

Exhibit B

OPERATING AGREEMENT
for
MCGUIRE DEVELOPMENT COMPANY, LLC

THIS OPERATING AGREEMENT (this "Agreement") is made effective as of the 1st day of January, 2011, by and among the individuals described on Schedule A.

ARTICLE I - FORMATION, NAME AND PLACE OF BUSINESS

1.1 Formation. The Company's Articles of Organization (the "Articles") were filed in 2006 with the New York Secretary of State pursuant to Section 203 of the New York Limited Liability Company Law (the "Law"), hereby form a limited liability company. Up until the date of this Agreement the Company was operated under a verbal understanding among the individuals listed on Schedule A, consistent with long standing business practices the individuals have established and followed for other Companies, affiliated with the Company through common ownership.

1.2 Name. The Company has and shall operate under the name of **McGuire Development Company, LLC**.

1.3 Place of Business. The principal place of business of the Company shall be 560 Delaware Avenue, Suite 300, Buffalo, New York 14202. The principal place of business may be changed, and other offices may be established, by actions taken in accordance with the provisions of this Agreement that govern management of the Company's business.

ARTICLE II - PURPOSES

The Company is and shall be in the business of developing and managing real estate projects and companies for which it will charge fees. The Company shall also engage in the business of real estate brokerage services and other agency services related to real estate sales, leasing and management. Without limiting the foregoing, the Company may also purchase investments or services, including the purchase or rental of office facilities and equipment and leasing or renting personnel from affiliated persons, entities or parties, or any of their respective affiliates, on such terms and conditions as may be approved by the General Manager, Management Committee and or officers of the Company. The Company may also engage in such business activities or other lawful acts or activities for which limited liability companies may be formed under the New York Act and to engage in any and all activities necessary or related thereto. Except as specifically set forth in this Agreement, no vote or other consent of the Members shall be required in order for the General Manager, Management Committee and or officers to exercise their authority, granted under this Agreement, to undertake any action or activity affecting or involving the Company.

ARTICLE III – TERM AND FISCAL YEAR

The Company is not to have a specific date of dissolution in addition to the events of dissolution set forth in section seven hundred one of the Act. The Company's fiscal year shall be the calendar year. The Company's books shall be kept on the accrual basis except as modified to comply with any requirements of applicable law, and closed and balanced at the end of each fiscal year.

ARTICLE IV - MEMBER INTERESTS AND CAPITAL CONTRIBUTIONS**4.1 Member Interests and Capital Contributions**

(a) Prior to the date of this Agreement the Members contributed to the Company cash (as reflected on the Company books and records) of the Company in exchange for each Member receiving an equal Membership interest in the Company of 16 and 2/3rd % .

(b) Effective as of the date of this Agreement the Membership Interests of the Members are amended as reflected on Schedule A.

(c) The term "Majority of the Interests" shall mean the affirmative vote or written consent of Member(s) whose Membership Interests when combined exceed fifty percent (50%).

4.2 Additional Capital Contributions.

(a) Except as expressly provided in this Agreement, no Member shall be required to make any additional contributions to the capital of the Company. However, if at any time or times, the General Manager (as defined in Section 7.1) determines that the Company's capital should be increased, the General Manager may request additional contributions to the capital of the Company from the Members based on their Membership Interest (as defined in Section 4.1 and Schedule A). Should any Member or Members elect not to contribute additional capital in such a circumstance, the General Manager shall recalculate the Membership Interests as set forth on Schedule A based on each Members cumulative capital contributions as a percentage of the Company's total cumulative capital contributions since the date of this Agreement. At such time Schedule A shall be restated prospectively.

(c) No Member shall receive, or be entitled to, interest on his or her contributions to capital. No Member shall have the right to withdraw all or any part of its capital contribution or receive payment of the value of their Membership Interest prior to the dissolution and liquidation of the Company pursuant to provisions of this Agreement, except as expressly provided herein. The Members agree that the Company property is not and will not be suitable for partition. Accordingly, each Member hereby irrevocably waives any and all rights (if any) that it may have to maintain any action for partition of the Company property or any of it.

ARTICLE V - CAPITAL ACCOUNTS AND DISTRIBUTIONS

5.1 **Capital Accounts.** A separate capital account shall be maintained for each Member. Each Member's capital shall be increased by his or her capital contributions and share of Company net profits and decreased by his or her distributions and share of Company net losses. The Members acknowledge and agree that as a result of the amended Membership Interests as stated in Schedule A and effective as of the date of this agreement that The Company will adjust each Member's capital account to a value that is based on Membership Interest of each Member listed in Schedule A and multiplied by the total Members' capital.

5.2 **Distributions.** The Company shall make distributions to Members in such amounts and at such times as the General Manager shall so determine to be in the best interest of the Company and the Members. Distributions shall be paid to each Member based on their Membership Interest (as

defined in Section 4.1 and Schedule A).

ARTICLE VI - PROFITS AND LOSSES

6.1 Determination of Profits or Losses. The net profits or net losses of the Company shall be determined: (a) at the close of each calendar year; (b) upon the dissolution of the Company; and (c) upon the winding up of the Company's business. The net profits or net losses of the Company shall be computed in accordance with the accounting method followed by the Company for federal income tax purposes, applied in a consistent manner.

6.2 Allocation of Profits or Losses. Except as provided in Sections 6.3 and 6.4, the net profits or net losses of the Company shall be credited or charged to the Members in accordance with their Membership Interest noted in Section 4.1 and on Schedule A.

6.3 Built-in Gains and Losses. In accordance with Section 704(c) of the Internal Revenue Code of 1986 ("Code") and Treasury Regulations promulgated there-under, income, gain, loss and deduction with respect to property contributed to the capital of the Company (if any) shall, solely for income tax purposes, be allocated among the Members so as to take account of variations between the adjusted basis of the property contributed and the property's fair value. The allocations shall be made using such reasonable methods as the General Manager determines.

6.4 Item Allocations. Except as provided in Section 6.3, for federal and state income taxes purposes each item of income, gain, loss or deduction shall be allocated to each Member in accordance with their Membership Interest noted on Schedule A.

ARTICLE VII - MANAGEMENT

7.1 The General Manager. The business and affairs of the Company shall be managed under the direction and control of a general manager (the "General Manager"). Upon the commencement of the Company, the General Manager shall be F. James McGuire. Upon the General Manager's death, incapacity, mental disability, bankruptcy, retirement, resignation or expulsion, the Members holding a Majority of the Interests shall elect a new General Manager. The General Manager may be removed only for cause, and such removal shall be by the affirmative vote of Members holding a Majority of the Interests, excluding the Membership Interest held by the General Manager to be removed. A vacancy created by the death, incapacity, resignation or removal of any General Manager may be filled only by the vote of the remaining Members holding a Majority of the Interests. The General Manager may, but need not, be a Member. The General Manager shall have the full power to execute, for and on behalf of the Company, any and all documents and instruments which may be necessary to carry on the business of the Company, including, without limitation, any and all contracts, leases, agreements, deeds, instruments of conveyance or assignment, notes, mortgages, easements, rights-of-way, and security agreements. The General Manager is not obligated to devote all of his/her time or business efforts to the affairs of the Company. The General Manager shall devote whatever time, effort and skill as he/she deems appropriate for the operation of the Company. The General Manager of the Company, either individually or with others, shall have the right to participate in other business ventures of every kind. No person dealing with the General Manager need inquire into the validity or propriety of any document or instrument executed in the name of the Company by the General Manager, or as to the authority of the General Manager in executing the same.

7.2 The Management Committee and Officers.

The General Manager may appoint a Management Committee to provide guidance and direction as to the operation and business of the Company. The members of the Management Committee may, but need not, be Members and may be removed by the General Manager or by a vote of the Members holding a Majority of the Interests with or without cause.

The General Manager or Management Committee may appoint such officers (ex: CEO, President, Vice President, Secretary and Treasurer) of the Company as it determines to be necessary or appropriate. Every officer must be at least 18 years of age. An officer may be, but need not be, a Member or General Manager of the Company, and any number of offices may be held by the same person. Officers shall have such powers and shall perform such duties as may be prescribed from time to time by the General Manager or the Management Committee. The officers shall hold office at the pleasure of the General Manager or the Management Committee and may be removed, with or without cause, at any time by the same. The Members may also remove any Officer by a vote of the Members holding a Majority of the Interests. No officer shall have any personal liability to the Company or its Members for damages for the breach of duty in such capacity, except to the extent that a judgment or other final adjudication adverse to the officer establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

The initial officers of the Company are set forth on Schedule B, as the same may be amended or replaced from time to time by the Company.

7.3 Meetings of Management Committee. Meetings of the Management Committee shall be held at the principal place of business of the Company or at any other place that a majority of the members of the Management Committee determine. In the alternative, meetings may be held by conference telephone, provided that each member of the Management Committee can hear the others. The presence of at least two of the members of the Management Committee shall constitute a quorum for the transaction of business. Meetings shall be held in accordance with a schedule established by the Management Committee. The Management Committee also may make decisions, without holding a meeting, by written consent of all members of the Management Committee. Minutes of each meeting and a record of each decision shall be kept by the General Manager and shall be given to the Members promptly upon request. Decisions of the Management Committee shall require the approval of at least a simple majority of its members.

7.4 Compensation. Except as otherwise agreed by the Members, the General Manager and the members of the Management Committee shall serve without compensation from the Company.

7.5 Superseding Provisions. This Article VII supersedes any authority granted to the Members pursuant to Section 412 of the Law. Without limiting the foregoing, the Members shall have no power to participate in the management of the Company except as expressly authorized in this Agreement. No Member, acting solely in the capacity of a Member, is an agent of the Company, nor does any Member, unless expressly and duly authorized in writing to do so by the Management Committee or as expressly authorized by this Agreement, has any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf or

to render it liable for any purpose. Any Member who takes any action or binds the Company in violation of this Article VII shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

7.6 Outside Activities of Members. Each Member may engage in other enterprises, including enterprises in competition with the Company. Members need not offer competing or other business opportunities to the Company and may take advantage of opportunities for their own accounts or for the accounts of others. Neither the Company nor any Member shall have any right to any income or profit derived by another Member from any enterprise or opportunity permitted under this Section 7.6.

7.7 Deposit Accounts. The Company shall establish one or more deposit accounts at such bank(s), and or mutual fund/brokerage company (ies) as the General Manager shall determine. Checks, drafts or withdrawal slips drawn on Company accounts may be executed by the General Manager, Treasurer or any additional person authorized by the General Manager.

7.8 Reimbursement by Company. The General Manager and members of the Management Committee, employees and other representatives of the Company shall be reimbursed for reasonable out-of-pocket expenses incurred on behalf of the Company or in connection with the business and affairs of the Company. In addition, the Company will indemnify the General Manager and members of the Management Committee, employees and other representatives of the Company in respect of payments made and liabilities reasonably incurred in the ordinary and proper conduct of the Company's business, or for the preservation of the business or property of the Company.

7.9 Liability and Indemnity.

(a) Neither the General Manager nor the members of the Management Committee shall be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the Management Committee or the General Manager within the scope of the authority conferred on the Management Committee and the General Manager by this Agreement, except for fraud, bad faith, gross negligence or an intentional breach of this Agreement.

(b) The Company shall indemnify the General Manager and the members of the Management Committee for any act performed by the Management Committee or the General Manager within the scope of the authority conferred on the Management Committee and the General Manager by this Agreement, except for fraud, bad faith, gross negligence or an intentional breach of this Agreement.

7.10 Tax Matters. The General Manager shall be the Company's "tax matters partner," as that term is defined in the Code. If there is no General Manager serving, then a member of the Management Committee shall be designated to act as interim tax matters partner until the appointment of a General Manager.

7.11 Tax Status. The Members intend and agree that the Company will be classified as a partnership for federal, state and local tax purposes. The Members further agree to file any and all elections required to ensure that the Company is classified as a partnership for federal, state and local tax purposes. The tax classification or fiscal year of the Company may not be changed except by the vote of the holders of a Majority of the Interests.

ARTICLE VIII - BOOKS, RECORDS AND FINANCIAL REPORTS

The books and records of the Company shall at all times be maintained at the principal office of the Company. Each Member, or its duly authorized agent, shall have full, complete and unrestricted access to all of the Company's books and records at all times. The Company will file income tax returns on a calendar year basis. At the close of each calendar year, an accounting shall be made of the operations for the year, which shall include the preparation of a balance sheet as at the close of the year and a statement of the operations of the Company for the year. Based on the determinations so made, the Company shall, within the time required (including extensions), file all necessary information returns. The Company will not have its financial statements audited but any Member may have an audit of the Company's books and records and financial statements conducted provided that the Member making the request pay all expenses incurred in connection therewith.

The determination of each Member's share of each item of income, gain, loss, deduction or credit of the Company for any period or fiscal year shall, for purposes of Sections 702 and 704 of the Code, be made in accordance with the allocations set forth in this Agreement. The General Manager and/or the tax matters partner shall have no liability to the Members or the Company if they shall rely upon the opinion of tax counsel or accountants retained by the Company with respect to all matters (including disputes) relating to computations and determinations required to be made under any provision of this Agreement or relating to the determination of the purchase price under Article X of this Agreement.

ARTICLE IX - TRANSFER OF INTEREST

Except as provided in Article X, no Member shall withdraw from the Company or encumber, hypothecate or transfer, by sale, gift, bequest, assignment, operation of law or otherwise, all or any portion of the Member's Interest. Any withdrawal, encumbrance, hypothecation or transfer in contravention of this Article IX shall be null and void and of no effect whatsoever.

ARTICLE X- TRANSFERS OF INTEREST

10.1 Company's Restriction on Transfer. The Company shall neither cause nor permit the Transfer of all or any portion of any Interest by Members to be made unless the Transfer is permitted by this Agreement and has been made in accordance with its terms. For purposes of this Article, the term "Transfer" or "Transfers" shall mean any direct or indirect sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange, grant, conveyance or any other disposition, whether voluntary or involuntary, whether by entering into any agreement as a result of which any other Person shall become interested in the Company or by operation of law or otherwise (including through a change in capital structure of any Member). The term "Person" means any natural person and any general partnership, limited partnership, limited liability partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

10.2 Member's Restriction on Transfer. No Member may, directly or indirectly, voluntarily or involuntarily, Transfer all or any portion of his/her Interest now or hereafter owned by such Member or any of such Member's economic rights as a Member without the prior written consent of either the Management Committee (which consent may be given or withheld in the sole discretion of the Management Committee) or the General Man or except as otherwise permitted by this Agreement and made in accordance with its terms. Any direct or indirect, voluntary or involuntary, Transfer in violation of this Agreement shall be void and shall not (i) operate to pass legal or beneficial ownership to such

Membership Interest, or (ii) make the intended recipient a third-party beneficiary of this Agreement.

10.3 Prohibited Transfers. Notwithstanding anything to the contrary contained in this Agreement, no Transfer of any Membership Interest shall be consummated if the Transfer would:

- (a) violate any provision of any agreement to which the Company is a party or by which the Company or its assets are bound or affected, unless a written and signed consent to the Transfer is obtained from all third parties who are intended to be benefited by the Transfer restriction;
- (b) require registration of the Membership Interest under any federal or state securities laws; or
- (c) jeopardize the treatment of the Company as a partnership for federal income tax purposes, or violate, or cause the Company to violate, any applicable laws, rules, or regulations, including, but not limited to, any provisions of state and federal securities law.

10.4 Permitted Transfers. With notice to the Company, the following Transfers may be made by a Member without complying with the applicable Sections of this Agreement:

- (a) the gift, transfer, bequest or other disposition of any portion of such Member's Interest to such Member's Immediate Family, or to a custodian, trustee or other fiduciary for the account of the Member or such members of such Member's Immediate Family or to a family limited partnership, limited liability company or other entity or Person in connection with a bona fide estate planning transaction;
- (b) the gift, transfer, bequest or other disposition of any portion of such Member's Interest to any other Person with the unanimous written consent of the other Members;
- (c) a bona fide pledge any portion of such Member's Interest to secure the indebtedness of the Company and the transfer of any portion of the pledged Interest to the pledgee or its permitted designee upon the default by the Company of such indebtedness; or
- (d) a transfer pursuant to a merger or consolidation of the Company with or into another Person; provided such transfer is authorized in accordance with this Agreement.

For purposes of this Section 10.4, the term "Immediate Family" shall mean, with respect to any Member, such Member's children (natural or adopted), stepchildren, and grandchildren and the term "Person" shall mean any natural person.

10.5 Certain Conditions to Transfers; Assignees and Substitute Members.

- (a) A transferee of an Interest or any portion of an Interest (sometimes referred to herein as an "Assignee"), shall be admitted to the Company as a substitute Member and be entitled to all rights and privileges of a Member if the Assignee and/or the transferring Member, as the case may be, satisfies the conditions set forth in this Agreement, including subsection (b) below. In the event the conditions of this Agreement are not satisfied, the transferee will not be a Member and will be a mere Assignee who is only entitled to receive, to the extent assigned, the distributions and allocation of income and losses to which the transferring Member would otherwise be entitled.
- (b) An Assignee shall be admitted as a Member and have all of the rights of a Member only if:

- (i) the transferring Member has complied with the terms, conditions and provisions of this Agreement;
- (ii) the Management Committee receives a copy of the instrument affecting the Transfer of the Interest to the transferee;
- (iii) the transferee, other than pursuant to a Transfer described in this Article, agrees to pay all of the fees and costs incurred by the Company in connection with the Transfer, including any legal fees incurred by the Company;
- (iv) evidence, in form satisfactory to the Management Committee, of the Assignee's acceptance of all the terms of this Agreement and assumption of all of the obligations of the transferor Member under this Agreement is delivered to the Management Committee (including a counterpart of this Agreement executed by the Assignee); and
- (v) the Management Committee receives such other documents or instruments as may be required, in the reasonable discretion of the Management Committee, to effect the Assignee's admission as a Member.

(c) Upon admission of the Assignee as a Member under this Article, such transferee shall assume all of the obligations of the transferring Member with respect to the Interest acquired, and shall have all of the rights and powers of a Member, shall be subject to all of the restrictions applicable to Members, and shall attain the status of Member and shall in all respects be a Member of the Company.

10.6 Repurchase Upon Death of a Member. In the event of a Member's death, the deceased Member's executor, legal guardian, attorney in fact or similar official (each a "*Legal Representative*") shall, within 90 days of the Member's death or his or her appointment, whichever is later, offer to sell all, but not less than all, of the deceased Member's Interest, to the Company, or the surviving Members, as the case may be, in accordance with the procedures set out in this Article and the deceased Member's Legal Representative shall be deemed to be an "*Offering Member*". The purchase price for the deceased Member's Interest shall be the aggregate Value of such Interest determined in accordance with Section 10.10 below; and, in the event the Company and/or the surviving Members do not purchase all of the deceased Member's Interest pursuant to this Article, the Company and the surviving Members shall lose their right to purchase the deceased Member's Interest hereunder and arising as a result of such occurrence and the deceased Member's Legal Representative shall be subject to this Agreement and shall execute and deliver to the Company a counterpart signature to this Agreement and such other documents or instruments as are required by this Agreement.

10.7 Mandatory Sales.

(a) If any Transfer in violation of this Agreement is made it shall be void and the Company and the other Members shall have the right to purchase, at any time before or after the attempted Transfer, any or all of such delinquent Member's Interest in accordance with the procedures set out in Section 10.9 (except as expressly modified by this Section) and such delinquent Member or its Legal Representative or transferee shall be deemed to be an "*Offering Member*". The purchase price for the delinquent Member's Interest shall be the price, if any, paid for or proposed to be paid for such Interest or the aggregate Value of such Interest determined in accordance with Section 10.10, whichever is less.

(b) A Member shall be deemed to have made a Transfer in violation of this Agreement, if: (i) the Member makes an assignment for the benefit of creditors; (ii) the Member files a voluntary petition in bankruptcy; (iii) the Member is adjudged a bankrupt or insolvent, or has entered

against it an order for relief, in bankruptcy or insolvency proceedings; (iv) the Member files a petition or answer seeking reorganization, liquidation, dissolution of the Member or similar relief under any statute, law or regulation; (v) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (vi) the Member seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's properties; (vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation is commenced; (viii) a Member is subject to a Transfer of its Interest by any divorce, alimony or support proceeding or otherwise by operation of law (other than by death, in which case the provisions of this Article apply); or the Member otherwise Transfers (or attempts to Transfer) its Interest in violation of this Agreement.

10.8 Right of First Refusal for Sales of Membership Interests by Members. Except as permitted under Section 10.4, in the event that any Member (sometimes referred hereinafter as an "Offering Member") wishes to Transfer any or all of such Member's Interest ("Offered Interest") to any Person, such Offering Member shall first offer to sell the Offered Interest to the Company and to each of the other remaining Members ("Non-Selling Members") at the price, upon the terms and conditions and in the manner provided in Sections 10.9 and 10.10.

10.9 Procedure for Right of First Refusal.

(a) *Right of First Refusal.*

(i) The Company shall, pursuant to this Section, have the first right and option to purchase the Offering Member's Interest. The Offering Member shall, prior to any proposed Transfer, deliver a written notice (the "Offer") to the Company, stating (i) the Offering Member's bona fide intention to Transfer such Member's Interest, (ii) the name of the prospective transferee, the Interest proposed to be transferred, the purchase price or other consideration for the Interest proposed to be purchased, and any other terms or conditions applicable to such Transfer, and (iii) a true and complete copy of the prospective transferee offer (the "Transferee Offer").

(ii) The Offer shall be and remain irrevocable for a period (the "Offer Period") ending at 11:59 p.m. local time at the Company's principal office, on the thirtieth (30th) day following the date the Offer shall have been given to the Company. At any time during the Offer Period, the Company may accept the Offer by notifying the Offering Member in writing that the Company intends to purchase all or a portion of the Offering Member's Interest proposed to be Transferred and, including in such notice the Interest the Company intends to purchase and the aggregate purchase price (as determined pursuant to the provisions of this Article – (the "Purchase Price")) to be paid by the Company for such Interest. If the Company shall accept the Offer as to all of the Offered Interest, then the parties shall fix a closing date (the "Company Closing Date") for the purchase, which shall not be more than 60 days after the expiration of the Offer Period.

(iii) If the Company does not exercise its right of first refusal during the Offer Period, or if the Company affirmatively notifies the Offering Member in writing before the end of the Offer Period that it will not exercise its rights under this Section or if the Company exercises its right of first refusal as to only a portion of the Offered Interest, the Offering Member shall then offer to sell the Offering Member's remaining Interest identified in the Offer and not accepted for purchase by the Company to the Non-Selling Member(s) at the Purchase Price and upon the same terms and conditions of the Offer (the "Second Offer"). The Second Offer shall be accompanied by a copy of the Offer to the Company, together with a notice of the portion of the

Interest the Company has elected to purchase (if any), and shall be and remain irrevocable for a period ending at 11:59 p.m. local time 30 days following receipt of the Second Offer (the "*Second Offer Period*"). At any time during the Second Offer Period, the Non-Selling Member(s) may purchase, by notifying the Offering Member in writing of their intention to purchase the Offered Interest described in the Second Offer, including in such notice the Interest such Non-Selling Member intends to purchase and the aggregate Purchase Price to be paid by the Non-Selling Member. If there shall be an over-subscription for the Offered Interest among the Non-Selling Member(s) electing to purchase, then the Non-Selling Member(s) may purchase their Non-Selling Member Pro Rata Share of the Offered Interest. For purposes of this Section and application of the rights of first refusal hereunder, the *Non-Selling Member Pro Rata Share* of a Non-Selling Member, shall be determined based on a fraction, the numerator of which is the Interest owned by the Non-Selling Member, and the denominator of which is the aggregate Interest owned by all Non-Selling Member(s) exercising their rights of purchase hereunder. If one or more of the Non-Selling Member(s) shall accept the Second Offer, such that all of the Offered Interest identified in the Transferee Offer are subject to acceptance offers by the Non-Selling Members and the Company, then the parties shall fix a closing date (the "*Non-Selling Member(s) Closing Date*") for the purchase, which shall not be more than 60 days after the expiration of the Second Offer Period.

(iv) The closing and payment of the purchase price hereunder shall occur in accordance with Section 10.10.

(v) If the Company and the Non-Selling Members fail to accept all of the Offered Interest pursuant to this Section, then the Offering Member shall be free, subject to the provisions of this Section below, for a period (the "*Free Transfer Period*") of 60 days after the earlier of (a) the expiration of the Second Offer Period and (b) the date on which the Company and all of the Non-Selling Member(s) affirmatively notify the Offering Member that they will not exercise their respective rights of purchase under this Section, to Transfer its Interest or remaining Interest (as specified in both the Offer and Second Offer) to the same transferee specified in the Transferee Offer on terms no more favorable to such transferee as specified in the Transferee Offer. The transferee shall be subject, however, to this Agreement and shall execute and deliver to the Company a counterpart signature to this Agreement and such other documents or instruments as are required by this Article of this Agreement. If the Offering Member shall not Transfer the Offered Interest within the Free Transfer Period, the Offering Member's right to Transfer the Offered Interest pursuant to this Section shall cease and terminate, and the Offering Member shall again be required to comply with the provisions of Section 10.8 and this Section 10.9 before it may Transfer any Interest.

(vi) Any Transfer by the Offering Member after the last day of the Free Transfer Period or without strict compliance with the terms, provisions and conditions of this Section and the other terms, provisions and conditions of this Agreement shall be null and void and of no force or effect.

(vii) *Purchase Price.* The aggregate purchase price payable with respect to the Offered Interest or any portion thereof, proposed to be purchased by the Company and/or the Non-Selling Members pursuant to this Section shall be equal to the lesser of (a) the purchase price or the value of the other consideration proposed to be paid by the prospective transferee and set forth in the Transferee Offer or (b) the aggregate Value of the Offered Interest, determined in accordance with Section 10.10 below.

10.10 Value; Closing

(a) *Value.* The Value of any portion of a Member's Interest subject to purchase pursuant to this Article (the "*Value*"), shall be equal to the amount that a Member holding such Interest would receive if each of the assets of the Company were sold for its Fair Market Value on the date of occurrence of the event(s) giving rise to the right to purchase a Member's Interest under this Article (the "*Determination Date*"), the Company were to pay all of its outstanding liabilities, and the remaining proceeds were to be distributed to the Members in accordance with the terms of this Agreement. The "*Determination Date*" for purposes of Section 10.6 shall be date of the Member's death, for purposes of Section 10.7 shall be the date of the occurrence of an event described in Subsections thereto or the discovery of the occurrence of such an event, whichever is later, and for purposes of Section 10.9 shall be the date of the Company's receipt of the Offer. For purposes of this Article, the term "Fair Market Value" shall mean the gross value of any asset, as of the date of the event requiring the determination, as determined by the Management Committee or General Manager, acting in good faith and based upon a commercially reasonable estimate of the amount that would be realized by the Company if the asset(s) of the Company were sold to a non-affiliated purchaser in an arms' length transaction where neither the purchaser nor the seller were under any economic compulsion to enter into the transaction (without regard to any discount in value as a result of the Company's minority interest in any asset or any illiquidity of the Company's interest in any asset).

(b) *Closings; Tenders.* At any closing with respect to a Transfer of any portion of a Member's Interest provided for in this Agreement (including any Transfers pursuant to Sections 10.6, 10.7 and 10.9 of this Agreement), the transferring or selling Member (or the Member's Legal Representative, as the case may be) shall deliver to the appropriate purchaser(s) the certificate(s) representing the transferring or selling Member's Interest (or, in the event the Interest is uncertificated, such other documentation evidencing the Member's legal ownership of the Interest) to be purchased, duly endorsed for Transfer, in exchange for payment by each purchaser of such purchaser's portion of the aggregate Purchase Price determined as provided in this Agreement. A purchaser may off-set against the Purchase Price any amounts owing to the purchaser by the selling or transferring Member.

(c) *Payment of Purchase Price.* In the event that the Purchase Price to be paid by the Company or the Non-Selling Members due to transactions arising under this Article is equal to or less than One Million Dollars (\$1,000,000), then the Company or the Non-Selling Members, as the case may be, shall pay to the transferring or Selling Member the Purchase Price in full at closing. In the event that the Purchase Price to be paid by the Company or the Non-Selling Members due to transaction arising under this Article is greater than One Million Dollars (\$1,000,000), then the Company or the Non-Selling Members, as the case may be, shall pay the first One Million Dollars (\$1,000,000) of the Purchase Price at closing and shall deliver to the transferring or Selling Member a promissory note for the balance of the Purchase Price. The note shall have a term of five (5) years and shall bear interest at the lowest prime rate reported by the Wall Street Journal (or similar reporting institution) on the date of execution and delivery of the note.

10.11 Assignment of Right to Purchase. Any person or party may not assign any right it may have to purchase a Membership Interest pursuant to this Agreement.

10.12 Irreparable Harm. The Members acknowledge that a breach of their respective obligations relating to Transfers will cause irreparable harm to the Company and to the other Member(s) that will be difficult to quantify and for which money damages would be inadequate. As a result, the Members agree that in the event of such a breach or threat of such a breach the Company and the other Member(s) may, in addition to any other legal or equitable remedies they may have, enforce their respective rights by actions for specific performance (to the extent permitted by law), without the necessity of posting a bond, and the Company may refuse to recognize any transferee as one of its Members for any purpose, including, without limitation, for purposes of voting rights and rights to taxable income and losses unless and until all applicable provisions of this Agreement have been

complied with.

ARTICLE XI - TERMINATION AND LIQUIDATION

11.1 The Company shall be dissolved upon the first to occur of:

(a) disposal of all or substantially all of the Company's assets except that, if the Company receives a purchase money mortgage or other non-cash consideration in connection with the disposition, the Company shall not dissolve until the non-cash consideration is converted into cash or distributed to the Members;

(b) the dissolution of the Company as approved by the Members holding 80% or more of the Membership Interests;

(c) entry of a decree of judicial dissolution of the Company pursuant to the Law;
and

11.2 Liquidation. Upon the termination of the Company, the General Manager shall proceed with reasonable promptness to wind-up the business of the Company. The assets of the Company shall be sold and the proceeds of sale shall be: (a) first, applied to pay or provide for the payment of all liabilities of the Company; (b) second, applied to pay all expenses of termination and liquidation; and (c) finally, distributed to the Members in accordance with their Membership Interests.

11.3 No Member Dissolution Right. No Member shall have any right to have dissolution or winding up of the Company by decree of court or otherwise, and each Member hereby irrevocably waives and releases all such rights it may otherwise have had under applicable Law. Any Member who shall in any way effect a wrongful dissolution of the Company shall be liable to the other Members therefore, and such Member's Interest shall be subject to lien or attachment as security for such liability.

ARTICLE XII - MISCELLANEOUS

12.1 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any or all of the Members shall be personally delivered or sent by first class mail, postage prepaid, to the address set forth on Schedule A. Additionally, if any member of the Management Committee or the General Manager is not a Member, the address for notices to any such party shall be given by notice to the Members. All notices, demands or requests shall be effective on personal delivery or if mailed, three days following their deposit in the mail as required by this Section 12.1. Any address for the sending of notice may be changed by a Member sending a notice to that effect to the other Members.

12.2 Merger and Amendment. This Agreement contains the sole and entire agreement and understanding of the Members with respect to the subject matter hereof. All prior discussions, negotiations, commitments, and understandings relating thereto are merged herein. This Agreement can be changed or terminated only by a writing signed by Members holding eighty percent (80%) of the Membership Interests. Each Member may grant or withhold its approval of amendments in its discretion and copies of each amendment shall be furnished to each Member.

12.3 Waiver. No consent or waiver, express or implied, by any Member to or of any breach or default in the performance of another Member's obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of any other obligation under this Agreement.

12.4 Severability. If any provisions of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the full extent permitted by law.

12.5 Binding Agreement. Subject to the restrictions on transfers and encumbrances set forth herein, this Agreement shall inure to the benefit of and be binding upon the Members and their respective heirs, executors, legal representatives, successors and assigns. Whenever, in this Agreement, a reference to any Member is made, the reference shall include the heirs, executors, legal representatives, successors and assigns of the Member.

12.6 Definitions and Articles, Sections and Paragraph References. As used in this Agreement, the singular includes the plural and the masculine, feminine and neuter gender each include the other where the context so indicates. References to Articles, Sections and paragraphs shall be references to the Articles, Sections and paragraphs of this Agreement.

12.7 No Rights Created in Third Persons. This Agreement is intended solely for the benefit of the Members and does not create any rights in persons not who are not Members except for the right of the General Manager and the Management Committee members as set forth in Section 7.9.

12.8 Execution. Each Member has signed a signature page to this Agreement. The original of this Agreement and of each signature page shall be retained by the Company and a copy furnished to each Member.

12.9 Governing Law. This Agreement and the obligations of the Members hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of New York.

12.10 Power of Attorney. Each Member constitutes and appoints the General Manager and each member of the Management Committee as the Member's attorney-in-fact to make, execute, sign, acknowledge, and file: (a) the Articles and all amendments thereto; (ii) all documents which the General Manager or the Management Committee deems appropriate to reflect any amendment, change, or modification of this Agreement; (b) any and all other certificates and instruments required to be filed by the Company under the laws of the State of New York or of any other state or jurisdiction including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify a limited liability company under the laws of the State of New York; (c) one or more fictitious or trade name certificates; and (d) all documents which may be required to dissolve and terminate the Company and to cancel the Articles. The power of attorney is irrevocable and is coupled with an interest and, to the extent permitted by applicable law, shall survive the death or disability of a Member. The power of attorney also shall survive the transfer of all or any part of a Member's Interest except that, if the transferee is admitted as Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the General Manager and each member of the Management Committee to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations

made by the General Manager and each member of the Management Committee acting in good faith under this power of attorney.

12.11 Separate Counsel. Each party to this Agreement acknowledges and agrees that such party has been provided the opportunity and encouraged to consult with counsel of such party's own choosing with respect to this Agreement and that no party other than the Company has engaged Harris Beach PLLC to represent his or its interests.

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

(Individual signature pages for each member to follow hereafter)

Schedule A**MEMBERS****Name and Address
of Members****Membership Interest**

F. James McGuire
560 Delaware Avenue, Suite 400
Buffalo, NY 14202

20.8333%

Michael McGuire
515 Chandler Court
Shoreview, MN 55126

15.8334%

Kathleen M. McGuire
6609 Kilmarnoch
Catonsville, MD 21228

15.8334%

Jeannie Marie McGuire
400 E. 71st Street
Apartment 16D
New York, NY 10021

15.8333%

Jacquelyn McGuire Gurney
144 Middlesex Road
Buffalo, NY 14216

15.8333%

Kelly McGuire
560 Delaware Avenue, Suite 400
Buffalo, NY 14202

15.8333%

Schedule B

OFFICERS

General Manager

F. James McGuire

President

James Dentinger

Signature Page to Operating Agreement

The undersigned has executed this counterpart of the Operating Agreement.

(Date)

F. JAMES McGUIRE

Member's Name

Member's Signature

Signature Page to Operating Agreement

The undersigned has executed this counterpart of the Operating Agreement.

(Date)

MICHAEL McGUIRE
Member's Name

Member's Signature

Signature Page to Operating Agreement

The undersigned has executed this counterpart of the Operating Agreement.

(Date)

KATHLEEN M. McGUIRE
Member's Name

Member's Signature

Signature Page to Operating Agreement

The undersigned has executed this counterpart of the Operating Agreement.

(Date)

JEANNIE MARIE McGUIRE
Member's Name

Member's Signature

Signature Page to Operating Agreement

The undersigned has executed this counterpart of the Operating Agreement.

(Date)

JACQUELYN McGUIRE GURNEY
Member's Name

Member's Signature

Signature Page to Operating Agreement

The undersigned has executed this counterpart of the Operating Agreement.

(Date)

KELLY McGUIRE
Member's Name

Member's Signature