

Exhibit 5

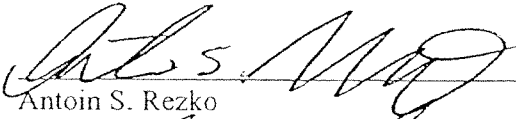
part C

disclose that he no longer has a direct or indirect economic interest in the Property.

- (f) *Third Party Beneficiary.* It is expressly understood that Orifarm S.A., a Luxembourg corporation, is a third party beneficiary to Sections 3 and 9(e).
- (g) *Counterparts; Facsimile.* This Agreement may be executed in separate counterparts (including by means of facsimile), each of which is deemed to be an original and all of which taken together constitute one and the same agreement. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.
- (h) *Governing Law.* This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Illinois.
- (i) *Expenses.* Buyer and Seller will each bear his or its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. The Seller agrees that Buyer has not borne and will not bear any of the Seller's costs and expenses (including any of their legal fees and expenses) in connection with this Agreement or any of the transactions contemplated hereby.

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

BUYER:


Antoin S. Rezko

SELLER:

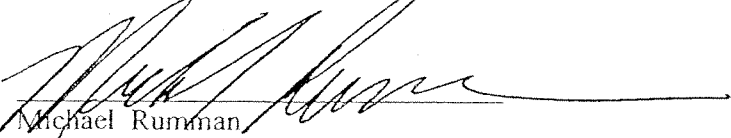

Michael Ruman

EXHIBIT A

AMENDED AND RESTATED
OPERATING AGREEMENT
OF
MT PROPERTY HOLDINGS, LLC

1065657v9

GMH-00000104

INDEX

	<u>Page</u>
ARTICLE 1 DEFINITIONS	1
ARTICLE 2 FORMATION OF THE COMPANY	6
2.1 Formation	6
2.2 Name	6
2.3 Purpose; Powers	6
2.4 Term	6
2.5 Principal Place of Business	7
2.6 Registered Office and Registered Agent	7
2.7 Continuation of Company	7
2.8 Qualification in Other Jurisdictions	7
ARTICLE 3 UNITS	7
3.1 Units	7
3.2 Persons Deemed Members	7
ARTICLE 4 CAPITAL CONTRIBUTIONS	8
4.1 Capital Contributions of Members	8
4.2 Additional Capital Contributions	8
4.3 Capital Accounts	8
4.4 Interest on Capital Contributions	9
4.5 Withdrawal	9
4.6 Return of Capital	10
4.7 Liability of Members	10
ARTICLE 5 ALLOCATION OF COMPANY PROFITS AND LOSSES	10
5.1 Allocations	10
5.2 Special Allocations	10
5.3 Other Allocation Rules	13
5.4 Allocations Solely For Tax Purposes	14
ARTICLE 6 DISTRIBUTIONS AND DISTRIBUTABLE CASH	14
6.1 Timing and Amount	14
6.2 Distributions for Tax Purposes	15
6.3 Distributions In Respect of Illinois Replacement Tax Savings and Comparable Items	15
6.4 Limitations on Distributions	15
ARTICLE 7 MANAGEMENT: RIGHTS, POWERS AND DUTIES	15
7.1 Management	15
7.2 Meetings of and Voting by Members	16
7.3 Personal Services	17
7.4 Duties of Parties	17
7.5 Liability and Indemnification	17
ARTICLE 8 TRANSFER OF INTERESTS AND WITHDRAWALS OF MEMBERS	18
8.1 Transfer	18

8.2	<i>Voluntary Withdrawal</i>	18
8.3	<i>Involuntary Withdrawal</i>	19
8.4	<i>No Right to Terminate the Company</i>	19
8.5	<i>Rights of Unadmitted Assignees</i>	19
8.6	<i>Admission of Transferees as Members</i>	19
ARTICLE 9 ROLE OF MEMBERS; INDEMNIFICATION OF MEMBERS		19
9.1	<i>General Rules</i>	20
9.2	<i>Meetings of the Members</i>	20
ARTICLE 10 DISSOLUTION AND TERMINATION		22
10.1	<i>Events of Dissolution</i>	22
10.2	<i>Liquidation</i>	22
10.3	<i>Filings</i>	23
10.4	<i>Termination</i>	23
ARTICLE 11 BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS		24
11.1	<i>Bank Accounts</i>	24
11.2	<i>Books and Records</i>	24
11.3	<i>Annual Accounting Period</i>	24
11.4	<i>Reports</i>	24
11.5	<i>Tax Matters Person</i>	25
11.6	<i>Tax Elections</i>	25
11.7	<i>Title to Company Property</i>	25
ARTICLE 12 GENERAL PROVISIONS		25
12.1	<i>Assurances</i>	25
12.2	<i>Notifications</i>	25
12.3	<i>Specific Performance</i>	26
12.4	<i>Complete Agreement</i>	26
12.5	<i>Agreement</i>	26
12.6	<i>Applicable Law</i>	26
12.7	<i>Titles</i>	26
12.8	<i>Binding Provisions</i>	26
12.9	<i>Jurisdiction and Venue</i>	26
12.10	<i>Terms</i>	26
12.11	<i>Separability of Provisions</i>	27
12.12	<i>Counterparts</i>	27
12.13	<i>Trustee's Obligations</i>	27
12.14	<i>Securities Law Restrictions/Accredited Investor Statutes</i>	27

AMENDED AND RESTATED
OPERATING AGREEMENT
OF
MT PROPERTY HOLDINGS, LLC

This Amended and Restated Operating Agreement is entered into by and among the Persons whose names are set forth on the signature pages hereof and any Person who hereafter becomes a party hereto pursuant to the provisions hereof, and is made effective as of January 1, 2006.

RECITALS

MT Property Holdings, LLC (the "Company") was organized pursuant to the Illinois Limited Liability Company Act (the "Act") upon the filing of the Articles of Organization (the "Articles") with the Office of Secretary of State at the State of Illinois on December 28, 2006. ⁵

The existing Members, who previously entered into an operating agreement for the Company, desire to amend and restate the prior operating agreement and, as of the date first written above, operate the Company in accordance with and subject to the terms and conditions set forth in such amended and restated operating agreement.

NOW THEREFORE, for good and valuable consideration, the Persons set forth in the signature pages hereto, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

The following terms used herein shall have the following meanings (unless otherwise expressly provided herein, or unless the context clearly indicates otherwise):

1.1 "Act" means the Illinois Limited Liability Company Act, 805 ILCS Sec 180/1-1, et seq., as amended from time to time (or any corresponding provisions of succeeding law).

1.2 "Agreement" means this Amended and Restated Operating Agreement of MT Property Holdings, LLC, as from time to time amended.

1.3 "Annual Tax Distribution" means that distribution provided in Section 6.2.

1.4 "Articles" means the Articles of Organization filed with the Office of the Secretary of State of Illinois, and all amendments thereto.

1.5 "Bankruptcy" means with respect to a Person: (a) a filing by the Person of a voluntary petition in bankruptcy, the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due or the filing against a Member of an

1065657v9

involuntary petition in bankruptcy that is not dismissed within thirty (30) days, (b) the making by the Person of a general assignment for the benefit of creditors, (c) the filing by the Person of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a bankruptcy petition filed against it in any bankruptcy proceeding, (d) the entry of an order, judgment, decree by any court of competent jurisdiction adjudicating the Person a bankrupt or appointing a trustee of its assets, or (e) any levy of execution being made upon the Interest of the Person in the Company.

1.6 "Book Value" means, with respect to any property, the Company's adjusted basis for federal income tax purposes, adjusted from time to time as required or permitted under Treasury Regulations Section 1.704-1(b)(2)(iv)(d)-(g).

1.7 "Capital Account" means the account maintained for each Member in accordance with the provisions of the Code and the regulations promulgated thereunder, including but not limited to the rules regarding maintenance of capital accounts set forth in Treasury Regulations Section 1.704-1.

1.8 "Capital Contribution" means, with respect to any Member executing this Agreement, the capital contribution such Member actually makes pursuant to Article 4 hereof

1.9 "Class A Payment Preference" means the sum of following:

(1) the cumulative amount for all prior and current periods distributable to the Holders of Class A Units pursuant to Section 6.1(ii) computed as if the amounts so distributed included (i) Net Cash and (ii) Company Offering Payments;

plus:

(2) the amount of all Member Offering Payments;

minus:

(3) the cumulative amount for all prior and current periods distributable to the Holders of Class A Units pursuant to Section 6.1(ii) computed without regard to any Section 6.1(i) distributions.

1.10 "Code" means the Internal Revenue Code of 1986, as amended. Any reference to any specific provision of the Code or any regulations promulgated thereunder shall also refer to any successor provisions thereto.

1.11 "Company" means MT Property Holdings, LLC, the Illinois limited liability company to be operated in accordance with the provisions of this Agreement.

1.12 "Company Loss" means, for any applicable fiscal period, all items of income, gain, deduction and loss of the Company, where the aggregate of all such items during any

1065657v9

applicable period results in a net loss to the Company, determined in accordance with Section 4.3.2 of this Agreement.

1.13 **“Company Minimum Gain”** means an amount equal to the Company minimum gain, as determined in accordance with Treasury Regulations Section 1.704-2(d).

1.14 **“Company Offering Payment”** means any amount paid by the Company with respect to any liability, claim or settlement of any matter related to the sale of membership interests by Heritage Development Partners, LLC.

1.15 **“Company Profit”** means, for any applicable fiscal period, all items of income, gain, deduction and loss of the Company, where the aggregate of all such items during any applicable period results in net income to the Company, determined in accordance with Section 4.3.2 of this Agreement.

1.16 **“Deficit Capital Account”** means, with respect to any Member, the deficit balance (if any) in such Member’s Capital Account as of the end of the Fiscal Period or Fiscal Year, after giving effect to the following adjustments:

1.15.1 credit to such Capital Account any amount which such Member is treated as being obligated to restore under Treasury Regulations Section 1.704-1(b)(2)(ii)(c), as well as any addition thereto pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) and (i)(5), after taking into account any changes during the period in Company Minimum Gain and in the Member Minimum Gain; and

1.15.2 debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(ii)(d)(4), (5) and (6).

This definition of “Deficit Capital Account” is intended to comply with Treasury Regulations Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and shall be construed in a manner consistent with those provisions.

1.17 **“Dissociation”** of a Member shall have the meaning provided under Section 35-45 of the Act.

1.18 **“Distribution Interest”** means the right to receive the shares of revenues from production and other income, receipts, or gain of the Company, or of any other distributions from the Company, with respect to an Interest in the Company. The holder of a Distributional Interest is not a Member, nor has any of the other rights herein conferred upon such Member, including the right to vote as a Member until such holder is admitted as a Member (if at all).

1.19 **“Heritage Investor Percentage”** means an amount, expressed as a percentage, that is equal to the amount by which 100 exceeds the product of (x) 100 multiplied by (y) a fraction, the numerator of which is the number of units (or amount of membership interests) in Heritage Development Partners, LLC owned by the Company from time to time, as determined

1065657v9

without regard to class and the denominator of which is the aggregate number of units (or amount of membership interests) in Heritage Development Partners, LLC then outstanding.

1.20 **"Illinois Replacement Tax"** means (a) the Illinois Personal Property Tax Replacement Income Tax, 35 ILCS 5/201 et seq., as amended from time to time, and (b) if the Company is subject to any other state tax (i.e., state tax other than Illinois Replacement Tax) the amount of which is dependent upon the tax character of some or all of the Members.

1.21 **"Illinois Replacement Tax Savings"** means, with respect to a Calendar Year for which the Company is subject to Illinois Replacement Tax, the amount (if any) of additional Illinois Replacement Tax that would have been imposed upon the Company for such Fiscal Year but for the fact that some of the Members are themselves subject to the Illinois Replacement Tax for such year.

1.22 **"Interest"** means the personal property ownership right of a Member, such personal property ownership right being evidenced by and composed of Units, in the Company entitling such Member to, among other things, an allocation of the Company's income, gains, losses, deductions and credits (for both book and tax purposes) and a share of distributions made by the Company. Each Member's allocation of the Company's income, gains, losses, deductions and credits (for both book and tax purposes) and share of the Company's distributions, as applicable, shall be determined in accordance with this Agreement based upon the number of Units owned by such Member.

1.23 **"Interest Holder"** or **"Holder"** means any Member, assignee or other transferee of a Member who is not admitted as a Member, but is a holder of a Distributional Interest.

1.24 **"Member"** means any Person that holds an Interest in the Company represented by Units and is admitted as a Member of the Company pursuant to this Agreement.

1.25 **"Member Minimum Gain"** means an amount, with respect to each Member Non-recourse Debt, equal to the Company Minimum Gain that would result if such Member Non-recourse Debt were treated as a Company non-recourse liability, as determined in accordance with Treasury Regulations Section 1.704-2.

1.26 **"Member Non-Recourse Debt"** shall have the same meaning as the term "partner non-recourse debt" set forth in Treasury Regulations Section 1.704-2(b)(4).

1.27 **"Member Non-Recourse Deductions"** shall have the same meaning as the term "partner non-recourse deductions" set forth in Treasury Regulations Section 1.704-2(i)(1) and 1.704-2(i)(2).

1.28 **"Member Offering Payment"** means any amount paid by a Holder of Class A Units with respect to any liability, claim or settlement of any matter related to any sale of membership interests by Heritage Development Partners, LLC.

1.29 "Net Cash" means, for each Fiscal Year or a portion thereof, (a) all cash of the Company derived from Company operations, after deducting: (i) all cash expenditures incurred in connection with the operation of the Company's business; (ii) an amount necessary to pay all liabilities of the Company then due and owing including, without limitation, all loans to the Company and all advances made by any Member to the Company; and (iii) an amount determined by the Members to be reasonably necessary or desirable as a reserve for the operation of the Company business, liabilities of the Company not yet due, and/or future or contingent liabilities of the Company, and (b) the net cash proceeds from all sales and other dispositions and all refinancing of Company Assets, less any portion thereof used to establish reserves, all as determined by the Member.

1.30 "Non-Recourse Deductions" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

1.31 "Non-Recourse Liability" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

1.32 "Ownership Percentage" means, with respect to any Member as of any date, the ratio (expressed as a percentage) of the number of Units held by such Member on such date to the aggregate of all Units held by all Members on such date.

1.33 "Property" means certain real property located at Roosevelt Road and Clark Street in Chicago, Illinois currently owned by Riverside District Development, LLC.

1.34 "Quarterly Estimated Tax Distribution" is defined in Section 6.2.

1.35 "Securities Act" means the Securities Act of 1933, as amended from time to time.

1.36 "Tax Allowance Amount" means, with respect to any Member for any calendar quarter, an amount reasonably determined by the Members, in good faith, to be the estimated income tax liability of such Member (or the owners of such Member that is a flow-through entity for federal income tax purposes) arising from its ownership of Units. The Tax Allowance Amount for each Member shall be computed on the assumption that all Members are subject to taxation at the same combined federal and state income tax rates, which shall be the highest combined rates applicable to any Member, as determined by the Members. The amount so determined by the Members shall be the Tax Allowance Amount for such period and shall be final and binding on all Members.

1.37 "Tax Matters Partner" means the Person designated as such in Section 13.1.2 of this Agreement.

1.38 "Transfer" means, as a noun, any voluntary or involuntary transfer, sale, assignment, pledge or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, assign, pledge, or otherwise dispose of.

1.39 "Treasury Regulations" means the proposed, temporary and final regulations promulgated under the Code, as amended from time to time.

1.40 "Unit" means a reference to a Class A Unit, Class B Units, and/or Class C Unit and represents an ownership interest issued by the Company represented by Units, with rights, interests, duties and obligations set forth in this Agreement with respect to Units, and representing a Capital Contribution in cash or other property equal to the price per Unit or fraction thereof paid by a Member and set forth on Schedule I.

1.41 "Unpaid Class A Payment Preference Balance" means, for the Holders of Class A Units, such Holders' Class A Payment Preference less amounts distributed to such Holders pursuant to Section 6.1(i) hereof.

1.42 "Voting Power" of any Person, means the total number of votes, which may be cast by the Members of the total number of outstanding shares of stock, units or interests of any class or classes of such Person in any election of directors of such Person.

1.43 "Withdrawal" means, with respect to any Member, the death or Bankruptcy of such Member or a complete assignment or disposition of such Member's entire interest in the Company made during the lifetime (or other existence) of such Member.

ARTICLE 2 FORMATION OF THE COMPANY

2.1 *Formation.* The Company has been organized as an Illinois Limited Liability Company pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement.

2.2 *Name* The name of the Company is MT Property Holdings, LLC, and appropriate certificates and affidavits shall be filed and recorded as may be necessary to secure said name.

2.3 *Purpose; Powers.* The purpose of the Company is (i) to own a membership interest in Heritage Development Partners, LLC, an Illinois limited liability company and (ii) to carry on any and all other lawful business, purpose or activity, except for any purposes prohibited under the Act. The Company shall possess and may exercise all powers and privileges granted by the Act, any other law, or by the Agreement, including incidental powers thereto, to the extent that such powers and privileges are necessary, customary, convenient or incidental to the attainment of the Company's purposes.

2.4 *Term.* The term of the Company commenced on the date that the Articles was filed in the office of the Secretary of State of the State of Illinois and shall continue until the Company is dissolved in accordance with the provisions of either this Agreement or the Act.

1065657v9

2.5 *Principal Place of Business.* The principal place of business of the Company shall initially be located at 233 South Wacker Drive, 95th Floor, Chicago, IL 60606, or at such other location or locations as the Members may from time to time designate.

2.6 *Registered Office and Registered Agent.* The Company's initial registered office shall be at the office of its registered agent at 233 South Wacker Drive, Chicago, Illinois 60606, and the name of its initial registered agent at such address shall be Michael Rumman. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Office of the Secretary of State of the State of Illinois, and paying any fees required under the Act.

2.7 *Continuation of Company.* The Members hereby agree that the Company shall be organized, administered, operated and terminated in accordance with the provisions of this Agreement and the Act. The Members hereby further agree that the rights, duties, liabilities and obligations of the Members, and each class thereof, shall be governed by the provisions of this Agreement and the Act.

2.8 *Qualification in Other Jurisdictions.* The Members shall have the authority to cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company conducts business and in which such qualification, formation or registration is required by law or deemed advisable by the Members.

ARTICLE 3 UNITS

3.1 *Units.* The Interests in the Company shall be designated as Units and shall be divided into three series, "Class A Units"; "Class B Units"; and "Class C Units." The Units of each Member in the Company are personal property. All Units redeemed, purchased or otherwise acquired by the Company shall be canceled and thereupon restored to the status of authorized but unissued Units. Holders of Units shall have the respective rights, interests, duties, and obligations that are set forth in this Agreement. The Company shall not issue new or additional Units or options or other securities to purchase or otherwise acquire or convert to new or additional Units, at any time and from time to time without the unanimous consent of the Members.

3.2 *Persons Deemed Members.* The Company may treat the Person in whose name any Unit shall be registered on the books and records of the Company as a Member and the sole Holder of such Unit for all purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claims to or interest in such Unit or the part of any other Person, whether or not the company shall have actual or other notice thereof.

ARTICLE 4
CAPITAL CONTRIBUTIONS

4.1 *Capital Contributions of Members; Ownership.* The names of the Members of the Company are maintained on the Company's books and records. Set forth on Schedule I "Ownership of Members" attached hereto are the number and class of Units issued to each Member. Each Member shall receive, in exchange for the capital contribution of such Member, the number and class of Units set forth opposite such Member's name thereon. The initial values of the Members' Capital Accounts are maintained on the Company's books and records.

4.2 *Additional Capital Contributions.* The Members shall not be obligated to contribute additional capital, however, any additional capital contributions shall be in the form of cash unless otherwise approved by the Members.

4.3 *Capital Accounts.*

4.3.1. A separate Capital Account will be maintained for each Member in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv) and 1.704-2, as amended. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such property that the Company assumes or takes subject to for purposes of Code Section 752); and (3) allocations to such Member of Company Profits and other allocations to such Member of items of Company income or gain. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); and (3) allocations to such Member of Company Losses and other allocations to such Member of items of Company loss or deduction. The Company may, upon the occurrence of the events specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

4.3.2. For purposes of computing the amount of any item of Company income, gain, loss or deduction to be reflected in the Members' Capital Accounts and to be allocated pursuant to Article 5 of this Agreement, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose), provided that:

4.3.2.1 The computation of all items of income, gain, loss and deduction shall include income and expense of the Company that is exempt from federal income tax and also those items described in Code Section 705(a)(1)(B) or Treasury Regulations Section 1.704-1(b)(2)(iv)(i), without regard to the fact that

such items are not includible in gross income or deductible for federal income tax purposes;

4.3.2.2 If the Book Value of any Company property is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e) or (f), the amount of such adjustment shall be taken into account as gain or loss from a disposition of such property;

4.3.2.3 Items of income, gain, loss or deduction attributable to the disposition of Company property having a Book Value that differs from its adjusted basis for federal income tax purposes shall be computed by reference to the Book Value of such property;

4.3.2.4 Items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted basis for federal income tax purposes shall be computed by reference to the Book Value of such property in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

4.3.2.5 To the extent an adjustment pursuant to Code Section 732(d), 734(b) or 743(b) to the adjusted tax basis of any Company property is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the tax basis) or loss (if the adjustment decreases the tax basis); and

4.3.2.6 Items of Company income, gain, loss or deduction that are specially allocated pursuant to Section 5.2 shall be determined in the same manner as Company Profits and Company Losses, but such specially allocated items shall not be taken into account in computing Company Profits and Company Losses.

4.3.3. The rules set forth in this Section 4.3 are intended to comply with the requirements of the Code and Treasury Regulations. If, in the opinion of the Members, the rules set forth in this Section 4.3 must be modified in order for the Company to comply with the requirements of the Code or the Treasury Regulations, then the method in which Capital Accounts are maintained shall be so modified.

4.4 *Interest on Capital Contributions.* Except as otherwise expressly provided in this Agreement, no Member shall receive interest on such Member's Capital Contribution.

4.5 *Withdrawal.* Each Member hereby covenants that he shall not willfully Dissociate himself as a Member without the consent of the Members. Any Member that voluntarily Dissociates himself as a Member pursuant to Section 35-45(1) of the Act shall be liable to the Company and its Members for all damages and costs that result from such

Dissociations and any consequential dissolution of the Company. Upon the Dissociation of any Member, such Member shall no longer participate in the management or conduct of the Company's business.

4.6 *Return of Capital.* Except as otherwise provided in Article 6 and Section 11.2, or another express provision of this Agreement, or required under the Act, no Member shall have priority over any other Member as to the return of any Capital Contribution. Any return of capital to the Members shall be solely from Company assets and the Members shall not be personally liable for any such return except as provided in the Act.

4.7 *Liability of Members.* Except as required under the Act or any other provision of this Agreement, no Member shall have any obligation to restore any portion of any Capital Account deficit or to contribute to the capital of the Company; nor shall any Member have any personal liability for debts or other obligations of the Company, including without limitation obligations for federal and state income taxes and any state replacement taxes.

ARTICLE 5 ALLOCATION OF COMPANY PROFITS AND LOSSES

5.1 *Allocations* Except as otherwise provided in Section 5.2, Company Profits and Company Losses for any calendar year shall be allocated among the Interest Holders such that, as of the end of such year, the Capital Account of each Interest Holder shall equal (a) the amount which would be distributed to him or it or for which they would be liable to the Company under the Act, determined as if the Company were to (i) liquidate the assets of the Company for an amount equal to their Book Value and (ii) distribute the proceeds of such liquidation pursuant to Section 6.1 minus (b) the sum of (i) such Interest Holder's share of Company Minimum Gain (as determined according to Treasury Regulation Sections 1.704-2(d) and (g)(3)) and such Interest Holder's partner minimum gain (as determined according to Treasury Regulation Section 1.704-2(i)) and (ii) the amount, if any, which such Interest Holder is obligated to contribute to the capital of the Company as of the last day of such Fiscal Period.

5.2 *Special Allocations.* The following special allocations will be made in the following order:

5.2.1. *Company Minimum Gain Chargeback.* Except as otherwise provided in Section 1.704-2(f) of the Treasury Regulations, notwithstanding any other provision of this Article 5, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Treasury

5.2.7. *Section 754 Adjustments.* To the extent that an adjustment to the tax basis of any Company property pursuant to Code Section 734(b) or 743(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or (m)(4) to be taken into account in determining Capital Accounts as a result of a distribution to a Member in complete liquidation of its Interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain or loss and shall be specially allocated to the Members in proportion to their respective Ownership Percentage in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies. Other items of gain or loss described in Section 4.3.2.5 shall be allocated in a manner consistent with the manner in which the corresponding adjustments to Capital Accounts are made.

5.2.8. *Curative Allocations.*

5.2.8.1 The special allocations required under this Section 5.2.8.1 are intended to comply with the Treasury Regulations. It is the intent of the Company and each of the Members that all special allocations made pursuant to Section 5.2.1 through Section 5.2.7 shall be offset either with other special allocations made pursuant to Section 5.2.1 through Section 5.2.7 or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 5.2.8. Therefore, the Members may, in its sole discretion, make, pursuant to this Section 5.2.8, such offsetting special allocations of Company income, gain, loss or deduction in any manner the Members determine to be appropriate, consistent with the goal that each Member's Capital Account balance be, to the extent possible, equal to the Capital Account balance such Member would have had in the absence of any allocations pursuant to Section 5.2.1 through 5.2.7.

5.2.8.2 The Members expect and intend that upon the liquidation of the Company, after giving effect to all contributions and all allocations for all periods, each Member's Capital Account will have a positive balance equal to the amount of proceeds distributable to such Member. If in the opinion of the Members this intended result would not be achieved without modification of the allocations required under this Article 5, then the allocations required under this Article 5 shall be modified in a manner consistent with Treasury Regulations Section 1.704-1(b) and 1.704-2 to the extent necessary to cause each Member's Capital Account to have a balance equal to the amount of proceeds distributable to such Member upon the liquidation of the Company.

5.2.8.3 If the Members determine that the allocation of any item of Company income, gain, loss, deduction or credit is not specified in this Article 5 (an "unallocated item"), or that the allocation of any item of Company income, gain, loss, deduction or credit under this Article 5 is clearly inconsistent with the Members' economic interests in the Company (determined by reference to the

general principles of Treasury Regulations Section 1.704-1(b) and the factors set forth in Treasury Regulations Section 1.704-1(b)(3)(ii) (a "misallocated item"), then the Members may cause the Company to allocate such unallocated item, or reallocate such misallocated item, to reflect the Members' economic interests in the Company.

5.2.9. *Allocations Relating to Taxable Issuance of Units.* Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of a Unit by the Company to a Member shall be allocated among the Members so that, to the extent possible, the net amount of such items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each Member if such items had not been realized.

5.2.10. *Allocations Relating to Illinois Personal Property Tax Replacement Income Tax and Comparable Items.* If the Company incurs liability for Illinois Replacement Tax for a Fiscal Year with respect to which the Company also realizes Illinois Replacement Tax Savings, then items of Company loss or deduction attributable to the Company's Illinois Replacement Tax expense shall be allocated to the Members that are not themselves subject to the Illinois Replacement Tax for such Fiscal Year and such allocation shall be made in proportion to the amount of Company Profits allocated to such Members for the period with respect to which such Illinois Replacement Tax is imposed. The principles of this Section 5.2.10 shall also apply if the Company is subject to any other tax, the computation of which depends in whole or in part upon the character of the Members.

5.3 *Other Allocation Rules.*

5.3.1. Company Profits, Company Losses, and all other items of Company income, gain, loss, deduction and credit shall be determined using any method permitted under Code Section 706 and the Treasury Regulations.

5.3.2. The Members are aware of the tax consequences of the allocations required under this Article 5 and each Member hereby agrees to be bound by the provisions of this Article 5 in reporting such Member's share of Company income, gain, loss and deduction for federal income tax purposes.

5.3.3. Solely for purposes of determining a Member's proportionate share of the "excess non-recourse liabilities" of the Company (within the meaning of Treasury Regulations Section 1.752-3(a)(3)), such Member's interests in Company profits are in proportion to such Member's Ownership Percentage.

5.3.4. As between a Member and any permitted (under this Agreement) transferee of all or any portion of such Member's Units, Company Profits and Company Losses shall be allocated by the Members in a manner intended to comply with Section 706 of the Code and the Treasury Regulations promulgated thereunder. In order to make

such an allocation, the Members may, in its discretion, close the Company's books on the date of such permitted transfer.

5.4 *Allocations Solely For Tax Purposes.*

5.4.1. Allocations required under this Section 5.4.1 are solely for tax purposes and shall not affect any Member's Capital Account or any Member's share of any distribution from the Company.

5.4.2. Allocations of tax credits, tax credit recapture, tax benefit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items taking into account the principles of Treasury Regulations Section 1.704-1(b)(4)(ii).

5.4.3. Items of Company income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) so as to take account of any variance between the tax basis of such property to the Company and its Book Value.

5.4.4. If the Book Value of any Company property is adjusted pursuant to Section 5.4.4, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such Company property shall take account of any variation between the tax basis of such Company property and its Book Value in the same manner as required under Code Section 704(c).

ARTICLE 6
DISTRIBUTIONS AND DISTRIBUTABLE CASH

6.1 *Timing and Amount.* At such times as they shall determine, the Members shall calculate the amount of Net Cash, if any, available for distribution to the Members at least quarterly and promptly distribute such amounts in the following order of priority:

(i) First, to the Holders of Class A Units, until the Unpaid Class A Payment Preference Balance equals zero.

(ii) Thereafter, to the Holders of the Class A Units, the Class B Units and the Class C Units in proportion to the following percentages:

A. with respect to the Holders of Class B Units, a percentage equal to the sum of (x) 78.4% minus (y) the Heritage Investor Percentage; and

B. with respect to the Holders of the Class A Units and the Class C Units, in proportion to the number of Units held by such Holders, a percentage equal to the sum of (x) 100% minus (y) the percentage determined with respect to the Holders of the Class B Units pursuant to Section 6.1(ii)(A) above.

6.2 *Distributions for Tax Purposes.* On or before the 90th day after the end of each year, the Company shall distribute to the Members out of Net Cash the cash amount equal to the Tax Allowance Amount multiplied by the excess, if any, of (a) the amount of taxable income allocated to such Members under this Agreement for such year, over (b) the amount, if any, by which the sum of all items of deduction and loss allocated to such Members under this Agreement for all prior years exceeds the sum of all items of taxable income allocated to such Members for all prior years (the "Annual Tax Distribution"). At the end of each quarter of the year, the Company shall estimate the portion of the current Annual Tax Distribution attributable to such quarter and allocable to specific Members (the "Quarterly Estimated Tax Distribution") and within 15 days of the end of such calendar quarter, the Company shall make a cash distribution to the Members of such Quarterly Estimated Tax Distribution allocable to such Members such that Members may make quarterly estimated federal and estimated state income tax payments. Any Quarterly Estimated Tax Distributions shall be credited against any Annual Tax Distribution due a Member, with any excess Quarterly Estimated Tax Distributions for such Fiscal Year credited against the next Quarterly Estimated Tax Distributions for the following Fiscal Years. Any Annual Tax Distributions or Quarterly Estimated Tax Distributions may be directly deposited with the appropriate federal or state tax authority for a Member's benefit in lieu of an actual distribution. Any amounts distributed to a Member under this Section 6.2 shall be credited against future amounts otherwise distributed to such member under Section 6.2.

6.3 *Distributions In Respect of Illinois Replacement Tax Savings and Comparable Items.* On or before the 90th day following the close of each year, the Company shall distribute to the Members that are themselves subject to the Illinois Replacement Tax for such year an amount equal to the Company's Illinois Replacement Tax Savings for such year. Such distribution shall be made to and among such Members in proportion to the amount of Company Profits allocated to such Members for such year. The Company shall also make distributions to Members, at such times and in such proportionate amounts as provided for in this Section 6.3, in respect of any tax that would have been imposed upon the Company in a year but for the fact that some Members are themselves subject to such tax.

6.4 *Limitations on Distributions.* Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any distribution to any Member if such distribution would violate Section 180/25-30 of the Act or other comparable applicable law.

ARTICLE 7 MANAGEMENT: RIGHTS, POWERS AND DUTIES

7.1 *Management.*

7.1.1 The Company shall be managed by the Members; provided, however, that responsibility for making ministerial decisions in connection with the ordinary course of business may be delegated by the Members to one or more Officers. Except as otherwise provided in this Agreement, no Member shall have the right to act for and bind the

Company in the ordinary course of its business or otherwise without the written approval of Members owning a majority of the Ownership Percentages then held by the Members.

7.1.2 The Members, by the vote required under Section 7.2.2, may from time to time appoint or remove various individuals ("Officers") to supervise and manage the day-to-day affairs of the Company who shall be assigned such title(s) as the Members deem appropriate. An Officer need not be a Member. The Officers' authority shall be ministerial only, and the Officers shall not make any decisions on behalf of the Company out of the ordinary course of business.

7.2 Meetings of and Voting by Members.

7.2.1 A meeting of the Members may be called at any time by those Members holding at least twenty percent (20%) of the Ownership Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place in Cook County, Illinois, designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written Notice of the meeting to each Member entitled to vote at the meeting. The Notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than fifty one percent (51%) of the Ownership Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by his duly authorized attorney in fact.

7.2.2 Except as otherwise provided in this Agreement, including but not limited to Section 7.1.2 hereof, the affirmative vote of Members holding fifty one percent (51%) or more of the Ownership Percentages then held by Members shall be required to approve any matter coming before the Members.

7.2.3 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding a majority of the Ownership Percentages then held by Members.

7.2.4 Except as otherwise provided in this Agreement, wherever the Act requires unanimous consent to approve or take any action, that consent shall be given in writing.

7.2.5 If a Member is a corporation, partnership or limited liability company, it shall provide the Company and all other Members with a written Notice identifying the individual authorized to represent, vote, bind and act on behalf of such Member on all Company affairs. The individual so identified shall continue to have authority to act on

7.5.1 No Member, Person acting on behalf of a Member on matters relating to the Company, or Officer of the Company (an "Indemnified Person") shall be liable, responsible, or accountable, in damages or otherwise, to any other Member or to the Company for any breach of fiduciary duty, loss sustained or liability incurred in connection with, or attributable to, ordinary negligence, errors in judgment, failure to use ordinary skill or for any other act or omission with respect to Company matters that do not constitute for fraud, gross negligence, recklessness or an intentional breach of this Agreement.

7.5.2 The Company shall indemnify each Indemnified Person for any act performed by the Indemnified Person with respect to Company matters, as and to the full extent permitted by law, but in no event for fraud, gross negligence, recklessness, or an intentional breach of this Agreement.

7.5.3 Expenses (including legal fees and costs) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding subject to Section 7.5.2, above (collectively, a "Proceeding"), shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of an undertaking (whether or not secured) by or on behalf of such Indemnified Person to repay such amount if it shall be finally determined by a court of competent jurisdiction that such Person is not entitled to be indemnified by the Company as authorized hereunder

ARTICLE 8

TRANSFER OF INTERESTS AND WITHDRAWALS OF MEMBERS

8.1. *Transfer.* No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Rights or Interest without the unanimous consent of all Members.

8.2. *Voluntary Withdrawal.* Any Member who Voluntarily Withdraws from the Company is wrongfully dissociating from the Company (a "Disassociating Member"). Any Disassociating Member shall give the other Member(s) written Notice of the withdrawal, which shall be effective as of the date specified in Section 8.2 (the "Effective Date"). Upon the Effective Date, the Interest of the Disassociating Member shall be converted to the Interest of a non-member Interest Holder. At any time thereafter, the Company may elect to purchase the Interest of the Disassociating Member. If the Company purchases the Disassociating Member's Interest before the Company is dissolved, the purchase price of the Interest shall be the lesser of (a) the fair market value of the interest on the Effective Date, and (b) the fair market value of the Interest on a date which is thirty days before the date fixed by the remaining Member(s) for the Company's purchase of the Interest. Fair market value shall be determined by an appraiser reasonably acceptable to the Company and the Disassociating Member. If the Company purchases the Disassociating Member's Interest at dissolution, the purchase price shall be the lesser of (x) the fair market value of the Interest on the Effective Date, and (y) the fair market value of the interest on the Dissolution Date, and (z) the amount the Disassociating Member would have received based upon his Percentage had he remained a Member through the

liquidation of the Company. The purchase price for the Disassociating Member's Interest shall be paid in wired federal funds or by cashier's or certified check drawn on any national bank located in Illinois. The Disassociating Member shall receive distributions and allocations of net income and loss in lieu of interest until the purchase price for his Interest has been paid.

8.3. *Involuntary Withdrawal.* Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the Withdrawn Member shall thereupon become a Holder but shall not become a Member. The successor Holder shall have all the rights of a Holder but neither the predecessor nor the successor Holder shall be entitled to receive, at the time of the Involuntary Withdrawal and in liquidation of the Interest pursuant the Act, the fair market value of the Member's Interest as of the date the Member involuntarily withdrew from the Company, but in lieu thereof, the Holder shall be entitled to receive the Distributions as provided in Section 6.1.

8.4. *No Right to Terminate the Company.* No Member shall have the right to terminate or dissolve the Company except as set forth in this Agreement or in Sections 35-1(3) and(4) of the Act.

8.5. *Rights of Unadmitted Assignees.* A Person who acquires Membership Rights or Interest but who is not admitted as a substituted Member pursuant to Section 8.6 shall hold only a distribution interest shall and be entitled only to allocations and distributions with respect to such Interests in accordance with this Agreement, shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

8.6. *Admission of Transferees as Members.* Subject to the other provisions of this Article 6, a transferee of Units may be admitted to the Company as a Member only upon satisfaction of the conditions set forth below in this Section 8.6:

- 8.6.1. The Members consent to such admission, which consent may be given or withheld in the sole and absolute discretion of the Members;
- 8.6.2. The transferee becomes a party to this Agreement as a Member and executes such documents and instruments as the other Members may reasonably request as may be necessary or appropriate to confirm such transferee as a Member in the Company and such transferee's agreement to be bound by the terms and conditions of this Agreement;
- 8.6.3. The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Member incurs in connection with the admission of the transferee as a Member with respect to the Transferred Units.

ARTICLE 9 ROLE OF MEMBERS; INDEMNIFICATION OF MEMBERS

9.1 *General Rules.* Except as otherwise stated in this Agreement or required under the Act, Members shall not take any part in the day-to-day management or conduct of the business of the Company, nor shall such Members have any right or authority to act for or bind the Company. Except as otherwise required under the Act, any action of the Members shall be taken by the affirmative vote of the Members holding a majority of the Units then held by Members who are entitled to vote pursuant to this Article 9.

9.2 *Meetings of the Members.* Except as otherwise stated in this Agreement or required under the Act, the following provisions shall apply to all meetings of Members:

9.2.1. Place and Time of Annual Meetings. An annual meeting of the Members shall be held each year on the first Tuesday in the month of April at 10:00 o'clock a.m., unless such day should fall on a legal holiday, in which event the meeting shall be held at the same hour on the next succeeding business day that is not a legal holiday.

9.2.2. Special Meetings. Special meetings of Members may be called for any purpose and may be held at such time and place, within or without the State of Illinois, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Special meetings of the Members may be called by the Members holding not less than 51% of all outstanding Units entitled to vote on the matter for which the meeting is called.

9.2.3. Place of Meetings. The Members may designate any place, either within or without the State of Illinois, as the place of meeting for any annual meeting or for any special meeting called. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Company.

9.2.4. Notice of Meetings. Unless otherwise provided by statute, whenever Members are required or permitted to take action at a meeting, written or printed notice stating the place, day, and hour, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each Member entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting or in the case of a merger, consolidation, Unit exchange, dissolution or sale, lease or exchange of all or substantially all assets not less than 20 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the officers, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the Member at his, her or its address as the same appears on the records of the Company. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Notice may also be waived in writing by any Member.

Unless otherwise provided by herein or by law, neither the business to be transacted at, or the purpose of, any regular or special meeting need be specified in any written waiver of notice.

- 9.2.5. Quorum. Unless otherwise provided herein or by statute, a majority of the outstanding Units entitled to vote at a meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the Members, however, a quorum shall not consist of less than one-third of the outstanding Units entitled to vote. If a quorum is not present, the Members holding a majority of the Units present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. Members may participate in any meeting of Members by means of conference telephone or similar communication equipment by means of which all Members participating in such meeting can hear each other, and such participation shall constitute presence in person at such meeting.
- 9.2.6. Proxies. Each Member may appoint a proxy to vote or otherwise act for him or her by signing an appointment form and delivering it to the person so appointed, but no such proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.
- 9.2.7. Voting of Units. Each outstanding Unit owned by a Member shall be entitled to one vote, and each outstanding fractional Unit owned by a Member shall be entitled such percentage of one vote that is represented by the fractional Unit. In each matter submitted to vote at a meeting of Members, every Member shall have the right to vote the number of Units owned by such Member. Each Member may vote either in person or by proxy as provided herein.
- 9.2.8. Informal Action. Unless otherwise provided by statute, any action required to be taken at any annual or special meeting of the Members of the Company, or any other action which may be taken at a meeting of the Members may be taken without a meeting and without a vote if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding Units having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Units entitled to vote thereon were present and voting. If such consent is signed by less than all of the Members entitled to vote, then such consent shall become effective only if at least five days prior to execution of the consent a notice in writing is delivered to all the Members entitled to vote with respect to the subject matter thereof and, after the effective date of the consent, prompt notice of the taking of the Company action without a meeting by less than unanimous written consent shall be delivered in writing to those Members who have not consented in writing.
- 9.2.9. Indemnification of Members. The Company shall, to the fullest extent permitted by law, indemnify, defend and hold harmless its Members and former Members

(collectively, the "Indemnified Parties"), from any and all claims, actions, causes of action, suits, proceedings, losses, damages, liability, costs and expenses (including, without limitation, attorneys' fees and court costs) asserted against or incurred or sustained by them by reason of their status as Members of the Company, or by reason of any act performed by them or any omission on their part while acting for or on behalf of the Company and in furtherance of its interests provided that the Indemnified Party acted in good faith and in a manner such party reasonably believed to be in, or not opposed to, the best interest of the Company and, with respect to any criminal action or proceeding, such Indemnified Party had no reason to believe that his or her conduct was unlawful.

ARTICLE 10 DISSOLUTION AND TERMINATION

10.1. *Events of Dissolution.* The Company shall be dissolved, and shall terminate and wind up its affairs, upon the first to occur of the following:

- 10.1.1. the consent of the Members holding of a majority of the Units then outstanding; and
- 10.1.2. the sale of substantially all the assets of the Company;
- 10.1.3. the entry of a decree of judicial dissolution or an administrative dissolution under the Act; and
- 10.1.4. any other event requiring the dissolution of the Company under Section 35-1 of the Act.

Notwithstanding the foregoing, if the Members (and any dissociated Member whose Dissociation caused such dissolution) elect to waive such dissolution as provided under Section 35-3 of the Act, the Company may carry on its business as if no dissolution occurred.

10.2. *Liquidation.* If the Company shall be dissolved by reason of the occurrence of any of the circumstances described in Section 10.1, no further business shall be conducted by the Company except for taking such action as shall be necessary for the winding up of its affairs and the distribution of its assets to the Members. Upon such dissolution of the Company, the Members shall take the following steps:

- 10.2.1. Unless otherwise approved by the Members in accordance with Article 7, dispose of all other Company properties and assets at the best cash price obtainable therefor under the circumstances.
- 10.2.2. Pay all Company debts and liabilities, in the order of priority as provided under applicable law, or otherwise make adequate provision therefor.

- 10.2.3. Determine by independent appraisal the fair market value of the Company properties and assets to be distributed in kind (if permitted under Article 7), and credit or charge (as the case may be) the Capital Account of each Member with the amount that would have been credited or charged to such Member in accordance with Article 4 if such properties and assets had been sold at fair market value.
- 10.2.4. Credit or charge (as the case may be) each Member's Capital Account with such Member's share of all Company Profits and Company Losses that were not previously reflected in any Capital Accounts and that were realized or incurred during the Fiscal Year or Fiscal Years which include the dissolution and termination, up to and including the date of distribution, net of all distributions that were not previously reflected in any Capital Accounts and that were made to such Member during such Fiscal Years up to but not including such date.
- 10.2.5. Distribute to each of the Members the balance, if any, of the properties and assets of the Company in accordance with each Member's Capital Account, as adjusted pursuant to Sections 11.2.3 and 11.2.4.
- 10.2.6. Notwithstanding Sections 11.2.1 through 11.2.5, if any Member shall be indebted to the Company for any reason whatsoever, the liquidator may apply any cash allocated to such Member in accordance with this Section 11.2 to the payment of such indebtedness. If such cash is not sufficient to liquidate such indebtedness in its entirety then, until payment in full of such indebtedness by such Member, the liquidator shall retain such Member's distributive share of the Company properties and assets and, after applying the cost of operation of such properties and assets during the period of such liquidation against the income therefrom, shall apply the balance of such income toward the liquidation of such indebtedness; provided, however, that if upon the expiration of six months after notice of such outstanding indebtedness has been given to such Member, such amount has not been paid or otherwise liquidated in full, the liquidator may sell the assets allocable to such Member at private or public sale at the best cash price immediately obtainable under the circumstances, and so much of the proceeds of such sale as shall be necessary to liquidate such indebtedness shall then be so applied, and the balance (if any) of such proceeds shall be distributed to such Member.
- 10.2.7. The liquidator shall comply with all requirements of the Act, or other applicable law, pertaining to the winding up of a limited liability company.
- 10.3. *Filings.* Upon dissolution and complete winding up of the Company, the liquidator shall file any and all certificates and other documents required under the Act including, but not limited to, Articles of Dissolution as required by Section 35-20 of the Act.
- 10.4. *Termination.* The Company shall terminate when all of the assets of the

Company have been distributed in the manner provided for in Section 11.2 of this Agreement, and the Articles shall have been canceled in the manner required by the Act.

ARTICLE 11
BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS

11.1. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Members shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

11.2. *Books and Records.*

11.2.1. The Company shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the articles of organization and operating agreement and all amendments to the articles and operating agreement; a current list of the names and last known business, residence, or mailing addresses of all Members; and the Company's federal, state or local tax returns.

11.2.2. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

11.2.3. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

11.3. *Annual Accounting Period.* The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Members, subject to the requirements and limitations of the Code.

11.4. *Reports.* As soon as practicable after the end of each taxable year of the Company, the Company shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Company shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

11.5. *Tax Matters Person.* The Members shall designate a Member who shall be the Company's "tax matters person" ("Tax Matters Person"). The Tax Matters Person shall have all powers and responsibilities provided in Code Section 6221, et seq. or such other provisions as may become applicable to limited liability companies. The Tax Matters Person shall keep all Members informed of all notices from government taxing authorities that may come to the attention of the Tax Matters Person. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Person in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Person may not compromise any dispute with the Internal Revenue Service without the approval of the Members.

11.6. *Tax Elections.* The Tax Matters Person shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the Tax Matters Person's sole and absolute discretion.

11.7. *Title to Company Property.*

11.7.1. Except as provided in Section 11.7.1, all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

11.7.2. The Member may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Member may cause title to be acquired and held in its name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company, and all of that property shall be treated as Company property.

ARTICLE 12 GENERAL PROVISIONS

12.1. *Assurances.* Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing and other acts as the Member deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

12.2. *Notifications.* Any notice, demand, consent, election, offer, approval, request, or other communication (collectively, a "Notice") required or permitted under this Agreement must be in writing and either delivered personally sent by certified or registered mail, postage prepaid, return receipt requested sent by recognized overnight delivery service or by facsimile transmittal. A notice must be addressed to an Interest Holder at the Interest Holder's last known address on

the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. A notice sent by recognized overnight delivery service will be deemed given when received or refused. A notice sent by facsimile shall be deemed given when sent provided notice by personal delivery or overnight delivery service is effective the day following such facsimile transmission. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

12.3. *Specific Performance.* The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

12.4. *Complete Agreement.* This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty.

12.5. *Amendment.* Except as expressly provided otherwise herein, this Agreement may be amended upon the unanimous written consent of all of the Members.

12.6. *Applicable Law.* All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Illinois.

12.7. *Titles.* The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

12.8. *Binding Provisions.* This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

12.9. *Jurisdiction and Venue.* Any suit involving any dispute or matter arising under this Agreement may only be brought in any United States District Court in the State of Illinois or Illinois or any Illinois or Illinois State Court having jurisdiction over the subject matter of the dispute or matter. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

12.10. *Terms.* Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require.

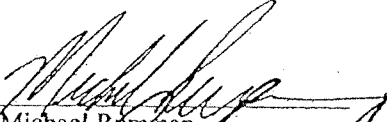
12.11. *Separability of Provisions.* Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

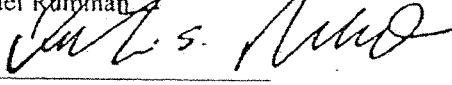
12.12. *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

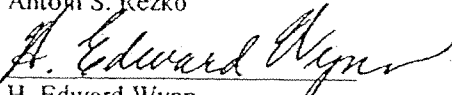
12.13. *Trustee's Obligations.* This Agreement has been executed by certain persons not individually but solely as Trustee. All covenants and obligations to be performed hereunder are undertaken by them solely in their capacity as Trustees and not individually. No personal liability shall be asserted or enforceable against such persons by reason of any of the covenants, statements, representations, or warranties contained in this Agreement.

12.14. *Securities Law Restrictions/Accredited Investor Statutes.* Each of the Members represents and warrants that he is an "Accredited Investor" as that term is defined in Rule 501 of the Securities Act of 1933, that he is acquiring his interest for his own account as an investment and not with a view toward resale, that he is aware of and understands the risk inherent in this investment and can afford to lose his entire investment in the Company, and that any transfer of his interest is subject to numerous restrictions which are both set forth in this Agreement and arise under applicable Federal and State Law. Each Member agrees to indemnify and hold the Company and all Members harmless from any loss, liability or expense resulting from a breach of these representations.

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed as of the date first set forth above.


Michael Ramin


Antoin S. Rezko


H. Edward Wynn

MT PROPERTY HOLDINGS, LLC OPERATING AGREEMENT

EXHIBIT A
LIST OF MEMBERS, CAPITAL, AND PERCENTAGES

<u>Name of Members</u>	<u>Initial Capital Contribution</u>	<u>Number and Class of Units</u>
Michael Rumman	\$196.00	196 Class A Units
Antoin S. Rezko	\$784.00	784 Class B Units
H. Edward Wynn	\$20.00	20 Class C Units
Total	\$1,000	1,000 Units

CONSENT RESOLUTION
MT PROPERTY HOLDINGS, LLC

WHEREAS, the Members of MT Property Holdings, LLC are Antoin Rezko, Michael Rumman, and H. Edward Wynn; and

WHEREAS, Exhibit A of the Amended and Restated Operating Agreement of MT Property Holdings, LLC, states the number of units as:

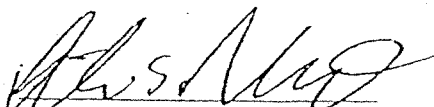
196 Class A Units
784 Class B Units
20 Class C Units

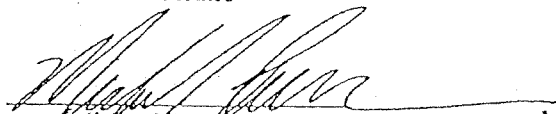
WHEREAS, the Members wish to restate the number of Units to reflect the same percentages of ownership, as follows:

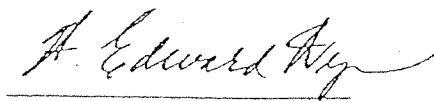
19.6 Class A Units
78.4 Class B Units
2.0 Class C Units

NOW, THEREFORE, having considered the matter, the Members of MT Property Holdings, LLC, hereby Consent to the Restatement of the Units in Exhibit A as described herein.

Dated this 14th day of June, 2006.


Antoin Rezko


Michael Rumman


H. Edward Wynn

**MT PROPERTY HOLDINGS, LLC
AMENDMENT TO AMENDED AND RESTATED
OPERATING AGREEMENT**

This Amendment to the Amended and Restated Operating Agreement of MT Property Holdings, LLC (this "Amendment") is made as of March 15, 2007 by those Members who have executed this Amendment below.

WHEREAS, the Members have heretofore executed an Amended and Restated Operating Agreement effective June 24, 2005 (the "Agreement"); and

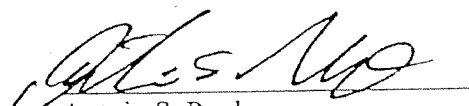
WHEREAS, the Members desire to amend the Agreement to permit transfers of Units in certain situations.

NOW, THEREFORE, the Agreement is hereby amended as follows:

Section 8.1 of the Agreement shall be deleted in its entirety and replaced with the following:

8.1 *Transfer.* No Person may Transfer all or any portion or any interest or rights in the Person's Membership Rights or Interest without the consent of Members holding a majority of the Units of the Company. An informal consent to any such transfer which is executed by Members holding a majority of the Units pursuant to this Section 8.1 shall not be required to comply the notice provisions of Section 9.2.8 of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this MT Property Holdings, LLC Amendment to Amended and Restated Operating Agreement as of the day and year first written above.


Antoin S. Rezko


Michael Rumman

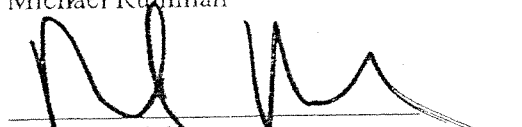

Michel Malek

EXHIBIT B

HERITAGE DEVELOPMENT PARTNERS, LLC
OPERATING AGREEMENT

INDEX

	<u>Page</u>
ARTICLE 1 DEFINITIONS	I
ARTICLE 2 FORMATION OF THE COMPANY	7
2.1 <i>Formation</i>	7
2.2 <i>Name</i>	8
2.3 <i>Purpose; Powers</i>	8
2.4 <i>Term</i>	8
2.5 <i>Principal Place of Business</i>	8
2.6 <i>Registered Office and Registered Agent</i>	8
2.7 <i>Continuation of Company</i>	8
2.8 <i>Qualification in Other Jurisdictions</i>	8
ARTICLE 3 UNITS	9
3.1 <i>Units</i>	9
3.2 <i>Persons Deemed Members</i>	9
3.3 <i>Subscriptions</i>	9
3.4 <i>Waiver of Dissenters</i>	9
3.5 <i>Expulsion</i>	9
ARTICLE 4 CAPITAL CONTRIBUTIONS	10
4.2 <i>Capital Contributions of Members</i>	10
4.2 <i>Additional Capital Contributions</i>	10
4.3 <i>Capital Accounts</i>	10
4.4 <i>Interest on Capital Contributions</i>	11
4.5 <i>Withdrawal</i>	12
4.6 <i>Return of Capital</i>	12
4.7 <i>Liability of Members</i>	12
ARTICLE 5 ALLOCATION OF COMPANY PROFITS AND LOSSES	12
5.1 <i>Allocations</i>	12
5.2 <i>Special Allocations</i>	12
5.3 <i>Other Allocation Rules</i>	15
5.4 <i>Allocations Solely For Tax Purposes</i>	16
ARTICLE 6 DISTRIBUTIONS AND DISTRIBUTABLE CASH	16
6.1 <i>Timing and Amount</i>	16
6.2 <i>Distributions for Tax Purposes</i>	17
6.3 <i>Distributions In Respect of Illinois Replacement Tax Savings and</i> <i>Comparable Items</i>	17
6.4 <i>Limitations on Distributions</i>	18
6.5 <i>Redemption of the Class A Units</i>	18
ARTICLE 7 RESTRICTED TRANSACTIONS	18
7.1 <i>Compensation and Distribution</i>	18
7.2 <i>Affiliate Transaction Rights</i>	18

ARTICLE 8 ROLE OF MEMBERS 19

 8.1 *General Rules* 19

 8.2 *Meetings of the Members* 19

 8.3 *Indemnification of Members* 21

ARTICLE 9 MANAGEMENT 21

 9.1 *General Powers of the Manager* 21

 9.2 *Number and Election* 21

 9.3 *Removal and Vacancies* 22

 9.4 *Vacancies* 22

 9.5 *Quorum, Required Vote and Adjournment* 22

 9.4 *No Liability* 22

 9.5 *Certain Powers of the Manager* 22

 9.7 *Exculpation From Liability For Certain Acts* 24

 9.9 *Indemnification* 25

 9.10 *Interested Manager* 25

 9.11 *Compensation to Manager* 25

ARTICLE 10 LIMITATIONS ON DISPOSITION OF MEMBERS' INTERESTS 26

 10.1 *Restriction on Transfers; Investment Representations and Warranties* 26

 10.2 *Permitted Transfers* 26

 10.3 *Sale of the Company* 27

 10.4 *Restrictions on Transfers* 28

 10.5 *Prohibited Transfers* 29

 10.6 *Rights of Unadmitted Assignees* 29

 10.7 *Admission of Transferees as Members* 29

 10.8 *Covenants; Representations Regarding Transfers; Legend* 30

 10.9 *Distribution and Allocations in Respect to Transferred Interests* 31

 10.10 *Termination of Restrictions* 31

 10.11 *Waiver of Redemption of Distributional Interest* 31

ARTICLE 11 DISSOLUTION AND TERMINATION 32

 11.1 *Events of Dissolution* 32

 11.2 *Liquidation* 32

 11.3 *Filings* 33

 11.4 *Termination* 33

ARTICLE 12 BOOKS AND RECORDS 34

 12.1 *Books and Records; Accounting* 34

 12.2 *Access to Records, Financial Statements* 34

 12.3 *Annual Reports* 34

 12.4 *Bank Account(s)* 34

ARTICLE 13 TAX MATTERS 34

 13.1 *Company Tax Returns* 34

 13.2 *Schedules K-1 and Forms 1065* 35

 13.3 *Taxation as Partnership* 35

13.4	<i>Withholding</i>	35
ARTICLE 14	MISCELLANEOUS	36
14.1	<i>Reimbursements</i>	36
14.2	<i>Amendments</i>	36
14.3	<i>Successors</i>	37
14.4	<i>Counterparts</i>	37
14.5	<i>Integration</i>	37
14.6	<i>Entire Agreement</i>	37
14.7	<i>Governing Law</i>	37
14.8	<i>Severability</i>	37
14.9	<i>Headings</i>	37
14.10	<i>Waiver</i>	37
14.11	<i>Filings</i>	38
14.12	<i>Notices</i>	38
14.13	<i>Mediation</i>	38
14.14	<i>Arbitration</i>	38
14.15	<i>Equitable Remedies</i>	38
14.16	<i>Company Losses Due to Member's Litigation</i>	39
14.17	<i>Title to Company Assets</i>	39
14.18	<i>Execution of Additional Documents</i>	39
14.19	<i>Confidentiality</i>	39

OPERATING AGREEMENT of
HERITAGE DEVELOPMENT PARTNERS, LLC

This Operating Agreement is entered into by and among the Persons whose names are set forth on the signature pages hereof and any Person who hereafter becomes a party hereto pursuant to the provisions hereof, and is made effective as of January 1, 2006.

RECITALS

Heritage Development Partners, LLC (the "Company") was organized pursuant to the Illinois Limited Liability Company Act (the "Act") upon the filing of the Articles of Organization (the "Articles") with the office of Secretary of State of the State of Illinois August 15, 2005, as amended on October 19, 2005.

Subsequent to its formation, the Company admitted Michael Rumman and Anton S. Rezko as its initial members (collectively, the "Initial Members") who caused the Company to enter into various transactions, including the acquisition of membership interests in Riverside District Development, LLC, an Illinois limited liability company

The Initial Members, as of the date of first written above, along with the additional Persons when are set forth in this signature pages hereto, desire to operate the Company in accordance with and subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the persons set forth in the signature pages hereto, intending to be legally bound, agree as follows:

**ARTICLE I
DEFINITIONS**

The following terms used herein shall have the following meanings (unless otherwise expressly provided herein, or unless the context clearly indicates otherwise):

1.1 "Act" means the Illinois Limited Liability Company Act, 805 ILCS 180/1-1, et seq., as amended from time to time (or any corresponding provisions of succeeding law).

1.2 "Affiliate of the Company" means any Person directly or indirectly, Controlling, Controlled by or under common Control with the Company or any other Affiliate of the Company.

1.3 “**Affiliate of a Member**” means, in respect of a Member, any other Person, directly or indirectly, Controlling, Controlled by or under common Control with that Person.

1.4 “**Agreement**” means this Operating Agreement of Heritage Development Partners, LLC, as from time to time amended.

1.5 “**Annual Tax Distribution**” means that distribution provided in Section 6.2.

1.6 “**Articles**” means the Articles of Organization filed with the Office of the Secretary of State of Illinois, and all amendments thereto.

1.7 “**Bankruptcy**” means with respect to a Person: (a) a filing by the Person of a voluntary petition in bankruptcy, the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due or the filing against a Member of an involuntary petition in bankruptcy that is not dismissed within thirty (30) days, (b) the making by the Person of a general assignment for the benefit of creditors, (c) the filing by the Person of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a bankruptcy petition filed against it in any bankruptcy proceeding, (d) the entry of an order, judgment, decree by any court of competent jurisdiction adjudicating the Person a bankrupt or appointing a trustee of its assets, or (e) any levy of execution being made upon the Interest of the Person in the Company.

1.8 “**Book Value**” means, with respect to any property, the Company’s adjusted basis for federal income tax purposes, adjusted from time to time as required or permitted under Treasury Regulations Section 1.704-1(b)(2)(iv)(d)-(g).

1.9 “**Capital Account**” means the account maintained for each Member in accordance with the provisions of the Code and the regulations promulgated thereunder, including but not limited to the rules regarding maintenance of capital accounts set forth in Treasury Regulations Section 1.704-1.

1.10 “**Capital Contribution**” means, with respect to any Member executing this Agreement, the capital contribution such Member actually makes pursuant to Article 4 hereof.

1.11 “**Code**” means the Internal Revenue Code of 1986, as amended. Any reference to any specific provision of the Code or any regulations promulgated thereunder shall also refer to any successor provisions thereto.

1.12 “**Common Units**” means, collectively, the Non-Voting Common Units and the Voting Common Units.

1.13 “**Company**” means Heritage Development Partners, LLC, the Illinois limited liability company to be operated in accordance with the provisions of this Agreement.

1.14 “**Company Business**” is defined in Section 2.3.

1.15 “**Company Expenses**” means all costs and expenses incurred in connection with the business and affairs of the Company, including, without limitation, costs and expenses of acquiring, owning, operating and disposing of Company Investments, and fees and expenses of legal counsel, accountants, appraisers, investment bankers and third party consultants and advisors.

1.16 “**Company Investment**” means the interest of the Company in any business and other assets, owned, directly or indirectly, by the Company and acquired by the Company in one transaction or a series of related transactions, as determined by the Manager (as defined in Section 9.1).

1.17 “**Company Loss**” means, for any applicable fiscal period, all items of income, gain, deduction and loss of the Company (including any loss and net of any gain realized upon the refinancing or sale or other disposition of such Company Investment (or portion thereof) and Company Expenses primarily related to such Company Investment), where the aggregate of all such items during any applicable period results in a net loss to the Company, determined in accordance with Section 4.3.2 of this Agreement.

1.18 “**Company Minimum Gain**” means an amount equal to the Company minimum gain, as determined in accordance with Treasury Regulations Section 1.704-2(d).

1.19 “**Company Profit**” means, for any applicable fiscal period, all items of income, gain, deduction and loss of the Company (including any gain and net of any loss realized upon the refinancing or sale or other disposition of such Company Investment (or portion thereof) and Company Expenses primarily related to such Company Investment), where the aggregate of all such items during any applicable period results in net income to the Company, determined in accordance with Section 4.3.2 of this Agreement.

1.20 “**Control**” (including, with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any Person, includes the possession, directly or indirectly, of ten percent (10%) or more of the Voting Power (or in the case of a Person which is not a corporation, 10% or more of the ownership interest, beneficial or otherwise) of such Person or the power otherwise to direct or cause the direction of the management and policies of that Person, whether through voting, by contract or otherwise.

1.21 “**Deficit Capital Account**” means, with respect to any Member, the deficit balance (if any) in such Member’s Capital Account as of the end of the Fiscal Period or Fiscal Year, after giving effect to the following adjustments:

1.21.1 credit to such Capital Account any amount which such Member is treated as being obligated to restore under Treasury Regulations Section 1.704-1(b)(2)(ii)(c), as well as

any addition thereto pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) and (i)(5), after taking into account any changes during the period in Company Minimum Gain and in the Member Minimum Gain; and

1.21.2 debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(ii)(d)(4), (5) and (6).

This definition of "Deficit Capital Account" is intended to comply with Treasury Regulations Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and shall be construed in a manner consistent with those provisions.

1.22 "Dissociation" of a Member shall have the meaning provided under Section 35-45 of the Act.

1.23 "Distribution Interest" means the right to receive the shares of revenues from production and other income, receipts, or gain of the Company, or of any other distributions from the Company, with respect to an Interest in the Company. The holder of a Distributional Interest is not a Member, nor has any of the other rights herein conferred upon such Member, including the right to vote as a Member until such holder is admitted as a Member (if at all).

1.24 "Fiscal Period" means any interim accounting period within a Fiscal Year which is established by the Manager and which is required or permitted under the Code or Treasury Regulations.

1.25 "Fiscal Year" means the Company's annual accounting period established pursuant to Section 12.1 of this Agreement.

1.26 "Illinois Replacement Tax" means (a) the Illinois Personal Property Tax Replacement Income Tax, 35 ILCS 5/201 et seq., as amended from time to time, and (b) if the Company is subject to any other state tax (i.e., state tax other than Illinois Replacement Tax) the amount of which is dependent upon the tax character of some or all of the Members, the Manager may, in its discretion, treat such other state tax as Illinois Replacement Tax for all purposes of this Agreement.

1.27 "Illinois Replacement Tax Savings" means, with respect to a Fiscal Year for which the Company is subject to Illinois Replacement Tax, the amount (if any) of additional Illinois Replacement Tax that would have been imposed upon the Company for such Fiscal Year but for the fact that some of the Members are themselves subject to the Illinois Replacement Tax for such Fiscal Year.

1.28 "Independent Third Party" means any Person who, immediately prior to the contemplated transaction, does not own in excess of five percent of the Units on a fully-diluted basis

(a "5% Owner"), who is not Controlling, Controlled by or under common Control with any such 5% Owner and who is not the spouse or descendent (by birth or adoption) of any such 5% Owner or a trust for the benefit of any such 5% Owner and/or such other Persons.

1.29 **"Interest"** means the personal property ownership right of a Member, such personal property ownership right being evidenced by and composed of Units, in the Company entitling such Member to, among other things, an allocation of the Company's income, gains, losses, deductions and credits (for both book and tax purposes) and a share of distributions made by the Company. Each Member's allocation of the Company's income, gains, losses, deductions and credits (for both book and tax purposes) and share of the Company's distributions, as applicable, shall be determined in accordance with this Agreement based upon the number of Units owned by such Member.

1.30 **"Interest Holder"** means any Member, assignee or other transferee of a Member who is not admitted as a Member, but is a holder of a Distributional Interest.

1.31 **"Manager"** means the Person appointed as the manager of the Company under the Act and Article 9 of this Agreement.

1.32 **"Member"** means any Person that holds an Interest in the Company represented by Units and is admitted as a Member of the Company pursuant to this Agreement.

1.33 **"Member Minimum Gain"** means an amount, with respect to each Member Non-recourse Debt, equal to the Company Minimum Gain that would result if such Member Non-recourse Debt were treated as a Company non-recourse liability, as determined in accordance with Treasury Regulations Section 1.704-2.

1.34 **"Member Non-Recourse Debt"** shall have the same meaning as the term "partner non-recourse debt" set forth in Treasury Regulations Section 1.704-2(b)(4).

1.35 **"Member Non-Recourse Deductions"** shall have the same meaning as the term "partner non-recourse deductions" set forth in Treasury Regulations Section 1.704-2(i)(1) and 1.704-2(i)(2).

1.36 **"Net Cash"** means, for each Fiscal Year or a portion thereof, (a) all cash of the Company derived from Company operations, after deducting: (i) all cash expenditures incurred in connection with the operation of the Company's business; (ii) an amount necessary to pay all liabilities of the Company then due and owing including, without limitation, all loans to the Company and all advances made by any Member to the Company; and (iii) an amount determined by the Manager to be reasonably necessary or desirable as a reserve for the operation of the Company business, liabilities of the Company not yet due, and/or future or contingent liabilities of the Company, and (b) the net cash proceeds from all sales and other dispositions and all refinancing of

Company Investments, less any portion thereof used to establish reserves, all as determined by the Manager.

1.37 “**Net Invested Capital Balance**” means as to each Member, the cash contributed by such Member to the capital of the Company, less amounts distributed to such Member pursuant to Section 6.1.2 hereof.

1.38 “**Non-Recourse Deductions**” shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(1).

1.39 “**Non-Recourse Liability**” shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

1.40 “**Ownership Percentage**” means, with respect to any Member as of any date, the ratio (expressed as a percentage) of the number of Units held by such Member on such date to the aggregate of all Units held by all Members on such date.

1.41 “**Person**” means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

1.42 “**Property**” means certain real property located at Roosevelt Road and Clark Street in Chicago, Illinois currently owned by Riverside District Development, LLC.

1.43 “**Quarterly Estimated Tax Distribution**” is defined in Section 6.2.

1.44 “**Redemption Amount**” shall mean an amount sufficient to cause each holder of Class A Units to receive the sum of (x) an amount equal to a 20% per annum return on such holder’s Capital Contributions made to the Company plus (y) a return of all Capital Contributions made to the Company by such holder

1.45 “**Sale of the Company**” means the sale of the Company to an Independent Third Party or group of Independent Third Parties pursuant to which such party or parties acquire (i) Units of the Company possessing the voting power under normal circumstances to elect the Company’s Manager (whether by merger, consolidation or sale or transfer of Units) or (ii) all or substantially all of the Company’s assets determined on a consolidated basis.

1.46 “**Securities Act**” means the Securities Act of 1933, as amended from time to time.

1.47 “**Tax Allowance Amount**” means, with respect to any Member for any calendar quarter, an amount reasonably determined by the Manager, in good faith, to be the estimated income tax liability of such Member (or the owners of such Member that is a flow-through entity for federal income tax purposes) arising from its ownership of Units. The Tax Allowance Amount for each

Member shall be computed on the assumption that all Members are subject to taxation at the same combined federal and state income tax rates, which shall be the highest combined rates applicable to any Member, as determined by the Manager. The amount so determined by the Manager shall be the Tax Allowance Amount for such period and shall be final and binding on all Members.

1.48 “Tax Matters Partner” means the Person designated as such in Section 13.1.2 of this Agreement.

1.49 “Transfer” means, as a noun, any voluntary or involuntary transfer, sale, assignment, pledge or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, assign, pledge, or otherwise dispose of.

1.50 “Treasury Regulations” means the proposed, temporary and final regulations promulgated under the Code, as amended from time to time.

1.51 “Unreturned Capital” means, with respect to a Unit, the excess, if any, of the Capital Contribution made or deemed made in exchange for or on account of such Unit over all Distributions made by the Company with respect to such Unit pursuant to Section 6.1(i).

1.52 “Voting Power” of any Person, means the total number of votes, which may be cast by the holders of the total number of outstanding shares of stock, units or interests of any class or classes of such Person in any election of directors of such Person.

1.53 “Unit” means a reference to a Class A Units and Class B Units and represents an ownership Interest issued by the Company represented by Units, with rights, interests, duties and obligations set forth in this Agreement with respect to Units, and representing a Capital Contribution in cash or other property equal to the price per Unit or fraction thereof paid by a Member and set forth on Schedule I. Except as otherwise provided in this Agreement, Class A Units shall be non-voting Units.

1.54 “Withdrawal” means, with respect to any Member, the death or Bankruptcy of such Member or a complete assignment or disposition of such Member’s entire Interest in the Company made during the lifetime (or other existence) of such Member, and with respect to a Manager (in its capacity of Manager), the death, Bankruptcy, or legal incapacity of the Manager, or the Manager’s continued failure to perform its duties as a Manager.

ARTICLE 2 FORMATION OF THE COMPANY

2.1 *Formation.* The Company has been organized as an Illinois Limited Liability Company pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement.

2.2 *Name.* The name of the Company is Heritage Development Partners, LLC, and appropriate certificates and affidavits shall be filed and recorded as may be necessary to secure said name. The name of the Company shall be subject to change by the Manager.

2.3 *Purpose; Powers.* The purpose of the Company is (i) to own a membership interest in Riverside District Development, LLC, an Illinois limited liability company and (ii) to carry on any and all other lawful business, purpose or activity, except for any purposes prohibited under the Act (the "Company Business"). The Company shall possess and may exercise all powers and privileges granted by the Act, any other law, or by the Agreement, including incidental powers thereto, to the extent that such powers and privileges are necessary, customary, convenient or incidental to the attainment of the Company's purposes.

2.4 *Term.* The term of the Company commenced on the date that the Articles was filed in the office of the Secretary of State of the State of Illinois and shall continue until the Company is dissolved in accordance with the provisions of either this Agreement or the Act.

2.5 *Principal Place of Business.* The principal place of business of the Company shall initially be located at 233 South Wacker Drive, 95th Floor, Chicago, IL 60606, or at such other location or locations as the Manager may from time to time designate.

2.6 *Registered Office and Registered Agent.* The Company's initial registered office shall be at the office of its registered agent at 233 South Wacker Drive, Chicago, Illinois 60606, and the name of its initial registered agent at such address shall be Michael Rumman. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Office of the Secretary of State of the State of Illinois, and paying any fees required under the Act.

2.7 *Continuation of Company.* The Members hereby agree that the Company shall be organized, administered, operated and terminated in accordance with the provisions of this Agreement and the Act. The Members hereby further agree that the rights, duties, liabilities and obligations of the Members, and each Class thereof, shall be governed by the provisions of this Agreement and the Act.

2.8 *Qualification in Other Jurisdictions.* The Manager shall have the authority to cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company conducts business and in which such qualification, formation or registration is required by law or deemed advisable by the Manager. The Manager, or its authorized representative, as an authorized Person within the meaning of the Act, shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to do business.

ARTICLE 3
UNITS

3.1 *Units.* The Interests in the Company shall be designated as Units and shall be divided into two series, "Class A Units" and "Class B Units." The Units of each Member in the Company are personal property. All Units redeemed, purchased or otherwise acquired by the Company shall be canceled and thereupon restored to the status of authorized but unissued Units. Holders of Units shall have the respective rights, interests, duties, and obligations that are set forth in this Agreement.

Except as otherwise provided in this Agreement, the Manager may, with the consent of the Members holding at least fifty percent (50%) of the Class A Units, issue new or additional Units or options or other securities to purchase or otherwise acquire or convert to new or additional Units, at any time and from time to time.

3.2 *Persons Deemed Members.* The Company may treat the Person in whose name any Unit shall be registered on the books and records of the Company as a Member and the sole holder of such Unit for all purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claims to or interest in such Unit or the part of any other Person, whether or not the company shall have actual or other notice thereof

3.3 *Subscriptions.* A prospective Member of the Company may enter into a Subscription Agreement for the purchase of Units, or fractions thereof. A Person may not be admitted as a Member until such Person has: (a) executed this Agreement, which may be pursuant to an Additional Member Signature Page in the form attached to this Agreement, (b) purchased Units, and (c) executed and delivered to the Company such other agreements (including, without limitation, purchase agreements and investment representations) as the Manager may require.

3.4 *Waiver of Dissenters' Rights.* The Members hereby waive any and all contractual appraisal rights or dissenters' rights, if any, with respect to their Units and any or all similar rights whether set forth in any other applicable law or in any agreement with respect to which the Company or a Member is a party or beneficiary.

3.5 *Expulsion.* Any Member may be expelled as required in Section 35-45(6) of the Act.

ARTICLE 4
CAPITAL CONTRIBUTIONS

4.1 *Capital Contributions of Members; Ownership.* The Members of the Company as of the Acquisition Date are maintained on the Company's books and records. Set forth on Schedule 1 "Ownership of Members" attached hereto are the number and class of Units issued to each Member. Each Member shall receive, in exchange for the capital contribution of such Member, the number and class of Units set forth opposite such Member's name thereon. Additional capital contributions may be in the form of cash or cash equivalents, unless otherwise determined by the Manager. The initial values of the Members' Capital Accounts are maintained on the Company's books and records.

4.2 *Additional Capital Contributions.* The Members shall not be obligated to contribute additional capital, however, any additional capital contributions shall be in the form of cash unless otherwise approved by the Manager.

4.3 *Capital Accounts.*

4.3.1. A separate Capital Account will be maintained for each Member in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv) and 1.704-2, as amended. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such property that the Company assumes or takes subject to for purposes of Code Section 752); and (3) allocations to such Member of Company Profits and other allocations to such Member of items of Company income or gain. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); and (3) allocations to such Member of Company Losses and other allocations to such Member of items of Company loss or deduction. The Company may, upon the occurrence of the events specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

4.3.2. For purposes of computing the amount of any item of Company income, gain, loss or deduction to be reflected in the Members' Capital Accounts and to be allocated pursuant to Article 5 of this Agreement, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose), provided that:

4.3.2.1 The computation of all items of income, gain, loss and deduction shall include income and expense of the Company that is exempt from federal income tax and also those items described in Code Section 705(a)(1)(B) or Treasury Regulations Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includible in gross income or deductible for federal income tax purposes;

4.3.2.2 If the Book Value of any Company property is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e) or (f), the amount of such adjustment shall be taken into account as gain or loss from a disposition of such property;

4.3.2.3 Items of income, gain, loss or deduction attributable to the disposition of Company property having a Book Value that differs from its adjusted basis for federal income tax purposes shall be computed by reference to the Book Value of such property;

4.3.2.4 Items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted basis for federal income tax purposes shall be computed by reference to the Book Value of such property in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

4.3.2.5 To the extent an adjustment pursuant to Code Section 732(d), 734(b) or 743(b) to the adjusted tax basis of any Company property is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the tax basis) or loss (if the adjustment decreases the tax basis); and

4.3.2.6 Items of Company income, gain, loss or deduction that are specially allocated pursuant to Section 5.2 shall be determined in the same manner as Company Profits and Company Losses, but such specially allocated items shall not be taken into account in computing Company Profits and Company Losses.

4.3.3. The rules set forth in this Section 4 are intended to comply with the requirements of the Code and Treasury Regulations. If, in the opinion of the Manager, the rules set forth in this Section 4.3 must be modified in order for the Company to comply with the requirements of the Code or the Treasury Regulations, then the method in which Capital Accounts are maintained shall be so modified.

4.4 *Interest on Capital Contributions.* Except as otherwise expressly provided in this Agreement, no Member shall receive interest on such Member's Capital Contribution.