**OPERATING AGREEMENT** **OF** **[BIG HAPPY HOLDINGS], LLC**

This Operating Agreement (the “Agreement”) is made and entered into as of [DATE], by and among Andreas Vagelatos (“Andreas”), Mark Barney (“Mark”), Brianne Baker (“Brianne”), and Eric Dickinson (“Eric”) (each a “Member” and collectively, the “Members”).

**RECITALS**

WHEREAS, the Members desire to form a limited liability company under the laws of the State of New York; and

WHEREAS, the Members desire to enter into this Agreement to govern the affairs of the Company and the conduct of its business.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**ARTICLE I** **FORMATION**

**1.1 Formation.** The Members hereby form a limited liability company under the New York Limited Liability Company Law (the “Act”) and other relevant laws of the State of New York.

**1.2 Name.** The name of the limited liability company is [BIG HAPPY HOLDING COMPANY], LLC (the “Company”).

**1.3 Purpose.** The purpose of the Company is to acquire, develop, and distribute mobile software applications, and to engage in any other lawful act or activity for which limited liability companies may be formed under the Act.

**1.4 Principal Place of Business.** The principal place of business of the Company shall be located at [115 Wood Road, Bedford Hills, New York 10507] or such other place as the Members may from time to time determine.

**1.5 Registered Office and Agent.** The registered office of the Company in the State of New York shall be located at 115 Wood Road, Bedford Hills, New York 10507. The registered agent for service of process on the Company in the State of New York shall be Andreas Vagelatos, residing at such address. The Members may change the registered office and registered agent from time to time.

**1.6 Term.** The term of the Company shall commence on the date of filing of the Articles of Organization with the New York Department of State and shall continue perpetually unless sooner terminated as provided in this Agreement.

**1.7 Automatic Termination.** This Agreement shall automatically terminate, and be of no further force or effect, if the Company is not duly formed and a bank account established in the name of the Company within ninety (90) days of the execution date of this Agreement. In the event of such termination, all rights and obligations of the Members hereunder shall cease, and any capital contributions previously made shall be returned to the contributing Member(s) without interest.

**ARTICLE II** **MEMBERS, CAPITAL CONTRIBUTIONS, AND PERCENTAGE INTERESTS**

**2.1 Members.** The names, addresses, initial Capital Contributions, and Percentage Interests (as defined below) of the Members are as follows:

| **Member** | **Address** | **Initial Capital Contribution** | **Percentage Interest** |
| --- | --- | --- | --- |
| Andreas Vagelatos | 115 Wood Road, Bedford Hills, NY 10507 | $30,000.00 | 30% |
| Mark Barney | 653 Pudding Hill Road, Hampton, CT 06247 | $30,000.00 | 30% |
| Brianne Baker | 594 Chelsea Place  Carson City, NV 89703 | Assets of Peekaboo Studio/Night & Day Studios, Inc. per Schedule A | 30% |
| Eric Dickinson | 14069 Loma Rio Drive, Saratoga, CA 95070 | $10,000.00 | 10% |

**2.2 Capital Contributions.**

**(a) Initial Capital Contributions.** Each Member has contributed or shall contribute to the capital of the Company the amount set forth opposite such Member’s name in Section 2.1 hereof.

**(b) Brianne's Contribution.** Brianne's contribution consists of all assets of her studio, Peekaboo Studio, as more fully described in the Asset Acquisition Agreement attached hereto as **Schedule A** (the "Asset Acquisition Agreement"). The Members agree that the fair market value of these assets is $30,000.00 for the purpose of determining her initial capital contribution.

**(c) Additional Capital Contributions.** No Member shall be required to make any additional capital contributions to the Company unless all Members unanimously agree.

**(d) Contribution Deadline.** Each Member shall contribute their respective Initial Capital Contribution, whether in the form of cash or assets, within thirty (30) days of notification by the CEO that a bank account has been established in the name of the Company.

**2.3 Percentage Interests.** The “Percentage Interest” of each Member in the Company shall be the percentage set forth opposite such Member’s name in Section 2.1 hereof, as such percentage may be adjusted from time to time to reflect any changes in Capital Contributions or transfers of interests permitted by this Agreement.

**2.4 No Interest on Capital Contributions.** No Member shall be entitled to receive any interest on their Capital Contributions.

**2.5 Return of Capital Contributions.** Except as otherwise provided in this Agreement, no Member shall have the right to demand or receive the return of their Capital Contributions.

**ARTICLE III** **PROFITS, LOSSES, AND DISTRIBUTIONS**

**3.1 Allocation of Profits and Losses.**

**(a) Profits.** After giving effect to the special allocations set forth in Section 3.1(c), if any, Profits for each fiscal year shall be allocated among the Members in proportion to their respective Percentage Interests.

**(b) Losses.** After giving effect to the special allocations set forth in Section 3.1(c), if any, Losses for each fiscal year shall be allocated among the Members in proportion to their respective Percentage Interests.

**(c) Special Allocations.** The Members intend that the allocations of profits and losses under this Agreement comply with applicable tax laws and regulations. The Members shall consult with the Company's tax advisor as needed to establish appropriate special allocations to comply with such laws and regulations, including allocations pursuant to Internal Revenue Code Section 704(c) to account for the difference between the fair market value and tax basis of the assets contributed by Brianne. Any such special allocations shall be incorporated by amendment to this Agreement.

**3.2 Distributions.**

**(a) Distributions of Available Cash.** The Company shall distribute Available Cash (as defined below) to the Members in proportion to their respective Percentage Interests at such times and in such amounts as determined by the Management Committee (as defined in Section 4.1).

**(b) Available Cash.** “Available Cash” means the amount of cash on hand of the Company from time to time (excluding reserves reasonably determined by the Management Committee to be necessary for working capital, capital expenditures, debt service, and other anticipated cash needs of the Company).

**(c) Tax Distributions.** Notwithstanding Section 3.2(a), the Company shall use reasonable efforts to distribute to each Member, not later than 75 days after the end of each fiscal year, an amount equal to the estimated tax liability attributable to such Member’s allocable share of the Company’s taxable income for such fiscal year, calculated using the highest marginal federal, state, and local tax rates applicable to individuals or corporations, whichever is highest. Such distributions shall be treated as advances against future distributions under Section 3.2(a).

(d) Retained Earnings & Reinvestment

**3.3 Withholding.** The Company shall withhold and pay over to the appropriate governmental authorities any amounts required to be withheld from distributions to any Member pursuant to applicable law. Any amounts so withheld shall be treated as amounts distributed to such Member for purposes of this Agreement.

**ARTICLE IV** **MANAGEMENT**

**4.1 Management Committee.** The management of the Company shall be vested in a Management Committee consisting of all Members. Each Member shall have voting power on the Management Committee proportionate to their Percentage Interest. Except as otherwise provided in this Agreement, all decisions of the Management Committee shall be made by a majority vote, meaning a vote in favor by Members holding more than 50% of the Percentage Interests.

**4.2 Officers.**

**(a) Appointment.** The Management Committee shall appoint the following officers:

* **Chief Executive Officer (CEO) and Chief Financial Officer (CFO):** Andreas Vagelatos
* **Chief Technology Officer (CTO):** Mark Barney
* **Chief Creative Officer (CCO):** Brianne Baker
* **General Counsel:** Eric Dickinson

**(b) Duties.**

* **CEO:** The CEO shall have general supervision and control over the business and affairs of the Company, subject to the direction of the Management Committee.
* **CFO:** The CFO shall be responsible for the financial management of the Company, including overseeing accounting, financial reporting, budgeting, and financial planning.
* **CTO:** The CTO shall be responsible for the technological development and infrastructure of the Company.
* **CCO:** The CCO shall be responsible for the creative direction of the Company's projects and products.
* **General Counsel:** The General Counsel shall be responsible for the legal affairs of the Company.

**(c) Removal.** Any officer may be removed, with or without cause, by the Management Committee.

**(d) Compensation.** The compensation of the officers shall be determined by the Management Committee.

**4.3 Authority.** Except as otherwise provided in this Agreement or required by the Act, the Management Committee shall have the full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company’s business.

**4.4 Major Decisions.** Notwithstanding anything to the contrary in this Agreement, the following actions (each, a "Major Decision") shall require the unanimous consent of all Members:

**(a)** Admission of a new Member;

**(b)** Merger, consolidation, or sale of all or substantially all of the Company's assets;

**(c)** Dissolution of the Company;

**(d)** Amendment of this Operating Agreement;

**(e)** Any action that would make it impossible to carry on the ordinary business of the Company;

**(f)** Incurrence of debt outside the ordinary course of business, or in excess of $[1,500];

**(g)** Any transaction involving the Company and a Member or an Affiliate of a Member, other than transactions specifically contemplated by this Agreement.

**4.5 Meetings.** The Management Committee shall meet at least quarterly, or more frequently as determined by the Management Committee. Meetings may be held in person or by teleconference or other electronic means.

**4.6 Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if written consents setting forth the action so taken are signed by Members holding the requisite Percentage Interests for approval of such action.

**4.7 Duties of Members.** Each Member shall devote such time and effort to the business of the Company as is reasonably necessary to carry out their duties and responsibilities under this Agreement. Members shall have a duty of loyalty and a duty of care to the Company and each other. Each Member shall act in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

**4.8** **Creative Control Over Peekaboo Brand.** Brianne shall have the right to veto any and all creative and aesthetic decisions related to the use of the "Peekaboo" brand such as branding, marketing, third party licensing, and product design ("Creative Decisions"). The Management Committee shall present all proposed Creative Decisions related to the "Peekaboo" brand to Brianne for her approval prior to implementation. Brianne shall have ten (10) business days to approve or reject such Creative Decisions. Failure to respond within ten (10) business days shall be deemed approval. In the event of a veto by Brianne, the Management Committee shall work in good faith with Brianne to develop an alternative Creative Decision that is mutually acceptable.

**ARTICLE V** **TRANSFER OF INTERESTS**

**5.1 Restrictions on Transfer.** No Member may sell, assign, transfer, pledge, encumber, or otherwise dispose of (each, a “Transfer”) all or any part of their interest in the Company without the prior written consent of all other Members, which consent may be withheld in their sole discretion, except as otherwise provided in this Article V.

**5.2 Permitted Transfers.** Notwithstanding Section 5.1, a Member may Transfer all or a portion of their interest to a trust for the benefit of such Member or such Member’s immediate family, provided that such Member retains voting control over such transferred interest.

**5.3 Right of First Refusal.** If a Member receives a bona fide offer from a third party to purchase all or any portion of their interest in the Company (the “Offered Interest”), and the other Members do not consent to such transfer, the Member desiring to Transfer (the “Selling Member”) shall first offer the Offered Interest to the other Members (the “Non-Selling Members”) in proportion to their respective Percentage Interests, on the same terms and conditions as the third-party offer. The Non-Selling Members shall have thirty (30) days to accept or reject the offer. If any Non-Selling Member rejects the offer, the remaining Non-Selling Members shall have the right to purchase the rejected portion of the Offered Interest in proportion to their respective Percentage Interests. If the Non-Selling Members do not elect to purchase the entire Offered Interest, the Selling Member may Transfer the Offered Interest to the third party on the terms and conditions of the original offer, provided that such Transfer is completed within sixty (60) days.

**5.4 Substitute Members.** Any transferee of an interest in the Company shall be admitted as a substitute Member only upon the unanimous written consent of the other Members, which consent may be withheld in their sole discretion, and upon execution of an agreement to be bound by the terms and conditions of this Agreement.

**5.5 Void Transfers.** Any Transfer of an interest in the Company in violation of this Article V shall be null and void and of no effect.

**5.6** **Buyout Option.** In the event that a Member (the "Selling Member") desires to Transfer all or a portion of their interest in the Company to the other Members (the "Remaining Members") and has not received a bona fide offer from a third party, the Selling Member shall provide written notice to the Remaining Members of their intention to sell. The purchase price for the interest shall be determined by multiplying the Net Income of the Company by 2.5 (the "Buyout Price"). The Remaining Members shall have thirty (30) days from the date of such notice to elect to purchase the Selling Member's interest at the Buyout Price, in proportion to their respective Percentage Interests. If any Remaining Member rejects the offer, the remaining Remaining Members shall have the right to purchase the rejected portion of the Offered Interest in proportion to their respective Percentage Interests. The closing of such purchase shall occur within sixty (60) days of the election to purchase. For the purposes of this Section, “Net Income" means the Company’s total annual earnings after expenses and taxes, as reported in the most recent audited financial statements.

**ARTICLE VI** **DISSOLUTION AND WINDING UP**

**6.1 Dissolution.** The Company shall be dissolved upon the happening of any of the following events:

**(a)** The unanimous written consent of all Members;

**(b)** The sale or other disposition of all or substantially all of the assets of the Company;

**(c)** The entry of a decree of judicial dissolution under the Act; or

**(d)** Upon the occurrence of any other event that under the Act mandates the dissolution of the Company.

**6.2 Winding Up.** Upon the dissolution of the Company, the Management Committee (or such other person or persons as required by law) shall wind up the affairs of the Company. The person or persons winding up the affairs of the Company shall liquidate the Company’s assets, pay or provide for the payment of the Company’s debts and liabilities, and distribute any remaining assets to the Members in accordance with their respective positive capital account balances, after taking into account all capital account adjustments for the Company's taxable year during which such liquidation occurs. Upon dissolution of the Company, all intellectual property rights originally contributed by Brianne that are directly related to the "Peekaboo Studio" brand, including trademarks and copyrights (“Peekaboo IP”) shall revert to Brianne. The Management Committee shall execute any and all documents necessary to effectuate the transfer of the Peekaboo IP to Brianne promptly following the effective date of dissolution.

**6.3 Distribution in Kind.** If the Company’s assets are insufficient to repay all of the capital contributions made by the Members, the Members agree that any non-cash assets of the Company may be distributed in kind to the Members, subject to any liabilities to which such assets are subject, in lieu of cash, in satisfaction of their right to a return of capital contributions, so long as such distribution is made in a manner that reflects the Members’ relative economic interests in the Company as set forth in this Agreement.

**ARTICLE VII** **BOOKS AND RECORDS**

**7.1 Books and Records.** The Company shall keep complete and accurate books and records of its business and affairs at its principal place of business. The books and records shall include:

**(a)** A current list of the full name and last known address of each Member;

**(b)** A copy of the Articles of Organization and all amendments thereto;

**(c)** Copies of the Company’s federal, state, and local income tax returns and reports, if any, for the three most recent years;

**(d)** Copies of this Agreement and all amendments thereto;

**(e)** Financial statements of the Company for the three most recent years; and

**(f)** Minutes of meetings of the Management Committee, if any.

**7.2 Access to Books and Records and Consulting Rights.** Each Member, regardless of their status on the Management Committee, shall have the right to: (a) inspect and copy the Company’s books and records during normal business hours upon reasonable notice; and (b) consult with the Management Committee regarding the business and affairs of the Company. The Management Committee shall provide all Members with regular updates on the Company's financial performance and other material developments.

**7.3 Tax Matters.** Andreas Vagelatos is hereby designated as the "Tax Matters Partner" and shall be responsible for all tax matters of the Company, including the preparation and filing of all tax returns.

**ARTICLE VIII** **MISCELLANEOUS**

**8.1 Entire Agreement.** This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral.

**8.2 Amendments.** This Agreement may be amended only by the unanimous written consent of all Members.

**8.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws principles.

**8.4 WAIVER OF CONFLICT OF INTEREST.** **THE MEMBERS ACKNOWLEDGE THAT ERIC DICKINSON IS SERVING AS BOTH GENERAL COUNSEL TO THE COMPANY AND AS A MEMBER. THE MEMBERS HEREBY WAIVE ANY POTENTIAL CONFLICT OF INTEREST THAT MAY ARISE FROM ERIC DICKINSON’S DUAL ROLES, AND THEY ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED OF THE POTENTIAL FOR SUCH CONFLICTS AND HAVE HAD THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE. ERIC DICKINSON AGREES TO ACT IN THE BEST INTERESTS OF THE COMPANY AT ALL TIMES AND TO RECUSE HIMSELF FROM ANY MATTER IN WHICH HIS PERSONAL INTERESTS CONFLICT WITH THE INTERESTS OF THE COMPANY. THE MEMBERS UNDERSTAND THAT AS GENERAL COUNSEL, ERIC DICKINSON REPRESENTS THE COMPANY, NOT ANY INDIVIDUAL MEMBER.**

**8.5 Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally, sent by certified or registered mail, return receipt requested, or sent by reputable overnight courier service to the address set forth in Section 2.1 hereof or to such other address as a Member may designate in writing.

**8.6 Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall nevertheless be given full force and effect.

**8.7 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**8.8 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and permitted assigns.

**8.9 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and assigns and is not intended to and shall not confer any rights or remedies upon any other person or entity.

**8.10 Further Assurances.** Each Member agrees to execute and deliver such further documents and instruments and to take such further actions as may be reasonably necessary or appropriate to carry out the purposes and intent of this Agreement.

[Signature page follows]

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

Andreas Vagelatos

Mark Barney

Brianne Baker

Eric Dickinson

**SCHEDULE A**

**ASSET ACQUISITION AGREEMENT (BETWEEN THE COMPANY AND BRIANNE BAKER )**

**(Attached)**