**RESOURCE 4: SAMPLE TEMPLATE FOR BAND LLC OPERATING AGREEMENT**

**NOTE: THIS DOCUMENT IS A ROUGH TEMPLATE ONLY. BEFORE FORMING AN LLC, CONSULT A KNOWLEDGEABLE LEGAL AND/OR FINANCIAL PROFESSIONAL WHO CAN ADVISE YOU OF THE BEST ENTITY AND BEST OPERATING AGREEMENT PROVISIONS FOR YOUR SPECIFIC CIRCUMSTANCES. THIS FORM DOES NOT CONSTITUTE LEGAL ADVICE.**

Operating Agreement
for
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LLC
A Vermont Limited Liability Company

THIS OPERATING AGREEMENT is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_ (date) by and among \_\_\_\_\_\_\_\_\_\_\_\_ LLC, a Vermont Limited Liability Company (the "LLC") and the persons executing this Operating Agreement as Members of the LLC and all of those who shall hereafter be admitted as Members (individually, a "Member" and collectively, the "Members") whose names and signatures appear below, hereby agree as follows:

WITNESSETH:

1. Whereas, the Members desire to enter into this agreement ("Operating Agreement" or "Agreement") for the purposes of governing the LLC, to and for the sole purpose of developing, managing, marketing, and performing as a musical performance group, and selling merchandise and the products of musical performance including sound recordings and visual images, and for holding and managing copyrights and ownership of equipment and material related to said musical performance group. The LLC shall not conduct any other business unless related to the business as so described, unless approved by unanimous consent of all Members; and

2. Whereas, the Members intend to operate the business, manage the business, and provide for the restriction on the transfers of ownership interests in the LLC ("Interests");

NOW, THEREFORE, in consideration of the mutual premises below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

**I. ORGANIZATION AND MANAGEMENT**

**1. Formation**. The LLC has been organized as a member-managed Vermont LLC under and pursuant to Vermont law, by the filing of Articles of Organization ("Articles") with the Secretary of State of the State of Vermont.

**2. Name**. The name of the Company shall be \_\_\_\_\_\_\_\_\_\_\_\_ LLC. The Company may also conduct its business under one or more assumed names as permitted by law.

**3. Purposes**. The purpose of the LLC is to engage in any activity for which LLCs may be formed under Vermont law for purposes only of advancing the business as defined above. The Company shall have all the powers necessary or convenient to affect any purpose for which it is formed, including all powers granted by Vermont law.

**4. Duration**. The LLC shall continue in existence for the period fixed in the Articles of Organization for the duration of the LLC of one hundred (100) years, or until the LLC shall be sooner dissolved and its affairs wound up in accordance with Vermont Law or this Operating Agreement. Members of the LLC at the point of termination in one hundred (100) years may opt to continue the LLC upon such terms as shall, at that point in time and amongst the members then extant, be mutually agreeable, convenient and lawful.

**5. Registered Office and Resident Agent**. The Registered Office and Resident Agent of the LLC shall be as designated in the initial Articles or any amendment thereof. The Registered Office and/or Resident Agent may be changed from time to time. Any such change shall be made in accordance with Vermont Law. If the Resident Agent shall ever resign, the Company shall promptly appoint a replacement agent as the successor. If he/she is unable or unwilling, then he/she shall designate a successor by giving written notice to the Members.

**6. Principle Place of Business**. The principle place of business shall be:

The principle place of business may be changed by majority vote of the Members.

**7. Intention for Company**. The Members have formed the LLC as an LLC under and pursuant to the laws of Vermont. The Members specifically intend and agree that the Company shall not be, for legal purposes a partnership (including a limited partnership) or any other venture, but shall be a LLC under and pursuant to the laws of Vermont, desiring partnership (pass-through) tax treatment.

No Member shall be construed to be a partner in the Company or a partner of any other Member, or person; and the Articles, this Operating Agreement, and the relationships created thereby and arising there from shall not be construed to suggest otherwise.

**8. Members Duties, Authority and Limitations; Membership Classes**.

A. The LLC shall have two classes of Members: Class A and Class B. Class A Members shall have full voting rights regarding management of this Company. Class B Members shall have no voting rights, and may receive such percentage of profit of the Company as may be designated, at the time at which they become a Class B Member, by majority vote of the Class A Members, and may from time to time be adjusted or altered by majority vote of the Class A Members.

B. Duties and Authority. The LLC shall be managed by its Class A Members, whose duties shall be those duties reasonably necessary to conduct the business of the LLC, including but not limited to all duties and the exercise of all powers and authority granted by law, by example, the following:

#### Purchase, lease, or otherwise acquire any real or personal property or interest in real property;

#### Sell, convey, mortgage, grant a security interest in, pledge, lease, exchange, or otherwise dispose or encumber any real or personal property;

#### Open one or more depository accounts and make deposits into and checks and withdrawals against such accounts;

#### Borrow money, incur liabilities, and other obligations;

#### Enter into any and all agreements and execute any and all contracts, documents, and instruments relating to the Business;

#### Engage consultants and agents, define their respective duties and establish their compensation or remuneration;

#### Obtain insurance covering the Business and affairs of the Company's name;

#### Participate with others in partnerships, joint ventures, and other associations and strategic alliances only where same are directly in pursuit of the Business, as defined above.

C. Limitations. As an express limitation on the nature of the Business and the powers granted the Members herein, the LLC is intended to fulfill the purposes set forth in Section I(3) above, and no activities inconsistent with such limited purposes shall be undertaken. Furthermore, notwithstanding the foregoing and any other provision contained in this Operating Agreement to the contrary, no act shall be taken, sum expended, decision made, obligation incurred or power exercised by any Member on behalf of the LLC except by the consent of Seventy (75%) of all Membership Interests with respect to:

#### Any significant and material purchase, receipt, lease, exchange, or other acquisition of any real or personal property or business;

#### The sale of all or substantially all of the assets and property of the Company;

#### Any mortgage, grant of security interest, pledge, or encumbrance upon all or substantially all of the assets and property of the Company;

#### Any merger;

#### Any amendment or restatement of the Articles or of this Operating Agreement;

#### Any matter which could result in a change in the amount or character of the Company's capital;

#### Any change in the character of the business and affairs of the Company;

#### The commission of any act which would make it impossible for the Company to carry on its ordinary business and affairs;

#### Any act that would contravene any provision of the Articles or of this Operating Agreement or the Act.

**9. Standard of Care, Liability and Indemnification.**

A. Standard of Care. Every Member shall discharge his or her duties as a Member in good faith, with care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the LLC. A Member shall not be liable for any monetary damages to the LLC for any breach of such duties except for a receipt of a financial benefit to which the Member is not entitled; voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act; or a knowing violation of the law.

B. Exculpation of Liability. Unless otherwise provide by law or expressly assumed, a Member shall not be liable for the acts, debts or liabilities of the LLC.

C. Indemnification. Except as otherwise provided in this Article, the LLC shall indemnify any Member and may indemnify any employee or agent of the LLC who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal, other than an action by or in the right of the LLC, by reason of the fact that such person is or was a Member, employee or agent of the LLC against expenses, including attorney's fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding, if the person acted in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner that such person reasonably believed to be in the best interests of the LLC and with respect to a criminal action or proceeding, if such person had no reasonable cause to believe such person's conduct was unlawful.

To the extent that a Member, employee, or agent of the LLC has been successful on the merits or otherwise in defense of an action, suit, or proceeding or in the defense of any claim, issue, or other matter in the action, suit, or proceeding, such person shall be indemnified against actual and reasonable expenses, including attorney's fees, incurred by such person in connection with the action, suit, or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided herein. Any indemnification permitted under this Article, unless ordered by a court, shall be made by the LLC only as authorized in the specific case upon a determination that the indemnification is proper under the circumstances because the person to be indemnified has met the applicable standard of conduct and upon an evaluation shall be made by a majority vote of the Members who are not parties or threatened to be made parties to the action, suit, or proceeding. Notwithstanding the forgoing to the contrary, no indemnification shall be provided to any Manager, employee, agent of the LLC for or in connection with the receipt of a financial benefit to which such person is not entitled, voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or a knowing violation of law.

D. Other Activities. Any Member may engage in other business ventures of every nature, including, without limitation by specification, the ownership of another business similar to that operated by the LLC. Neither the LLC nor any of the other Members shall have any right or interest in any such independent venture or to the income and profits derived therefrom.

**10. Title to Assets**. Title to all assets of the company will be held in the name of the company. No member has any right to the assets of the company or any ownership interest in those assets except indirectly as a result of the member’s ownership of an interest in the company. No member has any right to partition any assets of the company or any right to receive any specific assets on the winding up of the business of the company or on any other distribution from the company. Assets of the company may not be commingled with those of a member or any other person.

**II. MEMBERS, CONTRIBUTIONS, CAPITAL ACCOUNTSand INTERESTS**

**A. The Assets of the LLC for purposes herein shall include:**

1. Any and all real or personal property purchased or otherwise acquired by or in the name of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_LLC throughout the lifetime of the \_\_\_\_\_\_\_\_\_\_\_\_LLC, including such property as may be transferred to the LLC by Members, and including such property held by leasehold or rental to the value of that leasehold or rental; and,

2. Any and all intellectual property created, produced, developed, or published by or in the name of the Company throughout the lifetime of the Company, including but not limited to copyrights, moral rights, and trademarks in the Company name, logos or other marketing materials, visual images of performances or recordings, sound recordings, and multi-media works, excepting only such copyrights, moral rights or trademarks which are, at the time of creation of the work to which they apply, specifically claimed and retained by an individual member or members of the Company.

**B. Initial Members and Initial Contributions**. The Initial Members shall all be Class A Members. The names and addresses of the initial members of the company, the amounts of their initial capital contributions and their initial ownership interests are:

INITIAL MEMBER 1:

Name and address:

Contribution:

Ownership Interest: %

INITIAL MEMBER 2:

Name:

Contribution:

Ownership Interest: %

INITIAL MEMBER 3:

Name:

Contribution:

Ownership Interest: %

INITIAL MEMBER 4:

Name:

Contribution:

Ownership Interest: %

Each member’s ownership interest at any time will be determined by the ratio of the member’s aggregate capital contributions to the aggregate capital contributions of all members.

**C. Members’ Capital Accounts.**

To the extent that Members’ contributions comprise cash, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LLC shall maintain a separate capital account for each member. No member may withdraw any part of the member's contributed capital without the consent of all other members. If a member's capital account falls below the amount of the member's contributed capital because of losses or permitted withdrawals, the member's share of the profits will be credited to the member's capital account until the capital contribution has been restored, and before any profits can be credited to the member's income account.

In-kind contributions such as time, skill, knowledge, and goodwill, \_\_\_\_shall or \_\_\_\_\_\_\_ not be considered to have monetary value for purposes of the establishment and maintenance of capital accounts.

**D. Division Of Profits And Losses.**

The net profits and losses of \_\_\_\_\_\_\_\_\_\_\_\_, LLC, after payment of all expenses of the LLC and of members incurred on behalf of the LLC, shall be equally divided among the members.

**D. Limitation Of Liability.**

Unless otherwise provided by *[state limited liability statute]*, (and then only to the extent of such provision), a member's liability for obligations of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC shall be limited to payment of the member's capital contribution and the member's share of the undistributed assets of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC.

**E. Members’ Rights to Salary, Stipend or Other Draws.**

No member shall receive any salary for the member's services to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC. No member shall be entitled to an additional share of profits solely because the member's capital account exceeds that of any other member, except as otherwise provided in the agreement. Each member shall be entitled to reimbursement from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LLC funds for expenses incurred with the prior approval of the majority of then-existing Class A members; and may receive reimbursement for expenses reasonably incurred without prior approval, upon later vote of the majority of then-existing Class A members. The Class A members may adopt categories of expenses for which reimbursement is regularly provided (such as gas to traveling to gigs, accommodations for touring, etc.). Upon the unanimous vote of all then-existing Class A members, any member may receive a stipend for one-time or ongoing work on behalf of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LLC such as maintaining websites and social media, promotion, and booking, in such amounts and under such terms as the Class A members may decide.

**F. No Interest in Capital.**

No interest will be paid on any balances in the members' capital accounts.

**G. Payment of Initial Capital Contributions**. The capital contributions must be paid in cash or transferred to the company contemporaneously with the signing of this agreement. The transfer documents must include warranties of title and good right to transfer. If any Member should fail to make payment of his or her initial capital contribution as agreed, the remaining Members shall have all remedies available at law to enforce the terms of agreement.

**H. Additional Members; Eligibility**. Except as otherwise provided in the section of this agreement relating to substitution, additional members of the company may be admitted only with the Class A Members’ unanimous approval. Such additional members may be designated as Class A or Class B Members, by unanimous vote of the Class A Members. Class B Members may be converted to Class A Members from time to time by unanimous vote of the then-existing Class A Members.

**I. Additional Contributions**. Except as otherwise provided in the act, no member is required to contribute additional capital to the company without the member’s consent. Additional capital contributions may be made only with the members’ approval. If the members approve additional capital contributions, they must set a maximum. Members will then have the right, but not the obligation, to contribute pro rata shares of the maximum based on their ownership interests. If any member elects to contribute less than his or her pro rata share, the other members may contribute all or part of the difference on a pro rata basis in accordance with their ownership interests or on any other basis they may agree on. If any Member should fail to make any agreed-upon additional capital contribution, the remaining members shall have all remedies available at law to enforce said agreement.

**J. Disposition of Membership Interests; Withdrawal of Membership**.

**1. No disposition that causes termination**.Every sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other disposition of any Membership Interest shall be made only upon compliance with this Article. No Membership Interest shall be disposed of if the disposition would cause a termination of the Company under IRC Sec. 708; without compliance with any and all state and federal securities laws and regulations; and unless the assignee of the Membership Interests provides the Company with the information and agreements that the majority of the Members may require in connection with such disposition, including but not limited to an executed counterpart of this Agreement.

**2. No transfer to anyone other than an existing member.** No Member shall be entitled to assign, convey, sell, encumber, or in any way alienate all or any part of its Membership Interest in the LLC and as a Member, other than to other Members, except with the prior written consent of a majority in the interest of the non-transferring Members, which consent may be given or withheld, conditioned, or delayed (as allowed by this Agreement or the Act), as the non-transferring Members may determine in their sole discretion.

**3. Rights of Survivorship and Beneficiaries.** Upon the death of any Member, that Member's interest and ownership shall pass to the other remaining Member or Members in equal shares.

**4. Withdrawal of Membership.** Any Member may withdraw from membership in the Company upon written notice provided four weeks in advance of the date of withdrawal. Upon withdrawal, any Member shall be entitled to receive from the Company the return of their Initial Contribution, as well as an distribution owing for performances undertaken prior to the date of withdrawal. The withdrawing Member shall not be entitled to any royalties or payments of any kind from the continued sale or distribution of Company property containing that withdrawing Member’s likeness, visual or sound recording or performance, as such intellectual property is and remains the property of the Company as described above; nor shall such withdrawing Member be entitled to any real or personal Company property.

If the withdrawing Member is a Class A Member, the remaining Class A Members may, in their sole discretion, vote to present the withdrawing Member with an additional sum of money representing gratitude for the contribution the withdrawing Member has made to the Company; and may further vote, at their sole discretion, to license the withdrawing Member to utilize such portions of the Company intellectual property as they may deem appropriate under the circumstances.

**K. Meetings of Members**.

1. An annual meeting of Members for the transaction of such business as may properly come before the Meeting, shall be held at such place, on such date and at such time as the Members shall determine. Special meetings of Members for any proper purpose or purposes may be called at any time by the Members. The Members shall calling the meeting shall notify each and every other Member of the meeting not less than Fourteen(14) and no more than Ninety(90) days before the date of the meeting. A majority of the Class A Members must be present at all meetings and no business shall be transacted absent a majority of the Class A Members. The Class A Members present at a meeting shall designate a Chairperson for that meeting as well as a Member or other individual to take notes or make a record of the business transacted therein. A Class A Member may participate and vote at such meeting via phone conference call or by such other technology as is convenient and mutually acceptable to the majority of the Class A Members.

2. Except to the extent provided to the contrary in this Agreement, all Clas A Members shall be entitled to vote on any matter submitted to a vote of the Members. *All votes shall be weighted in accordance with the voting Member’s sharing ratio.* Notwithstanding the foregoing, the Class A Members shall have the right to vote on all of the following:

#### The dissolution of the LLC pursuant to the provisions of this Operating Agreement that permit a dissolution of the LLC upon the unanimous consent of the Members;

#### The merger of the LLC;

#### A transaction involving an actual or potential conflict of interest between any Member and the LLC;

#### An amendment to the Articles of Organization;

#### The sale, exchange, lease or other transfer or encumbrance, whether temporary or permanent, substantial or insubstantial, of any material or real estate assets of the LLC other than in the ordinary course of business.

3. Required Vote. Unless a greater vote is required by Vermont Law or these Articles of Organization, the affirmative vote or consent of a majority of the Sharing Ratios of all the Members entitled to vote or consent on such matter shall be required.

4. Consent. Any action required or permitted to be taken at an annual or special meeting of the Members may be taken without a meeting, without prior Notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take action were present and voted. Every written consent shall bear the date and signature of each Member who signs the consent. Prompt Notice of the taking of action without a meeting by less than unanimous written consent shall be given to all Members who have not consented in writing to such action.

**L. Management.**

Each Class A member shall have an equal voice in the management of \_\_\_\_\_\_\_\_\_\_\_\_\_, LLC, and each shall be devoted full time to the conduct of its business. No member shall take any of the following actions on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC's behalf without the written consent of the remaining members:

(a) Borrow or lend money;

(b) Make, deliver, or accept commercial paper;

(c) Execute any mortgage, security agreement, bond, or lease; or

(d) Buy or execute a purchase agreement, or sell or execute a sales agreement for any property other than that bought or sold in the regular course of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC business.

**III. BOOKS, RECORDS and ACCOUNT**

**1. Books and Records**. The LLC shall maintain complete and accurate books and records of the LLC's business and affairs as required by the Act and such books and records shall be kept at the LLC's Registered Office.

**2. Bank Account.** All , LLC funds shall be deposited in its name in an account with *[name of bank]*located at *[address]*, or such other bank or banks as the Members may agree upon from time-to-time. All withdrawals from these accounts shall be by check signed by the Member or Member so designated by unanimous vote of the then-existing Class A Members.

**3. Fiscal year, accounting**. The LLC's fiscal year shall be the calendar year. The particular accounting methods and principals to be followed by the LLC shall be selected by the accountant for the LLC ("Accountant"). The Accountant may be changed by written Notice of the Members.

**4. Reports**. The Members or the Accountant shall create reports concerning the financial condition and results of operation of the LLC and the Capital Accounts of the Members to all Members in the time, manner, and form as the Members determines. Such reports shall be provided at least annually as soon as practicable after the end of each calendar year and shall include a statement of each Member's share of profits and other items of income, gain, loss, deduction and credit.

**5. Allocations and Distributions**

A. Allocations. Except as may be required by the Internal Revenue Code as amended or this Operating Agreement, net profits, net losses, and other items of income, gain, loss, deduction and credit of the LLC shall be equally allocated among the Members.

B. Distributions. By majority vote, the Class A Members may make distributions to the Class A and/or Class B Members from time to time. Distributions may be made only after the majority of Members determine in their reasonable judgment, that the LLC has sufficient cash on hand which exceeds the current and the anticipated needs of the LLC to fulfill its business purposes (including needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any). All distributions shall be made to the Members in accordance with their Sharing Ratios. Distributions shall be in cash or property or particularly in both, as determined by the majority vote of the Members. No distribution shall be declared or made if, after giving it effect, the LLC would not be able to pay its debts as they become due in the usual course of business or the LLC's total assets would be less than the sum of its total liabilities plus, the amount that would be needed if the LLC were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Members receiving the distribution.

**6. Allocations Solely for Tax Purposes.**  In accordance with IRC §704(c), income, gain, loss, and deduction with respect to any property contributed to the capital of the company must be allocated among the members to take into account any variation between the adjusted basis of the property for federal income tax purposed in the hands of the company and the agreed value of the property as set forth in this agreement, or in any document entered into at the time additional property or other capital is contributed to the company. Any elections or other decisions relating to the allocations to be made under this section will be made by the members. The allocations to be made under this section are solely for income tax purposes and will not affect any member’s capital account, allocable share of the net profits and net losses, or right to distributions.

**7. Prorates.** If a member has been a member of the company during only part of a fiscal year, or if a member’s ownership interest changes during a fiscal year, the net profit or net loss for the year will be allocated to the member based only on the period of time during which he or she was a member or held a particular ownership interest. Net profit or loss for the fiscal year may be allocated ratably between the persons who were members on a daily basis using the company’s usual accounting methods. Except as otherwise provided in IRC § 706(d)(3), the company’s fiscal year may, in the alternative, be divided into two or more segments, and the net profits or losses for each segment allocated among the persons who were members, or who held particular ownership interests, during the segment. Decisions about the method of prorating profit or loss will be made by the members.

**IV. DISSOLUTION AND WINDING UP**

**ARTICLE XVI**

**ARBITRATION OF DISPUTES**

Any controversy concerning this agreement will be settled by arbitration according to the rules of the American Arbitration Association, and judgment upon the award may be entered and enforced in any court.

1. Dissolution. The LLC shall dissolve its affairs and shall be wound up at the time specified in the Duration provision of this Operating Agreement or by the unanimous consent of all Members.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC shall not be dissolved and liquidated if there are at least two (2) remaining members of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC, and, within forty-five (45) days of being notified of the act of dissociation, they vote unanimously to continue the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC.

E. **Effect of Nonelection To Continue the Company.** In the event that the members do not elect to continue the company, the business of the company shall expire and the company shall be liquidated as provided in Article XV.

2. Winding Up and Liquidation. Upon dissolution, the LLC shall cease carrying on its business and affairs and shall commence the winding up of the LLC’s business and affairs and complete winding up as soon as practicable. Upon the winding up of the LLC, the assets of the LLC shall be distributed first to creditors to the extent permitted by law, in satisfaction of LLC debts, liabilities and obligations, and then to Members first in satisfaction of liabilities for distributions and then equally among Class A Members and, to the extent assets remain, equally among Class B Members.

Upon dissolution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC and the failure to continue \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC, the Members will liquidate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC in an orderly fashion. The proceeds, if any, derived from the sale of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC's property, including its name and goodwill, shall be applied in the following order:

(1) To discharge all \_\_\_\_\_\_\_\_\_\_\_\_\_, LLC's liabilities and pay the costs of liquidation;

(2) To bring the members' income accounts into balance;

(3) To pay the balance shown in each member's income account to that member;

(4) To bring the members' capital accounts into balance; and

(5) To pay the balance shown in each member's capital account to that member.

Prior to final liquidation, unless otherwise determined by unanimous vote of the then-existing Class A Members, the Class A Members must transfer in writing all copyrights and any other intellectual property assets of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_LLC to individual members of either Class by such proportions of ownership as shall be determined by the then-existing Class A Members. Should the Class A Members decline to meet and vote on such transferance, the Member last authorized to sign checks and engage in other day-to-day business of the LLC shall be deemed to own, in full, all intellectual property of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LLC. Should such circumstances occur, the signatures on this Operating Agreement are, shall be, and are intended to operate in any court of law as, written transference of such copyrights and intellectual property to such authorized Member.

**V. MISCELLANEOUS PROVISIONS**

**A. Amendment**. The members may amend or repeal all or part of this agreement by unanimous written agreement. This agreement may not be amended or repealed by oral agreement of the members.

**B.  Binding Effect**. The provisions of this agreement are binding on and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the members. This section is, however, not a modification of any restriction on transfer set forth in this agreement.

**C.  Notice**. Except as otherwise provided in other sections of this agreement, any notice or other communication required or permitted to be given under this agreement must be in writing and personally delivered or mailed by certified mail, return receipt requested, with postage prepaid. Notices addressed to a member must be addressed to the member’s address listed in the section of this agreement relating to initial members, or if there is none, the address of the member shown on the records of the company. Notices addressed to the company must be addressed to its principal office. The address of a party to which notices are to be mailed may be changed by the party’s giving written notice to the other parties. All mailed notices and other communications will be deemed to be given at the expiration of three days after the date of mailing unless the recipient acknowledges receipt prior to that time.

**D. Litigation Expense**. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this agreement, including any proceeding in the United States Bankruptcy Court, the prevailing party is entitled to recover reasonable attorneys’ fees in the proceeding, or any appeal, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.

**E. Additional Documents**. Each member must execute all additional documents and take all actions as are reasonably requested by the other members in order to complete or confirm the transactions contemplated by this agreement.

**F. Counterparts**. This agreement may be executed in two or more counterparts, which together will constitute one agreement.

**G. Governing Law**. This agreement is governed by the law of the state of Vermont and must be construed in accordance with the law of that state.

**H. Third Party Beneficiaries**. The provisions of this agreement are intended solely for the benefit of the members and create no rights or obligations enforceable by any third party, including any creditor of the company, except as otherwise provided by applicable law.

**I. Authority**. Each individual executing this agreement on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this agreement constitutes a legally binding obligation of the corporation or other entity that the individual represents.

**J. Severability**. Should any provision of this agreement be found to be ineffective, void or unlawful, such finding shall not affect the remaining terms of this agreement.

**K. Counsel**. This agreement has been drafted by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_who represents \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The initial members each understand that the attorney can represent only one party in connection with this matter and that the attorney does not represent the remaining members. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_acknowledges that he has been advised by the attorney that he should retain an attorney of his own choice in connection with this matter.

* 1. Headings. Article and Section titles have been inserted for convenience of reference only. They are not intended to affect the meaning or interpretation of this Operating Agreement.

The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the Operating Agreement of the Company adopted by the Members of the Company.

IN WITNESS WHEREOF, the parties hereto make and execute this Operating Agreement on the dates set below their names, to be effective on the date first above written.

WITNESSETH:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, LLC

MEMBERS:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Date: