

Art's Café Management, LLC
A New York Limited Liability Company
AMENDED AND RESTATED
OPERATING AGREEMENT
Last Adopted: June 29, 2020

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THIS OPERATING AGREEMENT is made between the Members set forth below and amended and restated on June 29, 2020.

Section 1. Corporate Affairs

1.1 Name of Company. The business of the Company will be conducted under **Art's Café Management, LLC**. (hereinafter "Company"), or such other name upon which the Members may unanimously agree.

1.2 Formation of Company. Effective September 6th, 2018, the Member(s) formed a limited liability company under the name Art's Café Management, LLC on the terms and conditions of the Operating Agreement (Agreement) and pursuant to the Limited Liability Company Act of the State of New York (Act). The Member(s) filed with the appropriate agency within the State of New York charged with processing and maintaining such record all documentation required for the formation of the Company. The rights and obligations of the parties are provided in the Act except as otherwise expressly provided in this Agreement.

1.3 Registered Office. The Company will maintain its principal business office within the State of New York at the following address: 5 East Main Street, Springville, New York 14141.

1.4 Purpose. Art's Café Management, LLC is a limited liability company, operating on a multi-stakeholder cooperative basis to redevelop and operate 5 East Main Street, Springville and other related projects with the goal of:

- fostering participation and interaction with the arts;
- contributing to the level of economic activity in the community as a whole through the use of local suppliers;
- building community and a sense of place;
- providing healthy, high-quality food products;
- supporting sustainable farming practices;
- building a democratically-run cooperative workplace;
- developing more environmentally sound business practices; and,
- encouraging Members to participate economically through investment of labor or capital and through democratic decision making.

The Company shall create a material positive impact on society and the environment, taken as a whole, from the business and operations of the Company.

1.5 Registered Agent. There shall be no registered agent until and unless the parties agree to have such.

1.6 Term. The term of the Company commenced on September 6, 2018 and shall continue perpetually unless sooner terminated as provided in this Agreement.

Section 2. Membership

2.1. Eligibility. The Membership of the Company shall consist of SCA X Inc. (SCA X), Art's Café Community Owners, LLC (ACCO) and a Class of Worker-Owner Members as defined and outlined in Section 3.

2.2 Capital Contribution. ACCO shall be obligated to make a Capital Contribution to the Company in the amount of \$25,000 or more dollars, which Installments shall be due and payable in cash by ACCO upon the satisfaction of the following conditions: (A) \$5,000 within 90 days of the admission of the Investor Member to the Company; and (B) \$20,000 within 1800 days of the public operations of the business.

2.2.1 Additional Capital Contributions made by any Member or Class of Membership do not alter the voting rights unless this Operating Agreement is modified.

2.3. Transfer Restrictions. SCA X or ACCO Membership may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily, by operation of law or otherwise, except through an amendment of this Operating Agreement.

2.3.1. The purchase price shall be the amount equal to the Member's Individual Capital Account Balance.

Section 3. Worker-Owner Membership (Worker-Owners)

3.1. Eligibility. The Class of Worker-Owner Membership shall be limited to natural persons who: (a) patronize the Company through their labor on a full-time or part-time basis; (b) have been approved by the existing Worker-Owner Members after a twelve-month trial period and have completed the first year review process with their supervisor; (c) have committed themselves and made arrangements to pay a membership fee in an amount determined by the Board. Neither the Worker-Owners nor their designees may discriminate on the basis of race, age, sex, sexual orientation, religion, veteran status, disability or national origin when considering a person for membership.

3.2. Membership Fee. The Worker-Owner Membership Fee is established to be \$2,000 for 2020. It will be adjusted for cost of living adjustments annually every January 1 by the Board.

3.2.1 The Board may make exceptions to this fee for labor given during the startup phase.

3.2.2 The Following persons are Worker-Owners with full rights:

Carol Brucato

Allison Duwe

Lia Oprea

Desiree Bojanowski

Seth Wochensky

3.3. Payment of Membership Fee. Upon acceptance to Worker-Owner Membership, a new Member must choose to pay her or his membership fee within one year in the following ways:

3.3.1. all at once in a single lump sum;

3.3.2. in two equal installments, the first within thirty (30) days after acceptance to the Membership, the second one year later, or;

3.3.3. as a payroll deduction spread equally over the course of one year.

An accepted new Member who has made one of the previous arrangements with the Board qualifies for and is responsible for any positive or negative patronage allocation made pro rata for that fiscal year.

In any year when the Board declares a patronage distribution, a member whose membership fee has not been fully paid may not receive that distribution or allocation in cash. Instead, the Member's patronage will be allocated to the individual capital account and will reduce the balance due on their membership fee.

3.4. Voting Rights. Worker-Owner Membership shall appoint three Directors to the Board. From time-to-time Worker-Owners may put certain policy or procedural decisions to a vote by the Worker-Owner Membership. Each member of record at the time of any meeting is entitled to one and only one vote on any matter requiring Worker-Owner Membership Voting. Voting by Proxy shall not be permitted.

3.5. Transfer Restrictions. No Worker-Owner Membership Interest may be sold, assigned, or otherwise transferred, voluntarily or involuntarily, by operation of law or otherwise, except for a transfer to the Company.

3.6. Member Resignation. A Worker-Owner Member shall have the right to resign as a Member of the Company by filing with the Board a written notice of resignation. The resignation shall become effective immediately, or upon the date of resignation posted on the notice, without any action on the part of the Company. Resignation shall not relieve the resigning Member from any obligation for charges incurred, dues, assessments, or fees, and this Section shall not diminish any right of the Company to enforce any such obligation or

obtain damages for its breach. Resignation terminates the Worker-Owner Member's right to vote on all matters voted on by the Worker-Owners.

3.7. Worker-Owner Membership Removal. No Worker-Owner Member may be expelled or suspended, except for temporary layoffs, and no Worker-Owner Membership or Memberships may be terminated or suspended, except according to the following procedures:

First, reasonable written notice must be given by the Worker-Owners;

Then, an opportunity must be given for the Member to be heard and to dispute any and all allegations made in support of termination to the Board;

Then, the termination shall be decided by a $\frac{2}{3}$ supermajority of the Worker-Owners and presented to the Board. The individual votes of the will not be shared with the terminated Member.

A Member who is removed shall be liable for any charges incurred, dues, assessments, or fees incurred before their Removal.

3.8. Terminated Membership Interest. Upon termination of a Worker-Owner's Membership in accordance with this Operating Agreement, the Membership Interest held by the terminated Member shall be returned to the Company and payments of capital account balances made in accordance with Section 5.

3.9. Profit Sharing. Worker-Owner Members are collectively entitled to a percentage of all earnings, losses, credits or other distributions of the company in accordance with Section 5. This class shall operate on a cooperative basis, with earnings and losses allocated to the Members of class in accordance with Section 5.

SECTION 4, MANAGEMENT

At present, the Worker-Owners shall serve as the Management Team. The Management Team shall oversee all day-to-day procedures and operations of the Company related to food service, programming or property management including hiring and management employees, scheduling, procurement of supplies, maintenance of the facility, management of finances and records in accordance with Board policies and all other management duties required to ensure the successful operations in accordance with the Purposes outlined herein.

SECTION 5. INTERNAL CAPITAL ACCOUNTS , Allocations & Distributions

5.1. Financial Definitions. The Company shall have a system of Internal Capital Accounts to reflect its net worth, and to reflect the allocation of the net worth among the members. The following definitions shall apply to terms used in this Article:

- (A) Net Worth.** The “Net Worth” of the Company is the difference between the assets and liabilities of the Company, according to the Generally Accepted Accounting Principles (GAAP).
- (B) Surplus.** The “Surplus” is the excess of revenue over expenses for a fiscal year.
- (C) Internal Capital Account.** The “Internal Capital Accounts” consist of the individual capital accounts and the collective capital account. The sum of the (net credit) balances in the internal capital accounts is the net worth of the Company.
- (D) Collective Account.** The “Collective Account” is an account that holds the portion of the net worth of the Company that is not allocated to Individual Capital Accounts. The balance in the Collective Account results from and is increased by: (1) that portion of retained Surplus not allocated to Individual Capital Accounts, and (2) any gifts or grants to the Company, unless otherwise allocated to Individual Capital Accounts. The Collective Account balance is decreased by any losses applied to the Collective Account.
- (E) Individual Capital Account.** The “Individual Capital Account” is each Member’s capital account in the Company. The Individual Capital Account records the value of the Member’s relative equity of the Company, or the share of the Company’s Net Worth that is owned by each Member. The balance in each Individual Capital Account results from and is increased by: (1) each Member’s initial Membership Fee, plus any other paid-in capital from or on behalf of each Member in excess of the Membership Fee, and (2) the amount of any Patronage Distributions credited to each Member. The balance in any Individual Capital Account is decreased by: (a) any losses applied to the Individual Capital Account, and (2) the proportion of the Patronage Distribution paid out to each Member as Patronage Payments.
- (F) Labor Patronage.** “Labor Patronage” is the work contributed by each Worker-Owner Member to the Company, based on hours worked (FTE).
- (G) Patronage Distribution.** The “Patronage Distribution” is the positive amount of Surplus allocated to each Worker-Owner Member in direct proportion to their Labor Patronage. The Patronage Distribution is either credited to each Member’s Individual Capital Account as a Patronage Credit, or directly paid out to Members as Patronage Payments.

(H) Patronage Credit. The “Patronage Credit” is the portion of each Member’s annual Patronage Distribution credited to each Member’s Individual Capital Account.

(I) Patronage Payment. The “Patronage Payment” is the portion of each Member’s annual Patronage Distribution paid out to each Member as a cash payment.

5.2. Fiscal Year. The Fiscal Year of the Company is the twelve months ending on the last day of December of each calendar year.

5.3. Individual Accounts. SCA X, ACCO and all Worker-Owners shall each have an individual capital account. The balance in the individual capital account results from and is increased by: (a) the initial membership fee (if any), initial capital investment, or any other paid-in capital from the member in excess of the membership fee; or (b) the amount of any written notice of allocation of surplus or patronage issued to the member. The balance is decreased by: (a) the application of negative surplus or patronage allocations (losses from current operations) or (b) the redemption in cash or notes of indebtedness of a written notice of allocation previously issued to the member and recorded in the member’s account.

5.4. Collective Account. The balance in the collective account results from and is increased by: (a) any allocation of surplus dedicated to the account as declared by the Board; or (b) any gifts or grants to the Company which are not allocated to individual capital accounts. The balance in the collective account is decreased by (a) negative allocations.

5.4.1 Reinvested Surplus. If there is a positive amount of Surplus, it shall first be credited to the Collective Account for future use as reinvestment in the Company. The exact portion of the Surplus to be allocated to the Collective Account shall be decided by the Board by majority vote. However, that decision shall be informed by the recognition that the Company should reinvest a reasonable portion of its Surplus to sustain itself financially and further its Mission.

5.4.2 Reinvestment Rate. From time to time, the Members may establish and record in the Operating Agreement or Policy Manual that a specific percentage or amount of the annual Surplus is to be reinvested into the Collective Account on the basis of the Company’s business needs and purposes. If the Members establish such a percentage or amount, then the Members shall allocate the Company’s Surplus to the Collective Account in accordance with this specific “Reinvestment Rate.”

5.5. Individual Accounts. In any proportions determined by the Board, the surplus or patronage beyond that paid to the Collective Account may be paid in cash or in written notice of allocation. During the payment period for the fiscal year, the Company shall deliver to each member the cash surplus and/or the written notice of allocation showing the amount of surplus or patronage retained by the Company and credited to his or her individual capital account. Unless approved by the Board, the written notices of allocation shall be

non-transferable.

5.5.1. Surplus Distribution. After allocating the Surplus to the Collective Account, any remaining Surplus shall be credited to Members' Individual Capital Accounts as follows:

If the Company is making a significant investment in arts programs as defined below, further surplus will be distributed:

- (a) 10% to SCA X,
- (b) 50% to Worker-Owner Membership further distributed to individual members based on their patronage as outlined below, and
- (c) 40% to ACCO.

If the Company is not making a significant investment in arts programs, the remaining surplus shall be distributed

- (a) 50% to SCA X,
- (b) 25% Worker-Owner Membership further distributed to individual members based on their patronage as outlined below, and
- (c) 25% to ACCO.

Significant Investment in Arts Programs is defined as 4% or more of the sales of the café operations paid to programming fees, program management fees, staff time dedicated to arts programs, payments to artists or instructors, marketing of arts programs, contracts with outside entities to provide arts programs, capital investments that primarily benefit arts programs or other payments which fosters the creation, participation, or further appreciation of performing, visual, literary, cinematic or other art forms.

The Board may elect to make a special allocation of Surplus by unanimous vote.

5.5.2. Notice of Allocation. The amount of surplus or patronage paid to a member in written notices of allocation shall be credited to the member's individual capital account. When allocation notices are redeemed or canceled, the member's individual capital account shall accordingly be debited. The net income treated as retained surplus or patronage credited to members' accounts may be used for any and all company purposes.

5.5.4. Negative Surplus. The individual capital account of each member shall be debited according to the same rules for positive allocations spelled out in this Operating Agreement. If a negative surplus or patronage allocation is applied against a portion of an individual capital account represented by a written notice of allocation, the amount of the written notice is accordingly reduced. A written notice is cancelled when its amount is reduced to zero.

5.5.5. Interest on Individual Capital Accounts. The individual capital accounts shall not accrue interest.

5.5.6. Individual Account Statements. During the payment period for a fiscal year, each member shall be issued an individual capital account statement that lists the previous balance, the positive an/or negative allocations, the redemptions or distributions from the account and the resulting current balance.

4.6. Worker-Owner Patronage Distributions. Distributions and allocations to Worker-Owner membership shall further be distributed to each individual member of this Class on the basis of patronage of labor. Each Worker-Owner member receives a portion of the total allocation made to the Class of Worker-Owners equal to his or her Full Time Equivalent Status over that fiscal year.

5.6.1 Anticipated Profit Distribution. Individual Worker-Owners may receive anticipated profit distributions on a regular basis as estimated and managed by the Board.

5.6.2. Individual Account Statements. During the payment period for a fiscal year, each individual Worker-Owner member shall be issued an individual capital account statement that lists the previous balance, the positive an/or negative allocations, the redemptions or distributions from the account and the resulting current balance.

5.7. Redemption of Written Notice of Allocation. The Board may redeem written notices of allocation credited to a Member's account in cash. Except as outlined for terminated members, Members may request to redeem written notices of allocation. In cases where the redemption of an allocation would jeopardize the financial wellbeing of the company, The Board may elect to take up to two years to complete payment.

5.8. Payments to Terminated Members. Payment of a terminated member's individual capital account will take precedence over other cash distributions. At the Company's discretion, the Company may convert the individual capital account balance to a note of indebtedness payable over three (3) years starting from the Member's termination, plus an interest rate of three percent (3%) on the amount outstanding at the end of each Fiscal Year.

5.9. Purpose of the Collective Account. Funds in the Collective Account will be dedicated to investment in the Company or other cooperative ventures which benefit the community.

5.10. Special Collective Account Distribution. Funds in the Collective Account, by a vote of the Board, may be distributed to SCA X. The Board may later call for additional capital reinvestment to be made in the Company by SCA X through a majority vote. This Capital Call shall not exceed the total amount of Collective Account funds previously distributed to SCA X minus thirty percent.

SECTION 6. BOARD

- 6.1. Powers.** The Board may exercise all the powers of the Company except those otherwise limited by this Operating Agreement or by Law, including the power to issue additional memberships, establishing yearly budgets, setting salaries or wage ranges, setting policies which govern the Worker-Owners and determination of any allocations or distributions, except as otherwise provided by law, the Articles, or these By-Laws. The Board must approve admittance to the Worker-Owner Membership.
- 6.2 Number of Directors.** The number of Directors shall be nine (9). In the event that the number of Directors is reduced to six (6), an emergency meeting shall be called of the Membership.
- 6.3. Qualification and Appointment.** The Board shall be composed of three Directors appointed by SCA X to represent the interest of the arts, three Directors appointed by Art's Café Community Owners, LLC from the membership of that company to represent the interest of consumers and investors and three Directors appointed by Worker-Owner Members to represent the interests of the workers and that are currently on the work force of the Company. SCA X and ACCO shall choose their own appointment process and terms.
- 6.3.1. Worker-Owner Representatives.** Worker-Owners shall elect their representatives annually. The term of office of the Worker-Owner Directors shall be three calendar years so that each calendar year three Directors' terms will expire. To establish the terms in the first year, Directors, will draw straws. There are no limits to the number of terms a person may fill. Notwithstanding the foregoing, each Director is required to be a Member of the Worker-Owner Class and if their Membership is terminated, then they shall immediately cease to be a Director of the Company.
- 6.4. Resignation.** A Director may resign effective upon giving written notice to the Chairperson of the Board.
- 6.5. Removal.** A Director may be removed from office at any time according to the bylaws, operating agreement, or established rules of the membership class or entity they are elected to represent. A director may be removed from office by the Board of this Company for cause by a two thirds majority vote of the full Board. Cause shall only include situations where the director's continued participation on the Board presents an economic or potential economic negative impact such as bankruptcy, mental incapacitation, legal prosecution or other events that could impact any existing or proposed licenses issued to the Company, or willful disregard for the well-being of the Company.
- 6.6. Vacancy.** In the event of a vacancy the remaining Directors may exercise the powers of the full Board until the vacancy is filled except as otherwise proscribed in this Operating Agreement. When a vacancy occurs, the partner entity or Class of

Membership may immediately appoint a new Director to fill out the remainder of the term.

- 6.7. Meetings.** Regular meetings of the Board must be held in Springville, New York at such times as the Board may determine but at least annually. Special meetings of the Board may be called at any time by the President or by the Clerk at the request of three or more Directors. All meetings are open to the Membership of the Company and the membership of any corporations or companies which comprise the Membership of the Company.
- 6.8. Notice of Meetings.** Notice of the time, place and purposes of any meeting of the Board shall be given to each Director by the President or their assigns in person, by telephone, by mail or electronic communication not less than seven days before the meeting unless all Directors consent in writing to a shorter notice time period for any specific meeting.
- 6.9. Quorum.** At any meeting of the Board, six Directors then in office shall constitute a quorum.
- 6.10. Action at a Meeting.** If a quorum is present, any action may be taken by the Board by a two-thirds (2/3) majority vote of those Directors present, unless a larger number is required by law, the Articles, or this Operating Agreement. Action may only be made through Board vote. Individual Directors do not have any authority except that authority assigned to them from time-to-time by the Board.
- 6.11. Action Without a Meeting.** Any action may be taken without a meeting if all of the current Directors consent in writing to the action. The written consent is then filed with the minutes of the next regular meeting and is treated as a vote of the Directors or all purposes.
- 6.12. Conflicts of Interest.** In any transaction considered by the Board with a nonmember of the Company, a Director must disclose any substantial financial interest with that nonmember so that the majority of non-interested Directors may vote whether to exclude the interest Director from voting on that specific matter.
- 6.13. Committees.** The Board may nominate committees who will work in an advisory capacity to the Board.
- 6.14. Board Officers.** A Chairperson and Clerk shall be elected annually by the Board at its first meeting of the year. Any Officer may be removed at any time by a majority vote of the Directors. These officer (s) may be nonmembers of the Board.
- 6.15. Chairperson.** The Chairperson of the Board shall preside at all meetings, act as chief executive officer for Board matters and shall have such other duties and powers as

determined by the Board. This role shall not overlap the duties separated in Section 5 for the management of the operations nor supervise Worker-Owners.

6.16. Clerk. The Clerk of the Board shall maintain records of the Company, including meeting minutes and a record of membership, at the Company's principal place of business.

6.17. Compensation. The Board may be paid an additional salary or compensation as determined by the Board.

Section 7. All-Membership Meeting

7.1. Annual Meeting. Each year, the Board shall host an annual meeting for the benefit of any Members, Class of Members, or shareholders or representatives of the Members of this Company. At this meeting, each Member or Membership Class shall announce their respective Board representatives for the coming year. An annual report detailing the finances and community impact of the Company shall be presented.

7.2. Notice of Meeting. Notice, by mail, hand delivery or electronic communication, of the All-Membership Meeting shall be given to each Member of the Company no less than ten days before the meeting.

Section 8. Consideration of Actions.

8.1. In discharging the duties of their positions and in considering the best interests of the Company, the Board and Worker-Owners shall consider the effects of any action or inaction on:

- i) the members of the Company;
- ii) the employees and work force of the Company, its subsidiaries, and its suppliers;
- iii) the interests of its customers as beneficiaries of the purpose of the Company to have a material positive impact on society and the environment;
- iv) community and societal factors, including those of each community in which offices or facilities of the Company, its subsidiaries, or its suppliers are located;

- v) the local and global environment;
- vi) the short-term and long-term interests of the Company, including benefits that may accrue to the Company from its long-term plans and the possibility that these interests may be best served by the continued independence of the Company; and
- vii) the ability of the Company to create a material positive impact on society and the environment, taken as a whole.

8.2. In discharging his or her duties, and in determining what is in the best interests of the Company and its members, the Board and Worker-Owners shall not be required to regard any interest, or the interests of any particular group affected by an action or inaction, including the members, as a dominant or controlling interest or factor. The Board and Worker-Owners shall not be personally liable for monetary damages for:

- (i) any action or inaction in the course of performing the duties of the Board and Worker-Owners under this paragraph if the Board and Worker-Owners was not interested with respect to the action or inaction; or
- (ii) failure of the Company to create a material positive impact on society and the environment, taken as a whole.

8.3. The Board and Worker-Owners does not have a duty to any person other than a member in its capacity as a member with respect to the purpose of the Company or the obligations set forth in this Article, and nothing in this Article express or implied, is intended to create or shall create or grant any right in or for any person other than a member or any cause of action by or for any person other than a member or the Company.

8.4. Notwithstanding anything set forth herein, the Board and Worker-Owners is entitled to rely on the provisions regarding "best interests" set forth above in enforcing his or her rights hereunder and under state law, and such reliance shall not, absent another breach, be construed as a breach of the Board and Worker-Owners duty of care, even in the context of a Change in Control Transaction where, as a result of weighing the interests set forth above, the Board and Worker-Owners determines to accept an offer, between two competing offers, with a lower price per unit.

8.5. The Board and Worker-Owners who makes a business judgment in good faith fulfills the duty under this section if the Board and Worker-Owners:

- (i) is not interested in the subject of the business judgment;

(ii) is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(iii) rationally believes that the business judgment is in the best interests of the Company.

SECTION 9. RECORDS.

9.1. Keeping of Records. The Company shall keep at its principal office:

i.) The original or a copy of its Articles of Organization, Operating Agreement and any Policy Manual as amended to date;

ii.) Adequate and correct books and records of account, for at least the current and past five Fiscal Years;

iii.) Records of all minutes of all the proceedings of its Members, Board, and Committees;

iv.) Records of Members, Officers, and Directors listing their names, address and contact information;

v.) Records of the Membership Interests held by each Member;

9.2. Record Format. Minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible form.

9.3. Digital Distribution. The Members shall digitally maintain and distribute via a shared web link the records of business as listed in 10.1.

9.4. Inspection Rights. The Company's Articles of Organization, Operating Agreement, and Policy Manual shall be open to inspection by the Members at all reasonable times during business hours. Any such inspection may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts. The accounting books and records and minutes of proceedings of the Members and the Board shall be open to inspection upon the demand on the Company of any Member at any reasonable time, for a purpose reasonable related to such person's interests as a Member. Every Officer and Board Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Company.

SECTION 10. INDEMNIFICATION.

The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the

Company, or is or was serving at the request of the Company, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Members determine that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.

Section 11. Dissolution and Winding up of the Company

11.1. Dissolution. The Company will be dissolved on the happening of any of the following events:

- i.) Sale, transfer or other disposition of all or substantially all of the property of the company;
- ii.) The agreement of all of the Members;
- iii.) By operation of law.

11.2. Winding Up. On the dissolution of the Company, the Board must take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed, after any gain or loss realized in connection with the liquidation has been allocated in accordance with Section 5 of this agreement, and the Members Capital Accounts have been adjusted to reflect the allocation and all other transactions through the date of the distribution, in the following order:

- i.) to payment and discharge of the expenses of the liquidation and of all the Company's debts and liabilities to persons or organizations other than Members;
- ii.) to the payment and discharge of any Company debts and liabilities owed to Members;
- iii.) distributed to Art's Café Community Owners, LLC in the amount equal to the balance in internal accounts;
- iv.) distributed to the Worker-Owner Members in the amount equal to the balances in their internal accounts or, if said residual assets are insufficient, then on a pro rata basis in proportion to the relative balances in their internal accounts;

11.2.1. Remaining Assets. Any assets remaining after said distribution shall be distributed to a qualified nonprofit corporation determined to be a charitable organization by New York State located in Springville, New York and with a mission to generally improve the area

through the arts. Providing no such entity exists, the Board may distribute remaining assets to any qualified nonprofit corporation determined to be a charitable organization by New York State located in Springville, New York.

Section 12. General Provisions.

- 12.1. Amendment.** Amendments to this Operating Agreement may be proposed by the Board. Amendment of these bylaws requires a vote of eight of the current Directors of the Board at a public meeting. If a partner entity or class of membership ceases to exist for any reason and the Board is reduced as a result, the remaining current Board may amend these bylaws with a unanimous vote of the remaining directors.
- 12.2 Governing Law.** This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the State of New York (without regard to principles of conflicts of law).
- 12.3 Entire Agreement; Modification.** This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter of this Agreement. No agreements, understandings, restrictions, representations, or warranties exist between or among the members other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this Agreement will be binding on any Member unless in writing and signed by all the Members.
- 12.4 Further Effect.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.
- 12.5 Severability.** If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.
- 12.6 Captions.** The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract, or alter the terms and provisions of this Agreement.
- 12.7 Notices.** All notices required to be given by this Agreement will be in writing and will be effective when actually delivered or, if mailed, when deposited as certified mail, postage prepaid, directed to the addresses first shown above for each Member or to such other address as a Member may specify by notice given in conformance with these provisions to the other Members.

12.8. Informal Resolution. The Members agree that in the event of any dispute or disagreement solely between or among any of them arising out of, relating to, or in connection with this Agreement or the Company or its organization, formation, business, or management, the Members shall use their best efforts to resolve any dispute arising out of or in connection with this Agreement by good-faith negotiation and mutual agreement. The Members shall meet at a mutually convenient time and place to attempt to resolve any such dispute.

12.9 Mediation. In the event that a member dispute cannot be resolved, such parties shall first attempt to settle such dispute through a nonbinding mediation proceeding. In no event shall the results of any mediation proceeding be admissible in any arbitration or judicial proceeding.

12.10 Arbitration. In the event that any party to a mediation proceeding pursuant to this Section is not satisfied with the results thereof, then any unresolved disputes shall be submitted to a final and binding arbitration proceeding in accordance with the Rules of the American Arbitration Society, unless mutually agreed otherwise.

12.11 Attorney Fees. In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the arbitrator, court or courts, including any appellate courts, in which the matter is tried, heard, or decided.