b) Prohibited Distributions. The Company may not make a Distribution if, after giving effect to the Distribution, (1) the Company would not be able to pay its debts as they become due in the usual and regular course of its business or (2) the fair market value of the Company's total assets would be less than the sum of its total liabilities. The Company's determination of its capacity to make a Distribution under this Section 4.04(b) will be made as of the date and in accordance with a method authorized by Section 48-2c-1005(2) of the Act.

(c) Obligation to Return Wrongful Distribution. If for any reason a Member receives a Distribution to which the Member is not legally entitled, the Member will return the Distribution to the Company within thirty (30) days after receiving notice of the wrongful Distribution.

(d) Waiver of Obligation to Return Rightful Distribution. Except to the extent required by Section 48-2c-603 of the Act, a Member has no liability to return to the Company a Distribution to which the Member is legally entitled, regardless of the Company's inability to discharge its obligations to its Creditors.

#### 4.05. **Capital Accounts.**

(a) General Maintenance. The Company will establish and maintain a Capital Account for each Member. A Member's Capital Account will be:

(1) Increased by: (i) the amount of any money the Member contributes to the Company's capital; (ii) the fair market value of any property the Member contributes to the Company's capital, net of any liabilities the Company assumes or to which the property is subject; and (iii) the Member's share of Profits; and

(2) Decreased by: (i) the amount of any money the Company distributes to the Member; (ii) the fair market value of any property the Company distributes to the Member, net of any liabilities the Member assumes or to which the property is subject; and (iii) the Member's share of Losses.

(b) Adjustments.

(1) Distributions in Kind. If at any time the Company distributes property in kind, it will adjust the Members' Capital Accounts to account for their shares of any Profit or Loss the Company would have realized had it sold the property at fair market value and distributed the sale proceeds.

(2) Acquisitions and Redemptions. If at any time a Person acquires a Membership Interest from the Company or the Company redeems a Membership Interest, the Company will adjust the Members' Capital Accounts to account for their shares of any Profit or Loss the Company would have realized had it sold all of its assets at fair market value on the date of the acquisition or redemption.

(c) Transfer of Capital Account. A Transferee of a Membership Interest succeeds to the portion of the transferor's Capital Account that corresponds to the portion of the Membership Interest that is the subject of the Transfer.

(d) Compliance with Code. The requirements of this Section 4.05 are intended and will be construed to ensure that the allocations of the Company's income, gain, losses, deductions and credits have substantial economic effect under the Regulations promulgated under section 704(b) of the Code.

## ARTICLE 5

### MANAGEMENT

5.01. **Management.** The Company shall be governed by a Manager elected by the Members.

5.02. **Manager.** The name and business address of the Company's Manager are as follows:

Dell Loy Hansen  
595 South Riverwoods Parkway, Suite 400  
Logan, Utah 84321

5.03. **Time Devoted to Business.** The Manager will devote only the amount of time to the Company's activities as is reasonably necessary to discharge the Manager's responsibilities.

5.04. **Powers and Authority.** The Manager has full power, authority and discretion to manage and direct the Company's business, affairs and properties, including, without limitation, the specific powers conferred by the Act.

5.05. **Manner of Acting.** The Manager may act with respect to any matter within the scope of his authority, and the signature of the Manager shall be required to bind the Company. The Manager may also execute contracts and other documents and any such contract or document signed by the Manager shall be binding upon the Company. The Manager shall also have authority to conduct the day-to-day management and operation of the Company, and to enter into such agreements and to take such steps as are reasonably required to further the business of the Company.

5.06. **Agency Power and Authority.** The Manager apparently acting for the Company in the usual course of its business has the power to bind the Company and no person has an obligation to inquire into a Manager's actual authority to act on the Company's behalf. However, if the Manager acts outside the scope of the Manager's actual authority or in contravention of a decision of the Members, the Manager will indemnify the Company for any costs or damages it incurs as a result of the unauthorized act.

5.07. **Fiduciary Duties.**

(a) Standard of Care.

(1) Liability for Wrongful Acts. The Manager is liable to and will indemnify the Company for all costs, expenses or damages attributable to such Manager's act or omission that constitutes a breach of this Agreement, gross negligence, willful misconduct or a violation of law.

(2) Justifiable Reliance. The Manager may rely on the Company's records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Manager reasonably believes to be within the Person's expertise or competence.

(b) Competing Activities. The Manager may participate in any business or activity without accounting to the Company or the Members. The Manager may accept a

business opportunity for the Manager's own account that the Manager believes or has reason to believe the Company would accept.

(c) Self-Dealing. The Manager may enter into a business transaction with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with an independent third party. Approval or ratification by Members having no interest in the transaction constitutes conclusive evidence that the terms satisfy the foregoing condition.

#### **5.08. Indemnification and Advancement of Costs.**

##### **(a) Indemnification.**

(1) Mandatory. The Company will indemnify the Manager for all expenses, losses, liabilities and damages a Manager actually and reasonably incurs in connection with the Manager's successful defense of any claim, action or proceeding arising out of or relating to the Manager's conduct of the Company's activities.

(2) Permissive. The Company may, but is not required to, indemnify a Manager for all expenses, losses, liabilities and damages a Manager actually and reasonably incurs in connection with the Manager's unsuccessful defense of any claim, action or proceeding arising out of or relating to the Manager's conduct of the Company's activities, but only if (i) the Manager's conduct was in good faith, (ii) the Manager reasonably believed that the Manager's conduct was in, or not opposed to, the Company's best interests, (iii) in the case of a criminal proceeding, the Manager had no reason to believe the Manager's conduct was unlawful, (iv) in the case of a proceeding by or in the right of the Company, the Manager was not adjudged liable to the Company and (v) in the case of any other proceeding, the Manager was not adjudged liable to any Person on the basis that the Manager derived an improper personal benefit.

(b) Advancement of Costs. The Company may, but is not required to, pay for or reimburse the expenses a Manager actually and reasonably incurs in connection with a proceeding arising out of or relating to the Manager's conduct of the Company's activities in advance of final disposition of the proceeding, but only if (1) the Manager furnishes to the Company a written affirmation of the Manager's good faith belief that the Manager has met the applicable standards of conduct described in Section 5.08(a)(2); (2) the Manager furnishes to the Company a written, signed undertaking to repay the advance if it is ultimately determined that the Manager did not meet such standards of conduct; and (3) the Company determines that the facts then known by it would not preclude indemnification under this Section 5.08.

**5.09. Compensation.** The Company may compensate the Manager for services rendered to or on behalf of the Company. The amount of the compensation will be commensurate to the value of the services rendered and may be determined with or without regard to Profit or other indicators of the results of operations. Compensation paid to the Manager will be treated as an expense for purposes of determining Profit. The Company will also reimburse the Manager for reasonable expenses properly incurred on the Company's behalf.

#### 5.10. **Tenure.**

(a) Term. The Manager will serve until the earlier of: (1) the appointment of a successor Manager by majority vote of the Members; (2) the Manager's resignation; (3) the Manager's removal; (4) the Manager's Bankruptcy; and (5) the Manager's death.

(b) Resignation. A Manager may resign at any time by providing an advance written notice to the Members, not less than thirty (30) days prior to the effective date of such resignation.

(c) Removal. The Members may remove a Manager only upon the majority vote of the Members.

(d) Vacancy. If a Manager for any reason ceases to act, the Members will promptly appoint a successor by majority vote.

5.11. **Officers.** The Manager hereby delegates certain duties and responsibilities to the Officers of the Company as follows:

(a) Number. The Officers of the Company shall be a President, one or more Vice Presidents, and a Secretary, each of whom shall be appointed by the Manager. Such other Officers and assistant Officers as may be deemed necessary may be appointed by the Manager. In his discretion, the Manager may leave any office unfilled for such period as he may determine. Officers need not be Members of the Company.

(b) Resignations. Any Officer may resign at any time by delivering a written resignation to the Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery.

(c) Removal. Any Officer may be removed by the Manager whenever in his judgment the best interests of the Company will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an Officer shall not of itself create contract rights.

(d) President. The President shall be the principal officer of the Company. In the absence of the Manager, the President shall preside at all meetings of the Members. The President shall exercise such duties as customarily pertain to the office of President and shall have general and active supervision over the property, business, and affairs of the Company and over its several Officers. The President may sign, execute and deliver in the name of the Company contracts and other obligations; provided, however, that with respect to contracts relating to the acquisition, financing or disposition of real property, the President shall have first obtained the written consent of the Members to enter into such contracts. The President shall also perform such other duties as may be prescribed from time to time by the Manager. The initial President shall be Dell Loy Hansen.

(e) Vice President. The Manager may appoint one or more Vice Presidents which shall have such powers and perform such duties as may be assigned to them by the

Manager or the President. A Vice President may sign and execute contracts and other obligations pertaining to the regular course of the Vice President's duties; provided, however, that with respect to contracts relating to the acquisition, financing or disposition of real property, a Vice President shall have first obtained the written consent of the Members to enter into such contracts. The initial Vice President shall be Joe Saxton.

(f) Secretary. The Secretary shall keep the minutes of any meetings of the Members. The Secretary shall cause notice to be given of meetings of Members. The Secretary shall have general charge of the records, documents and papers of the Company not pertaining to the performance of the duties vested in other Officers, which shall at all reasonable times be open to the examination of any Member. The Secretary shall perform such other duties as may be prescribed from time to time by the Manager. The initial Secretary shall be Judy Wiser.

## ARTICLE 6

### RECORDS AND ACCOUNTING

#### 6.01. **Maintenance of Records.**

(a) Required Records. The Company will maintain at its Registered Office such books, records and other materials as are reasonably necessary to document and account for its activities, including, without limitation:

- (1) A current list, in alphabetical order, of the full name and last-known business, residence or mailing address of each Member and Manager;
- (2) A copy of the Certificate;
- (3) Copies of the Company's federal, state and local income tax returns and reports for the three most recent Taxable Years;
- (4) Copies of the Company's financial statements for the three most recent Taxable Years;
- (5) A copy of this Agreement, including any amendments; and
- (6) Copies of any minutes of each meeting of the Members and of any written consents of the Members.

(b) Authorized Access.

(1) Each current or former Member or Manager is entitled to inspect and copy, during regular business hours at the Company's Registered Office, any of the records described in Section 6.01(a) after first giving the Company written notice at least five business days before the inspection and copying is to occur. However, a former Member or Manager is

entitled to inspect and copy only those records that pertain to the period of the former Member's or Manager's tenure as a Member or Manager or are reasonably necessary to enable the former Member or Manager to establish a claim or defense in a controversy with the Company, any Member or Manager or any other Person.

(2) An authorized agent or attorney of a current or former Member or Manager has the same rights of inspection and copying as such current or former Member or Manager.

(3) Any costs associated with the production or reproduction of the Company's records will be borne and paid in advance by the requesting current or former Member or Manager.

(c) Confidentiality. No current or former Member or Manager will disclose any information relating to the Company or its activities to any unauthorized person or use any such information for its or any other Person's personal gain or for any other improper purpose.

#### **6.02. Financial Accounting.**

(a) Accounting Method. The Company will account for its financial transactions using an accrual method of accounting.

(b) Taxable Year. The Company's Taxable Year is a calendar year.

#### **6.03. Reports.**

(a) Members. As soon as practicable after the close of each Taxable Year, the Company will prepare and send to the Members such reports and information as are reasonably necessary to (1) inform the Members of the results of the Company's operations for the Taxable Year and (2) enable the Members to completely and accurately reflect their distributive shares of the Company's income, gains, deductions, losses and credits in their federal, state and local income tax returns for the appropriate year.

(b) Periodic Reports. The Company will complete and file any periodic reports required by the Act or the law of any other jurisdiction in which the Company is qualified to do business.

#### **6.04. Tax Compliance.**

(a) Withholding. If the Company is required by law or regulation to withhold and pay over to a governmental agency any part or all of a Distribution or allocation of Profit to a Member:

(1) The amount withheld will be considered a Distribution to the Member; and

(2) If the withholding requirement pertains to a Distribution in kind or an allocation of Profit, the Company will pay the amount required to be withheld to the governmental agency and promptly take such action as it considers necessary or appropriate to recover a like amount from the Member, including offset against any Distributions to which the Member would otherwise be entitled.

(b) Tax Matters Partner. The Company will designate a Member to act as the “Tax Matters Partner” pursuant to Section 6231(a)(7) of the Code. The Company may remove any Tax Matters Partner, with or without cause, and designate a successor to any Tax Matters Partner who for any reason ceases to act. The Tax Matters Partner will inform the Members of all administrative and judicial proceedings pertaining to the determination of the Company’s tax items and will provide the Members with copies of all notices received from the Internal Revenue Service regarding the commencement of a Company-level audit or a proposed adjustment of any of the Company’s tax items. The Tax Matters Partner may extend the statute of limitations for assessment of tax deficiencies against the Members attributable to any adjustment of any tax item. The Company will reimburse the Tax Matters Partner for reasonable expenses properly incurred while acting within the scope of the Tax Matters Partner’s authority.

## ARTICLE 7

### DISSOLUTION

#### 7.01. **Events of Dissolution.**

(a) Enumeration. The Company will dissolve upon the first to occur of:

(1) The vote of the Members holding a majority of the outstanding Membership Units of the Company to dissolve the Company pursuant to the Act;

(2) Any event that makes the Company ineligible to conduct its activities as a limited liability company under the Act;

(3) The Company’s administrative dissolution under the Act, unless the Company is reinstated within the time prescribed by the Act;

(4) Entry of a decree of judicial dissolution pursuant to the Act; or

(5) Any event or circumstance that makes it unlawful or impossible for the Company to carry on its business, unless the Company’s incapacity to carry on its business is cured within ninety (90) days after such event or circumstance.

(b) Exclusivity of Events. Unless specifically referred to in this Section 7.01, no event will result in the Company’s dissolution.

## 7.02. **Effect of Dissolution.**

(a) Appointment of Liquidator. Upon the Company's dissolution, the Manager will appoint a liquidator, who may but need not be a Member. The liquidator will wind up and liquidate the Company in an orderly, prudent and expeditious manner in accordance with the following provisions of this Section 7.02.

(b) Final Accounting. The liquidator will make proper accountings (1) to the end of the month in which the event of dissolution occurred and (2) to the date on which the Company is finally and completely liquidated.

(c) Duties and Authority of Liquidator. The liquidator will make adequate provision for the discharge of all of the Company's debts, obligations and liabilities. The liquidator may sell, encumber or retain for distribution in kind any of the Company's assets. Any gain or loss recognized on the sale of assets will be allocated to the Members' Capital Accounts in accordance with the provisions of Section 4.02. With respect to any asset the liquidator determines to retain for distribution in kind, the liquidator will allocate to the Members' Capital Accounts the amount of gain or loss that would have been recognized had the asset been sold at its fair market value.

(d) Final Distribution. The liquidator will distribute any assets remaining after the discharge or accommodation of the Company's debts, obligations and liabilities to the Members in proportion to their Capital Accounts. The liquidator will distribute any assets distributable in kind to the Members in undivided interests as tenants in common. A Member whose Capital Account is negative will have no liability to the Company, the Company's creditors or any other Member with respect to the negative balance.

(e) Required Filings. The liquidator will file articles of dissolution with the Division and take such other actions as are reasonably necessary or appropriate to effectuate and confirm the cessation of the Company's existence.

## ARTICLE 8

### GENERAL PROVISIONS

#### 8.01. **Amendments.**

(a) Required Amendments. The Company, the Manager and the Members will execute and file with the Division an amendment of the Certificate, or such other documentation as may be required by the Division, when there is a change in the Company's name.

(b) Other Amendments. The Manager or any Member may propose for consideration and action an amendment to this Agreement or to the Certificate. A proposed

amendment will become effective at such time as it is approved by the Manager and all Members.

**8.02. Power of Attorney.** Each Member appoints the Manager, with full power of substitution, as the Member's attorney-in-fact, to act in the Member's name to execute and file (a) all certificates, applications, reports and other instruments necessary to qualify or maintain the Company as a limited liability company in the states and foreign countries where the Company conducts its activities, (b) all instruments that effect or confirm changes or modifications of the Company or its status, including, without limitation, certificates of amendment to the Certificate and (c) all instruments of transfer necessary to effect the Company's dissolution and termination. The power of attorney granted by this Section 8.02 is irrevocable and coupled with an interest.

**8.03. Investment Representation.** Each Member represents to the Company and the other Members that (a) the Member is acquiring a Membership Interest in the Company for investment and for the Member's own account and not with a view to its sale or distribution and (b) neither the Company nor any Member or Manager has made any guaranty or representation upon which the Member has relied concerning the possibility or probability of profit or loss resulting from the Member's investment in the Company.

**8.04. Resolution of Disputes.**

(a) Mediation. The parties will endeavor in good faith to resolve all disputes arising under or related to this Agreement by mediation according to the then prevailing rules and procedures of the American Arbitration Association.

(b) Alternative Method. If the parties fail in their attempt to resolve a dispute by mediation, any party may institute a proceeding for the resolution of the dispute by a court of competent jurisdiction.

**8.05. Notices.** Any notice contemplated by this Agreement may be sent by any commercially reasonable means, including hand delivery, first class mail, facsimile, e-mail or private courier. The notice must be prepaid and addressed as set forth in the Company's records. The notice will be effective on the date of receipt or, in the case of notice sent by first class mail, the fifth day after mailing. If notice is required to be given to a Member or Manager, a written waiver signed by the Member or Manager and delivered to the Company, whether before or after the time the notice is required to be given, is the equivalent of timely notice.

**8.06. Resolution of Inconsistencies.** If there are inconsistencies between this Agreement and the Certificate, this Agreement will control. If there are inconsistencies between this Agreement and the Act, this Agreement will control, except to the extent the inconsistencies relate to provisions of the Act that the Members cannot alter by agreement. Without limiting the generality of the foregoing, unless the language or context clearly indicates a different intent, the provisions of this Agreement pertaining to the Company's governance and financial affairs and the rights of the Members upon withdrawal and dissolution will supersede the provisions of the Act relating to the same matters.

8.07. **Provisions Applicable to Transferees.** As the context requires and subject to the restrictions and limitations imposed by Section 3.07(b), the provisions of this Agreement pertaining to the rights and obligations of a Member also govern the rights and obligations of the Member's Transferee.

8.08. **Additional Instruments.** Each Member will execute and deliver any document or statement necessary to give effect to the terms of this Agreement or to comply with any law, rule or regulation governing the Company's formation and activities.

8.09. **Computation of Time.** In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

8.10. **Entire Agreement.** This Agreement and the Certificate comprise the entire agreement among the parties with respect to the Company. This Agreement and the Certificate supersede any prior agreements or understandings with respect to the Company. No representation, statement or condition not contained in this Agreement or the Certificate has any force or effect.

8.11. **Waiver.** No right under this Agreement may be waived, except by an instrument in writing signed by the party sought to be charged with the waiver.

8.12. **General Construction Principles.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa. The headings and underlined paragraph titles are for guidance only and have no significance in the interpretation of this Agreement.

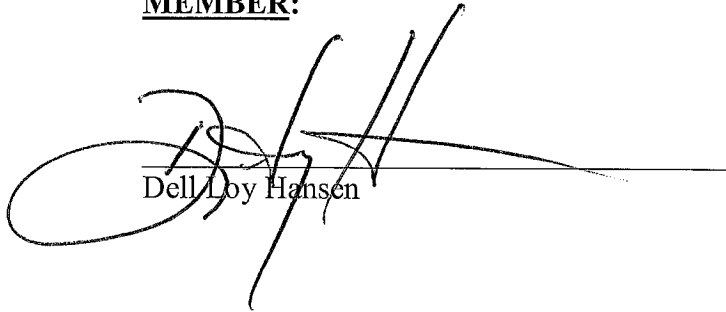
8.13. **Binding Effect.** Subject to the provisions of this Agreement relating to the transferability of Membership Interests and the rights of Transferees, this Agreement is binding on and will inure to the benefit of the Company, the Members and their respective distributees, successors and assigns.

8.14. **Governing Law.** Utah law governs the construction and application of the terms of this Agreement.

8.15. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original.

DATED as of the date first above written.

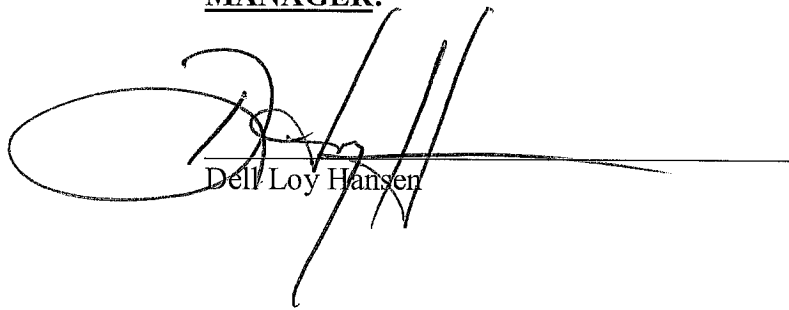
**MEMBER:**



Dell Loy Hansen

The undersigned, as the Company's designated Manager, accepts the office of Manager and agrees to be bound by all of the terms and conditions of this Agreement.

**MANAGER:**



Dell Loy Hansen

**EXHIBIT “A”****COMPANY MEMBERS**

<u>Name</u>	<u>Membership Units</u>	<u>Ownership %</u>
Dell Loy Hansen	1,000	100%
TOTAL	1,000	100%