

# **EXHIBIT B**

THIS OPERATING AGREEMENT, dated as of June \_\_, 1995, by and among the undersigned parties, who by their execution of this Operating Agreement have become members of Westchester Industrial Complex LLC, a New York limited liability company (the "Company"), provides as follows:

WHEREAS, the undersigned parties signing this Operating Agreement desire to form a limited liability company known as Westchester Industrial Complex LLC, pursuant to the New York Limited Liability Company Law; and

WHEREAS, the undersigned parties desire to establish their respective rights and obligations pursuant to the New York Limited Liability Company Law;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties signing this Operating Agreement agree as follows:

## ARTICLE I

### DEFINITIONS

1.01 In this Operating Agreement, the following terms shall have the meanings set forth below (unless otherwise expressly provided herein):

(1) "Act" shall mean the New York Limited Liability Company Act.

(2) "Articles of Organization" shall mean the Articles of Organization of the Company, filed or to be filed with the New York Secretary of State, as amended and in force from time to time.

(3) "Capital Account" shall mean, as of any given date, the Capital Contribution to the Company by a Member as provided in Section 6.04 hereof, adjusted as provided for pursuant to this Operating Agreement.

(4) "Capital Contribution" shall mean any contribution to the capital of the Company by a Member in cash, property, or services, or a binding obligation to contribute cash, property or services, whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.

(5) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

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(6) "Company" shall refer to Westchester Industrial Complex LLC.

(7) "Manager" shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.

(8) "Member" shall mean a person that is identified as a Member in Article III hereof. A person shall cease to be a Member at such time as he no longer owns any Membership Interest.

(9) "Membership Interest" shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members, or as may otherwise be expressed herein. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.

(10) "Operating Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

(11) "Property" shall mean premises located at 199 Albany Post Road, Buchanan, New York.

## ARTICLE II

### PURPOSE AND POWERS OF COMPANY

2.01 Purpose. The purposes of the Company shall be to:

(a) Own, acquire, manage, develop, operate, buy, sell, exchange, finance, refinance, and otherwise deal with the Property and real estate, personal property, and any type of business as the members may from time to time deem to be in the best interests of the company;

(b) Engage in such other activities as are related or incidental to the foregoing purposes.

2.02 Powers. The Company shall have all powers and rights of a limited liability company organized under the Act, to the extent such powers and rights are not prescribed by the Articles.

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ARTICLE III

NAMES, ADDRESSES AND MEMBERSHIP INTERESTS OF  
INITIAL MEMBERS; PRINCIPAL OFFICE

3.01 Names, Addresses and Membership Interests. The names, addresses, and Membership Interests of the initial Members are as follows:

<u>Names and Addresses</u>	<u>Membership Interest</u>
The Cartalemi Group	90%
The Jacobs Group	10%

The Cartalemi Group consists of five persons, to wit: Charles and Joan Cartalemi (husband and wife), Danielle Cartalemi, Nicole Cartalemi and Carissa Cartalemi. The members of the Cartalemi Group hereby expressly agree that regardless of any intra-family transfers that may be effectuated by members of the Cartalemi Group and regardless of the division of ownership of the Membership Interests therein, the members of the Cartalemi Group shall at all times expressly authorize only one person to represent the interests of the Cartalemi Group as a Member. The person designated to represent the interests of the Cartalemi Group shall be Charles Cartalemi. If necessary, the members of the Cartalemi Group shall execute an agreement irrevocably appointing Charles Cartalemi to represent the interests of the Cartalemi Group as a Member. Except in the case of death or other incapacity, Charles Cartalemi shall continue to be the sole representative of the Cartalemi Group as a Member, absent an agreement by the Jacobs Group to the contrary.

The Jacobs Group consists of four persons, to wit: William and Janet Jacobs (husband and wife), Wendy S. Jacobs and Richard I. Jacobs. The members of the Jacobs Group hereby expressly agree that regardless of any intra-family transfers that may be effectuated by members of the Jacobs Group and regardless of the division of ownership of the Membership Interests therein, the members of the Jacobs Group shall at all times expressly authorize only one person to represent the interests of the Jacobs Group as a Member. The person designated to represent the interests of the Jacobs Group shall be William Jacobs. If necessary, the members of the Jacobs Group shall execute an agreement irrevocably appointing William Jacobs to represent the interests of the Jacobs Group as a Member. Except in the case of death or other incapacity, William Jacobs shall continue to be the sole representative of the Jacobs Group as a Member, absent an agreement by the Cartalemi Group to the contrary.

3.02 Principal Office. The principal office of the Company shall initially be located at 419 Washington Street, Peekskill, New York. The Principal office may be changed from time to time by the Managers.

#### ARTICLE IV

##### VOTING POWERS MEETINGS ETC. OF MEMBERS

4.01 In General. The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Members the right to so vote or otherwise participate.

##### 4.02 Actions Requiring Approval of Members.

(a) Notwithstanding any other provision of this Operating Agreement, the approval of the Members shall be required in order for any of the following actions to be taken on behalf of the Company:

(i) Amending the Articles or this Operating Agreement in any manner that materially alters the preferences, privileges or relative rights of the Members.

(ii) Electing the Manager as provided in Article V hereof.

(iii) Taking any action which would make it impossible to carry on the ordinary business of the Company.

(iv) Confessing a judgment against the Company.

(v) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

(vi) Loaning Company funds to any Member.

(b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of the

Member or Members holding a majority of the Membership Interests shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters which require the approval or consent of the Members.

4.03 Action by Members. In exercising their rights as provided above, the Members shall act collectively through meetings and/or written consents as provided in this Article.

4.04 Annual Meeting. The annual meeting of the Members shall be held on the 1st day in June of each year at 10:00 a.m. or at such other time as shall be determined by the Manager for the purpose of the transaction of such business as may come properly before the meeting.

4.05 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager, and shall be called by the Manager at the request of any Member.

4.06 Place of Meeting. The place of any meeting of the Members shall be the principal office of the Company, unless another place, either within or outside the State of New York, is designated by the Manager.

4.07 Notice of Meetings. Written notice stating the place, day and hour of any meeting of the Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the Manager, to each Member unless the Act or the Articles require different notice.

4.08 Conduct of Meetings. All meetings of the Members shall be presided over by a chairperson of the meeting, who shall be the Manager, or a Member designated by the Manager. The chairperson of any meeting of the Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.

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4.09 Participation by Telephone or Similar Communications. Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.10 Waiver of Notice. When any notice of a meeting of the Members is required to be given, a waiver thereof in writing signed by a Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.

4.11 Action by Written Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if one or more written consents to such action are signed by the Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number of percentage of such Members necessary for adoption or approval of such matter on behalf of the Company. Action taken under this Section shall be effective when the requisite Members have signed the consent or consents, unless the consent or consents specify a different effective date.

4.12 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act, and other applicable law. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company (except where such Member has specifically consented to act as guarantor thereof), except that such Member shall remain personally liable for the payment of his or her Capital Contribution and as otherwise set forth in this Operating Agreement, the Act, and other applicable law.

## ARTICLE V

### MANAGERS

5.01 Powers of Manager. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by the Manager. The powers so exercised shall include, but not be limited to the following:

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(a) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.

(b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the company.

(c) Collecting funds due to the Company.

(d) To the extent that funds of the Company are available therefor, paying debts and obligations of the Company.

(e) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.

(f) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Manager shall determine, notwithstanding the fact that the Manager or any Member may have a financial interest in such firms or corporations.

(g) Making elections available to the Company under the Code.

(h) Obtaining general liability, property and other insurance for the Company, as the Manager deems proper.

(i) Taking such actions as may be directed by the Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.

(j) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

5.02 Election, Etc. of Managers.

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(a) The Members hereby unanimously elect Charles Cartalemi, as the initial Manager of the Company, to serve until the first annual meeting of the Members and until his respective successor shall be duly elected and qualified.

(b) The Members shall elect one or more Persons as Manager at each annual meeting of the Company to serve until the next annual meeting of the Company and until their respective successors are duly elected and qualified. In addition, if any person resigns or otherwise vacates the office of Manager, the Members shall elect a replacement Manager to serve the remaining term of such office, unless one or more other persons then serve as Managers and the Members determine not to fill such vacancy. A person may be removed as a Manager by the Members with or without cause at any time. A Manager may, but shall not be required to, be elected from among the Members. A Manager may be a natural person or an Entity. Notwithstanding any of the foregoing provisions, the rights of the Members to elect and remove Managers shall be subject to the restrictions set forth in Section 5.03 hereof.

5.03 Action by Two or More Managers. Unless otherwise expressly provided by the Act, the Articles, or the terms of this Operating Agreement, in the event more than one person is elected to manage the affairs of the Company the vote, approval or consent of a majority of the Managers, determined on a per capita basis, shall be necessary and sufficient for the Managers to take any action on behalf of the Company that the Managers are authorized to take pursuant to the Act, the Articles or this Operating Agreement.

5.04 Execution of Documents and Other Actions. The Managers may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in Section 5.04 hereof.

5.05 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Section, and all references in this Section and otherwise in this Operating Agreement to "Managers" shall be deemed to refer to such single Manager.

5.06 Reliance by Other Persons. Any Person dealing with the Company, other than a Member, may rely on the authority of a particular Manager or Managers in taking any action in the name of the Company, if such Manager or Managers provide to such Person a copy of the applicable provision of this Operating Agreement and/or the resolution or written consent of the Managers or Members granting such authority, certified in writing by such Manager or Managers to be genuine and correct and not to have been revoked, superseded or otherwise amended.

5.07 Manager's Expenses and Fees. A Manager shall be entitled, but not required, to receive a reasonable salary for services rendered on behalf of the Company or in his capacity as a Manager. The amount of such salary shall be determined by the Manager and consented to by the Members, which consent shall not be unreasonably withheld. The initial salary for the Manager shall be \$1,000.00 per week. Notwithstanding the Manager's entitlement to the salary provided for herein, the Manager will give due consideration to the financial circumstances of the Company and may, at his discretion, elect to defer or waive present payment of the salary provided for herein where appropriate under the circumstances. The Company shall reimburse any Manager for reasonable out-of-pocket expenses which were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.

5.08 Competition. During the existence of the Company, the Managers shall devote such time to the business of the Company as may reasonably be required to conduct its business in an efficient and profitable manner. The Managers, for their own account and for the account of others, may engage in business ventures, including the acquisition of real estate properties or interests therein and the development, operation, management and/or syndication of real estate properties or interests therein which may compete with the business of the Company. In furtherance and not in limitation of the foregoing, the Members recognize that one or more of them may own or have an interest in other real estate projects in the in the metropolitan area of New York City, some of which may be in the vicinity of and may compete with the business of the Company. Each Member hereby expressly consents to the continued and future ownership and operation by the other Members or the Managers of such properties and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

5.9 Indemnification. The Company shall indemnify each Manager to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled. The Managers may, upon the approval of the Members, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangement as may be permitted by law.

5.10 Liability of Managers. So long as the Managers act in good faith with respect to the conduct of the business and affairs of the Company, no Manager shall be liable or accountable to the Company or to any of the Members, in damages or otherwise, for any error or judgment, for any mistake of fact or of law, or for any other act or thing which he may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct or gross negligence or breach of fiduciary duty, and further except for breaches of contractual obligations or agreements between the Managers and the Company.

## ARTICLE VI

### CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

6.01 Initial Capital Contributions. Each Member, upon the execution of this Operating Agreement, shall make as an initial Capital Contribution the amount shown on Schedule A, which is attached hereto. The initial Capital Contribution to be made by any person who hereafter is admitted as a Member and acquires his Membership Interest from the Company shall be determined by the Members.

6.02 Additional Capital Contributions. No Member shall be required to make any Capital Contribution in addition to his Initial Capital Contribution. The Members, may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be agreed upon by the contributing Member and a majority in interest of the Members before contribution, or determined by a disinterested appraiser selected by the Managers.

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6.03 Interest and Return of Capital Contribution. No Member shall receive any interest on his Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contributions.

6.04 Capital Accounts. Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) In the event any interest in the Company is transferred in accordance with the terms of this Operating Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

6.05 Loans to the Company. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs or to improve the Property which is the subject of this Agreement, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to borrow necessary funds from one or more of the Members provided that the terms of such borrowing shall be commercially reasonable.

Upon or prior to or for the benefit of the formation of the Company, the Members have each made loans to the Company in the amounts set forth on Schedule B attached hereto. Loans made by Members shall contain provisions which shall guaranty equal treatment of the loan obligations by the Company in terms of priority, security, terms of repayment, and all other respects not specifically governed by the independent provisions

pertaining to certain Member's loans as set forth below. The loan documents evidencing said loans shall effectuate and verify the Members' intentions in this regard and shall provide a cross reference to any outstanding loans by Members and shall further provide that where and when the Company shall make any payment or distribution on account of a Member's loan as referred to herein, said distribution shall be made pro-rata, i.e., in accordance with the relative amount of outstanding indebtedness. In addition thereto, with respect to the initial loan amounts set forth in Schedule B, the Members hereto expressly agree that at such time as the Company shall obtain mortgage financing from a third party in an amount of at least \$1,500,000.00, all loans due and owing to Members shall be repaid in full.

In addition to the foregoing, the parties hereto stipulate that with respect to the initial loans referred to in Schedule B, the term of each such loan shall be six years. The interest rate for the first two years of the terms of said loans shall be 7.5% per annum. The interest rate for the second two years of the terms of said loans shall be the prime rate of interest as determined by Citibank, N.A. The interest rate applicable to the final two years of the terms of said loans shall be 15% per annum. The terms shall be deemed to have commenced on January 1, 1995.

With respect to the loan to be made by the Jacobs Group in the amount set forth in Schedule B, interest due under the terms of said loan shall accrue for the first two years of said loan. On January 1, 1996, the Jacobs Group shall present to the Company a document indicating that the Company's interest obligations to the Jacobs Group for the first year of the term of the Jacobs Group loan have been satisfied, subject to an adjustment in the Membership Interests referred to in Section 3.01 above as hereinbelow provided. The Cartalemi Group shall consent to a modification of it's Membership Interest in the manner hereinbelow provided. The Cartalemi Group shall agree to an adjustment of it's Membership Interest so that upon receipt of the document of satisfaction hereinabove referred to, the Membership Interests as set forth in Section 3.01 shall be adjusted to be as follows:

Cartalemi Group	85%
Jacobs Group	15%

On January 1, 1997 the same procedure as set forth above shall be utilized and the Membership Interests as set forth in Section 3.01 shall be further adjusted so that the Membership Interests of the Company shall thereafter be as follows:

Cartalemi Group	80%
Jacobs Group	20%

6.06 Effect of Sale or Exchange. In the event of a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent they relate to the transferred Membership Interest.

6.07 Distributions. Except where there exists outstanding any loans to Members, all distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Act and Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the Managers with the advice and consent of the Members. All amounts withheld pursuant to the Code or any provisions of state or local tax law will respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

Where there exists loans outstanding to Members, all amounts otherwise distributable to Members shall be divided into two equal amounts and the amounts distributed as follows:

(a) Profit Distributions - Profit distributions shall be distributed to the Members in proportion to their respective Membership Interests;

(b) Loan Repayment Distribution - Loan repayment distributions shall be made to the Members in proportion to their respective loan amounts then outstanding.

For example, assume that the Company has available for distribution to Members the sum of \$100,000.00 at a time when the Membership Interest of the Cartalemi Group is 80% of the total Membership Interests and the Cartalemi Group has a loan balance outstanding with the Company in the amount of \$400,000.00; while the Jacobs Group has a Membership Interest equal to 20% of the total Membership Interests and the Jacobs Group has a loan balance outstanding with the Company equal to \$500,000.00. The \$100,000.00 distributable to Members would be divided into two equal shares with \$50,000.00 being allocated for profit distribution and \$50,000.00 be allocated for loan repayment. The Cartalemi Group would be entitled to \$40,000.00 of the profit distribution (80% of \$50,000.00) and the Jacobs Group would be

entitled to \$10,000.00 of the profit distribution. The Cartalemi Group would be entitled to approximately \$22,220 (4/9ths of \$50,000.00) of the loan repayment distribution and the Jacobs group would be entitled to approximately \$27,775.00 (5/9ths of \$50,000.00) of the loan repayment distribution.

6.08 Allocations. Except as otherwise provided in Section 6.09 hereof, all items of income, gain, loss, deduction and credit, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.

6.09 Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of property to the company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

## ARTICLE VII

### RECORDS, REPORTS, ETC.

7.01 Records. The Company shall maintain and make available to the Members its records to the extent provided in the Act.

7.02 Financial and Operating Statements and Tax Returns. Within seventy-five (75) days from the close of each fiscal year of the Company, the Managers shall cause to be delivered to each Member a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Managers also shall cause to be prepared and filed all federal, state and local income tax returns required of the Company for each fiscal year.

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7.03 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Managers, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Managers. All withdrawals from any such bank accounts or investments established by the Managers hereunder shall be made on the signature of the Managers. Any account opened by the Managers for the Company shall not be commingled with other funds of the Managers or interested persons.

7.04 Power of Attorney.

(a) Each Member does hereby irrevocably constitute and appoint the Managers serving in office from time to time, and each of them, as such Member's true and lawful attorney, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

(i) Any certificate or other instrument which may be required to be filed by the Company or the Members under the laws of the State of New York or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Managers deem any such filing to be necessary or desirable.

(ii) Any amendment to the Articles adopted as provided in this Operating Agreement.

(iii) Any certificates or other instruments which may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.

(b) It is expressly understood, intended and agreed by each Member for himself, his successors and assigns that the grant of the power of attorney to the Managers pursuant to subsection (a) is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of his Membership interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of the Manager or Managers, as attorney-in-fact appear with the notation that the



signatory is signing as attorney-in-fact of the listed Members.

## ARTICLE VIII

### DISSOLUTION AND TERMINATION

8.01 Events of Dissolution. The Company shall be dissolved upon the first to occur of the following:

- (a) Any event which under the Articles requires dissolution of the Company.
- (b) The unanimous written consent of the Members to the dissolution of the Company.
- (c) The entry of a decree of judicial dissolution of the Company as provided in the Act.
- (d) Any event not set forth above which under the Act requires dissolution of the Company.

8.02 Liquidation. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:

- (a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof; and/or
- (b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership Interests.

8.03 Orderly Liquidation. A reasonable time as determined by the Managers not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company

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and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

8.04 Distributions. Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

(a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation including sales commission to the selling agent, if any; then

(b) Second, to the setting up of any reserves which the Manager (or the person or persons carrying out the liquidation) deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Members shall deem advisable, but in no event to exceed 18 months, the Company shall distribute the balance thereof in the manner provided in the following subsections; then

(c) Third, to the Members to the extent of their respective positive Capital Account balances in the ratio of said Capital Accounts, after first taking into account the allocations prescribed by Section 8.05 below; then

(d) Fourth, to the Members in proportion to their respective Membership Interests.

(e) In the event of a distribution in liquidation of the Company's property in kind, each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsections if such property were sold at such fair market value.

8.05 Taxable Gain or Loss. Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in section 6.08 above.

8.06 No Recourse Against Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member.

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## ARTICLE IX

### MISCELLANEOUS PROVISIONS

9.01 Notices. Whenever, under the provisions of the Act or other law, the Articles or this operating Agreement, notice is required to be given to any Person, it shall not be construed to mean exclusively personal notice unless otherwise specifically provided, but such notice may be given in writing, by mail, addressed to the Company at its principal office from time to time, and to any other Member at his address as it appears on the records of the Company from time to time, with postage thereon prepaid. Any such notice shall be deemed to have been given at the time it is deposited in the United States mail. Notice to a Member may also be given personally or by telegram or telecopy sent to his address as it appears on the records of the Company. The addresses of the initial Members as shown on the records of the Company shall originally be those set forth in Article III hereof. Any Member may change his address as shown on the records of the Company by delivering written notice to the Company in accordance with this Section.

9.02 Application of New York Law. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of New York, without reference to its choice of law provisions, and specifically the Act.

9.03 Amendments. No amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.

9.04 Construction. Whenever a singular designation is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

9.05 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

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9.06 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

9.07 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

9.08 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

9.09 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

9.10 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company. Notwithstanding the foregoing, the Members hereby acknowledge the outstanding obligation of the Company to Andrew Nemeth in the original principal amount of \$71,300.00 as to which such amount an agreement has been made to repay Andrew Nemeth in equal monthly installments without interest over a period of 36 months resulting in a monthly payment and obligation of the Company of \$1,980.55. As of the date hereof, two payments (totaling \$3,961.10 have been paid to Nemeth).

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

9.12 Entire Agreement. This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

## ARTICLE X

### RIGHT OF FIRST REFUSAL

10.01 Right of First Refusal - In the event that any Member (hereinafter referred to as "the Selling Member") desires to sell his, her or its Membership Interest, the Selling Member shall first be required to adhere to the terms of this section. For purposes of this section the term "Member" shall mean the Members named in this Agreement.

(a) Sale of Membership Interest in Absence of Prior Offer - In the event that the Selling Member desires to sell his or her Membership Interest but has not yet received an offer to purchase same from a bona fide purchaser for value, the Selling Member shall first offer to the other Member or Members the opportunity to purchase the Selling Member's Membership Interest upon terms and conditions fully set forth in a writing (hereinafter the "offer notice"), which such offer notice shall be sent to the other Member or Members by certified mail, return receipt requested. The other Member or Members shall thereafter have a period of time equal to thirty (30) days (hereinafter "the notice period") within which to determine to accept the Selling Member's offer or to reject same. The other Member or Members may, within such notice period, make a counteroffer to the Selling Member, which such counteroffer shall specify all of the salient terms and conditions upon which said Member or Members are willing to purchase the Selling Member's interest. The Selling Member shall have a period of time equal to thirty (30) days within which to accept or reject the counteroffer. In the event the Selling Member determines to reject such counteroffer, he shall be free to offer said Selling Member's Membership Interest to any other party, provided that the offer to sell shall be made on terms no less favorable to the Selling Member than the terms specified in the counteroffer received from the other Member or Members. If the Selling Member has not received an acceptance to the Selling Member's offer from any bona fide purchaser for value within one hundred twenty (120) days of the Members rejection of the offer notice or the Selling Member's rejection of the counteroffer, whichever shall last

occur, then and in that event the Selling Member may not dispose of his or her Membership Interest without adhering to the provisions of this section as if no prior offer was made to any other Member or Members.

(b) *Sale of Membership Interest Where Selling Member Receives Prior Offer* - In the event that the Selling Member desires to sell his or her Membership Interest and has received an offer to purchase same from a bona fide purchaser for value, the Selling Member shall first offer to the other Member or Members the opportunity to purchase the Selling Member's Membership Interest upon the terms and conditions that said Selling Member is willing to sell to the third party bona fide purchaser for value, which such terms and conditions shall be fully set forth in writing (hereinafter the "offer notice") which such offer notice shall be sent to the other Member or Members by certified mail return receipt requested. The other Member or Members shall thereafter have a period of time equal to thirty (30) days (hereinafter the "notice period") within which to determine to accept the Selling Member's offer or to reject same. If the other Member or Members fail to accept the Selling Member's offer to sell within such thirty (30) day period, the right of first refusal provided for herein shall be deemed to be waived. If such other Member or Members, within such notice period, make a counteroffer to the Selling Member, the Selling Member may, in the said Selling Member's sole discretion, either accept said counteroffer or, in the alternative, may treat such counteroffer as a waiver of the other Member or Members right of first refusal as provided for in this section. If the notice period expires and if, within such notice period, the other Member or Members have not accepted the Selling Member's offer to sell or have made a counteroffer which the Selling Member determines to treat as a rejection of the Selling Member's offer to sell, then the Selling Member shall be permitted to sell said Selling Member's Membership Interest to the bona fide purchaser for value provided that the sale shall be made on terms no less favorable to the Selling Member than the terms specified in the Selling Member's offer notice. If, for any reason, the Selling Member fails to sell his or her Membership Interest to the bona fide third-party purchaser for value within one hundred twenty (120) days of the expiration of the notice period, then and in that event, the Selling Member may not dispose of his or her Membership Interest without adhering to the provisions of this section as if no other prior offer was made to another other Member or Members.

The right of first refusal as set forth herein shall not pertain to any disposition of a Member's interest occurring as a result of a present transfer of all or a portion of a Member's interest to a Member's immediate family (hereinafter an "intra-family transfer") or a transfer occurring by reason of death (whether by will or intestacy), it being the intention of the parties hereto to limit the applicability of this section to bona fide sales or conveyances of a Member's Membership Interest.

#### ARTICLE XI

##### DISPOSITION OF MEMBER'S MEMBERSHIP INTEREST UPON DEATH

11.01 Disposition of Member's Membership Interest Upon Death - In the event of the death of any Member, said Member's Membership Interest may be transferred to said Member's heirs at law (through intestacy) or beneficiaries or devisees (through will) and the Company shall continue in full force and effect with the understanding that said deceased Member's heirs at law, beneficiaries or devisees shall be substituted for said deceased Member as Members of the Company.

#### ARTICLE XII

##### SPECIAL PROVISION RELATING TO DEATH OF CHARLES CARTALEMI

12.01 The Jacobs Group shall be accorded the right specified in this article in the event of the death of Charles Cartalemi (hereinafter "Cartalemi").

Upon the death of Cartalemi, the Jacobs Group shall have a period of six months from the date of death of Cartalemi to decide whether or not the Jacobs Group will continue to hold its Membership Interest or whether to demand that the estate of Cartalemi be required to purchase the Membership Interest of the Jacobs Group. The procedure to be utilized with respect to this provision shall be as follows: Within six (6) months of the date of death of Cartalemi, the Jacobs Group may serve a notice upon the personal representative of Cartalemi which such notice shall specify that the Jacobs Group desires to exercise its rights pursuant to this provision. Said notice shall also contain all of the salient terms and conditions of the offer of the Jacobs Group to sell its Membership Interest to Cartalemi's estate. Within ninety (90) days of the date of receipt of such notice by

Cartalemi's personal representative, said personal representative shall determine whether to accept the offer contained in the notice or whether to submit a counteroffer. The determination of the personal representative of Cartalemi shall be contained in a writing directed to the Jacobs Group. In the event the personal representative of Cartalemi elects to make a counteroffer to the offer made by the Jacobs Group, the personal representative of Cartalemi and representative of the Jacobs Group shall have a period of time equal to forty-five (45) days within which to determine whether or not they can reach agreement as to the terms and conditions of sale. In the event that said parties are unable to reach agreement regarding the terms of sale, then the parties shall be required to utilize the appraisal method set forth herein. The parties shall be free to select a single appraiser (subject to their agreement in connection with same), but in the event the parties do not desire to utilize the services of a single appraiser, each party shall have the right to designate their own appraiser for the purpose of determining the value of the Membership Interest of the Jacobs Group. Said appraisers shall meet and attempt to jointly determine the valuation of the Jacobs Group Membership Interest and shall reach a determination within one year of the date of death of Cartalemi. In the event the appraisers cannot agree upon a valuation of the Jacobs Group Membership Interest, then the two appraisers shall jointly select a third appraiser who shall determine the value of the Jacobs Group Membership Interest so long as the value reached by said appraiser is not higher than the highest appraisal or lower than the lowest appraisal reached by the two original appraisers, in which case the appraisal that is closest to the valuation selected by the third appraiser shall govern. Each of the appraisers selected by the parties shall have a minimum of ten (10) years experience valuing properties located in the County of Westchester and State of New York and neither shall be an employee of either party.

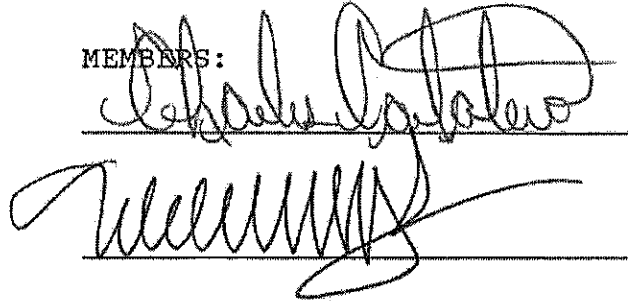
Once the valuation of the Jacobs Group Membership Interest has been determined in the manner referenced above, the Jacobs Group shall convey its Membership Interest to Cartalemi's estate within one year of the date that the valuation is determined. The Cartalemi estate, in purchasing the Jacobs Group Membership Interest, shall have the option to either pay for the Membership Interest on a cash basis or, at the estate's option, the estate may elect to pay for the Jacobs Group Membership Interest over a five year period by tendering equal quarterly payments of principal and interest over such five (5) year period with interest determined at the prime rate of interest as determined by Citibank, N.A.

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The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, unanimously adopted by the Members of the Company of the date first written above.

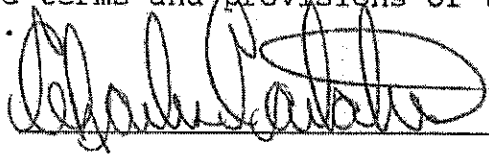
MEMBERS:



The image shows two handwritten signatures, each written over a horizontal line. The top signature is a cursive name that appears to be 'Charles [unclear]'. The bottom signature is a more stylized cursive name that appears to be 'William [unclear]'. Both signatures are written in dark ink on a white background.

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The undersigned hereby agree to serve as Manager of the Company in accordance with the terms and provisions of the foregoing Operating Agreement.



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