

Exhibit 5

part E

B. THE PARTIES HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY LITIGATION OR OTHER COURT PROCEEDING BY ANY PARTY AGAINST THE OTHER PARTY WITH RESPECT TO ANY MATTER ARISING FROM OR IN CONNECTION WITH THESE INSTRUCTIONS.

8. Prevailing Parties.

If any litigation or other court proceeding is sought, taken, instituted or brought by any Party against any other Party to enforce its rights under these Instructions, all fees, costs and expenses, including, without limitation, reasonable attorneys fees and court costs, of the prevailing party in such action, suit or proceeding shall be borne by the Party against whose interest the judgment or decision is rendered.

9. Entire Agreement; Amendments

These Instructions sets forth the entire understanding and agreement of the Parties, and shall supersede any other agreements and understandings (written or oral) among the Parties on or prior to the date of these Instructions, with respect to the subject matter contemplated herein. No amendment, supplement or other modification to any of these Instructions shall be valid unless in writing and executed and delivered by each of the Parties.

If these Instructions are acceptable to you, please have a duly authorized person countersign these Instructions, and deliver a copy of such countersigned Instructions to all other Parties.

Sincerely,

ORIFARM S.A.

By: Kirkland & Ellis LLP

Its: Attorney

By: 

REZKO:

By Freeborn + Peters LLP
As Its: Attorney
By: Brian A. Smith

RUMMAN:

By: _____
Its: _____
By: _____

Accepted and Agreed to as of
this 23 day of July, 2007.

ESCROW AGENT:

FREEBORN & PETERS LLP

By Brian A. Smith
Name: Brian A. Smith
Title: Partner

REZKO:

By _____
Its: _____

By: _____

RUMMAN:

By KARL L. FELBINGER
His: _____
His ATTORNEY

By: Karl L. Felbinger

Accepted and Agreed to as of
this ___ day of July, 2007.

ESCROW AGENT:

FREEBORN & PETERS LLP

By _____
Name: _____
Title: _____

Schedule A

Rezko's Closing Documents

1. Promissory Note
2. MT Property Holdings, LLC Assignment of Membership Interests
3. Assignment of Units of Heritage Development Partners, LLC
4. Resolutions of the Sole Member Holding Class B Units of Heritage Development Partners, LLC
5. Redemption Agreement
6. Letter of Direction
7. Second Amendment to Operating Agreement of Heritage Development Partners, LLC
8. Loan Forgiveness Agreement
9. MT Property Holdings, LLC Unit Purchase Agreement
10. Heritage Development Partners, LLC Unit Purchase Agreement.

Schedule B

Rumman's Closing Documents

1. MT Property Holdings, LLC Assignment of Membership Interests
2. Resignation as Manager of Heritage Development Partners, LLC
3. Articles of Amendment of Heritage Development Partners, LLC
4. Resignation as Manager of Riverside District Development LLC
5. Articles of Amendment of Riverside District Development LLC
6. Resignation as Chief Executive Office of Heritage Development Partners, LLC
7. MT Property Holdings, LLC Unit Purchase Agreement

Tab No. 15

AMENDED AND RESTATED
OPERATING AGREEMENT
OF
RIVERSIDE DISTRICT DEVELOPMENT LLC

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**AMENDED AND RESTATED OPERATING AGREEMENT
OF RIVERSIDE DISTRICT DEVELOPMENT LLC**

This Amended and Restated Operating Agreement is entered into by and among General Mediterranean Holding SA, a Luxemborg corporation ("GMH"), and Heritage Development Partners LLC, an Illinois limited liability company ("Heritage"), and any Person who hereafter becomes a party hereto pursuant to the provisions hereof, and is made effective as of January 1, 2006.

**ARTICLE 1
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 Amended and Restated Operating Agreement of Riverside District Development LLC, as from time to time amended.

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

1.6. "Approved Budget" shall have the same meaning ascribed to that from as set for the in Section 8.4 of this Agreement.

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

1.8. "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.

1.9. “**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).

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

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

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

1.13. “**Co-Investment Interest**” is defined in Section 7.3.2.

1.14. “**Co-Investment Member**” is defined in Section 7.3.2.

1.15. “**Common Unit**” means a Unit designated as a Common Unit which shall grant the Member or Interest Holding holding Common Units with the rights granted to, and subject such Persons to the obligations imposed on, the holders of Common Units as set forth in this Agreement. The term “Common Unit” shall not include Voting Units or Preferred Units.

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

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

1.18. “**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.

1.19. **“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).

1.20. **“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.

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

1.22. **“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.

1.23. **“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 fifty percent (50%) or more of the Voting Power (or in the case of a Person which is not a corporation, fifty percent (50%) 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.

1.24. **“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.

1.25. "Developer Co-Investment Notice" is defined in Section 7.3.2.

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

1.27. "Distributional 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) in accordance with Section 10.8 of this Agreement.

1.28. "Equity Raise Amount" is defined in Section 7.3.2.

1.29. "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.

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

1.31. "Funding Member" is defined in Section 4.2(c).

1.32. "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.

1.33. "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.

1.34. “**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.

1.35. “**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.

1.36. “**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.

1.37. “**Manager**” means the Person appointed as the manager of the Company under the Act and Article 9 of this Agreement.

1.38. “**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.

1.39. “**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.

1.40. “**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).

1.41. “**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).

1.42. “**Monthly Cost Estimate**” shall have the same meaning as set forth in Section 4.2(a) hereof.

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1.43. **“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.

1.44. **“Net Invested Capital Balance”** means as to each Member, the cash or other property contributed by such Member to the capital of the Company, less the cumulative amount distributed to such Member pursuant to Section 6.1.2 hereof.

1.45. **“Non-Funding Member”** is defined in Section 4.2(c).

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

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

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

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

1.50. **“Preferred Return”** means an amount equal to a 12% per annum, cumulative return, computed on the basis of simple interest, compounded annually, on the Net Invested Capital Balance of such Member from time to time.

1.51. **“Preferred Unit”** means a Unit designated as a Preferred Unit which shall grant the Member or Interest Holder holding Preferred Units with the rights, granted to, and subject such Persons to the obligations imposed on, the holders of Preferred Units as set forth in this Agreement. The term “Preferred Unit” shall not include Voting Units or Common Units.

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1.52. "Property" is defined in Section 2.3.

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

1.54. "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.

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

1.56. "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.

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

1.58. "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.

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

1.60. "Vertical Development Entity" is defined in Section 7.3.1.

1.61. "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.

1.62. "Voting Units" means a Unit designated as a Voting Unit which shall grant Members holding Voting Units with the rights granted to, and subject such Members to the obligations imposed

on, the holder of Voting Units as set forth in this Agreement. Voting Units shall not grant the holders of such Units with any rights to distributions or liquidation proceeds from the Company.

1.63. "Unit" means a reference to a Common Unit or a Preferred Unit and represents an ownership Interest issued by the Company represented by Units, which is designated as a Unit 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 1. The term "Unit" shall also mean Voting Units, provided, however, that Voting Units shall be granted solely the right to vote in accordance with the terms of the Agreement. For purposes of the Act, both Preferred Units and Common Units shall be non-voting.

1.64. "Unpaid Preferred Return Balance" means for each Member, such Member's Preferred Return less the cumulative amount distributed to such member pursuant to Section 6.1.1 hereof.

1.65. "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 Riverside District Development 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 and otherwise hold for investment certain real property located at Roosevelt Road and Clark Street in Chicago, Illinois (the "Property") more fully described in Schedule 2 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. The Manager shall use its sound business judgment and good faith efforts to prevent the Company from engaging in any activity that either (x) is inconsistent with the intent of the Members to limit the scope of the Company's business to holding the Property for investment or (y) would otherwise cause the Property to be property for sale to customers in ordinary course of the Company's business.

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.

2.9 *Independent Activities.* Each Member (and any Affiliate of a Member) may, notwithstanding this Agreement, engage in whatever activities (whether or not competitive with the Company's activities) such Member may choose, without having or incurring any obligation to offer any interest in such activities to the Company and such activities shall not be a breach of such Member's fiduciary duties to the Company.

RIVERSIDE DISTRICT DEVELOPMENT, LLC OPERATING AGREEMENT

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ARTICLE 3
UNITS

3.1 *Units.* The Interests in the Company shall be designated as Units and shall be divided into three classes, "Preferred Units", "Common Units" and "Voting Units". The Units of each Member in the Company are personal property. The Preferred Units, if any, held by an Interest Holder shall be the Units designated as Preferred Units on Schedule 1. The Common Units, if any, held by an Interest Holder shall be the Units designated as Common Units on Schedule 1. The Voting Units, if any, held by an Interest Holder shall be the Units designated as Voting Units on Schedule 1. All Units redeemed, purchased or otherwise acquired by the Company shall be canceled and thereupon restored to the status of authorized but unissued Units. Interest Holders shall have the respective rights, interests, duties, and obligations that are set forth in this Agreement.

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 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, (c) executed and delivered a subscription agreement for the purchase of Units, or fractions thereof, and (d) 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.*

(a) GMH has been the sole Member of the Company since its formation through the date of this Agreement and as of the date of this Agreement has made capital contributions in an amount equal to the amount set forth on Schedule 1 opposite GMH's name as its initial Net Invested Capital Balance. As of the date of this Agreement, Heritage has contributed its rights under a certain development agreement between Heritage and the Company. Upon such contribution, GMH and Heritage agree that the terms of the development agreement shall be superseded by the rights, obligations and duties of the parties as set forth in this Agreement. For purposes of this Agreement, the Members and the Manager acknowledge that Heritage's initial Net Invested Capital Balance shall be zero.

(b) The names of the Members and Interest Holders of the Company 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 as of the effective date of this Agreement, as well as the initial Net Invested Capital Balance. 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 monetary funds or equivalents, unless otherwise determined by the Manager. The initial value of the Members' Capital Accounts are maintained on the Company's books and records.

4.2 *Additional Capital Contributions.*

(a) On the 10th day of any month during the term of this Agreement, the Manager will provide to the Members holding Preferred Units an estimate of the items that are set forth in the Approved Budget that will give rise to expenditures by the Company in the following month (the "Monthly Cost Estimate"). On or before the 25th day of such month, the Members holding Preferred Units shall make an additional capital contribution to the Company in an amount equal to the Monthly Cost Estimate. In the event that the actual expenditures incurred by the Company in a particular month is less than the applicable Monthly Cost Estimate (the "Excess Contribution Amount"), the Company shall distribute to the Member holding Preferred Units an amount equal to the Excess Contribution Amount for such month on or before the last day of the month following the month in which such Pre-Development Costs are incurred. Such distribution shall be a made in accordance with Section 6.1 hereof. In the event that the actual expenditures incurred by the Company in a particular month exceed the applicable Monthly Cost Estimate, such excess shall become an addition to the Monthly Cost Estimate for a subsequent month.

(b) Other than the contribution described in Section 4.2(a), the Members shall not be obligated to contribute additional capital, however, any additional capital contributions shall be in the form of monetary funds unless otherwise approved by the Manager.

(c) If a Member (a "Non-Funding Member") does not make such Member's full additional capital contribution as required under Section 4.2(a) above within the time period specified in Section 4.2(a) hereof, the other Members (the "Funding Members") shall have the right, but not the obligation, to pay the Additional Capital Contribution of the Non-Funding Member. The payment of any such Non-Funding Member's Additional Capital Contribution shall result in an increase in the Funding Members' Capital Accounts to the extent of their respective payments. In addition, such Funding Member shall be entitled to a Preferred Return on all Additional Capital Contributions of twelve percent (12%) per annum. The amount of such Additional Capital Contributions and the Preferred Return on all Additional Capital Contributions shall be paid prior to any Common Unit distributions, but after any Preferred Unit distributions, as set forth in Article 6 hereof.

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 which 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.

4.5 *Withdrawal.* Each Member hereby covenants that he shall not willfully Dissociate himself as a Member without the consent of the other Members. Any Member that voluntarily

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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 Fiscal Period shall be allocated among the Interest Holders such that, as of the end of such Fiscal Period, 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 Regulations. This Section 5.2.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.

5.2.2. *Member Minimum Gain Chargeback.* Except as otherwise provided in Section 1.704-2(i)(4) of the Treasury Regulations, notwithstanding any other provision of this Article 5, if there is a net decrease in Member Minimum Gain attributable to a Member Non-Recourse Debt during any Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Non-Recourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, 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 Member Minimum Gain attributable to such Member Non-Recourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). 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(i)(4) and 1.704-2(j)(2) of the Treasury Regulations. This Section 5.2.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

5.2.3. *Qualified Income Offset.* In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such Member's Deficit Capital Account.

5.2.4. *Gross Income Allocation.* In the event any Member has a Deficit Capital Account at the end of any Fiscal Year, each such Member shall be specially allocated items of Company income and gain in the amount of such Deficit Capital Account as quickly as possible, provided that an allocation pursuant to this Section 5.2.4 shall be made only if and to the extent that such Member would have a Deficit Capital Account after all other allocations provided for in this Article 5 (other than Section 5.2.3 and 5.2.4) have been made.

5.2.5. *Non-Recourse Deductions.* Non-Recourse Deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their respective Ownership Percentage.



5.2.6. *Member Non-Recourse Deductions.* Member Non-Recourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Non-Recourse Debt to which such Member Non-Recourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

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 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 Manager 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 Manager determines 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 Manager 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 Manager determines 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 Manager may 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 by the Manager on a daily, monthly or other basis, 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 Manager in a manner intended to comply with Section 706 of the Code and the Treasury Regulations promulgated hereunder. In order to make such an allocation, the Manager 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 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 as determined by the Manager 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 4.3.2, 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.* The Manager shall calculate the amount of Net Cash, if any, available for distribution to the Members at least monthly and promptly distribute such amounts in the following order of priority:

6.1.1 First, to Members holding Preferred Units, in proportion to their respective Unpaid Preferred Return Balances, with respect to their Preferred Units, until the Unpaid Preferred Return Balance with respect to the Preferred Units of each such Member has been reduced to zero.

6.1.2 Second, to the Members holding Preferred Units, in proportion to their respective Net Invested Capital Balances until the Net Invested Capital Balances with respect to the Preferred Units of each such Member has been reduced to zero.

6.1.3 The balance, if any, to be distributed to the Members holding Common Units in proportion to the number of Common Units held by such Members.

6.2 *Distributions for Tax Purposes.* On or before the 90th day after the end of each Fiscal 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 Fiscal 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 Fiscal Years exceeds the sum of all items of taxable income allocated to such Members for all prior Fiscal Years (the "Annual Tax Distribution"). At the end of each quarter of the Fiscal Year, the Manager 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 to the extent authorized by the Manager, within 15 days of the end of such Fiscal 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 6.1.

6.3 *Distributions In Respect of Illinois Replacement Tax Savings and Comparable Items.* On or before the 90th day following the close of each Fiscal Year, the Company shall distribute to the Members that are themselves subject to the Illinois Replacement Tax for such Fiscal Year an amount equal to the Company's Illinois Replacement Tax Savings for such Fiscal 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 Fiscal 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 which would have been imposed upon the Company in a Fiscal 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 RESTRICTED TRANSACTIONS

7.1 *Compensation and Distributions.* All compensation, profits or distributions by the Company to any of the Members must be paid in accordance with Article 6 and Article 9. This covenant shall not restrict the payment of bona fide debt due a Member.

7.2 *Restricted Transactions.* The Company shall not, without first obtaining the approval of the Members holding more than 50% of the Voting Units then outstanding, voting or consenting, as the case may be:

7.2.1 enter into any material transactions with any Affiliate of the Company or Affiliate of a Member except on terms that are at least as favorable to the Company as those that would apply to a substantially similar transaction between the Company and an Independent Third Party;

7.2.2 redeem, purchase or otherwise acquire for value any Units except pursuant to an offer made upon the same terms pro rata to all Members;

7.2.3 liquidate, dissolve or otherwise wind up the affairs of the Company;

7.2.4 adopt any option, restricted equity or like plan providing for the grant of equity incentives to employees, officers, directors or consultants;

7.2.5 except as otherwise provided in Section 7.3 hereof, sell, exchange, or otherwise dispose of all, or substantially all, of the Company's assets;

7.2.6 distribute any property or equity (other than a cash distribution to Members) with respect to the Units of the Company;

7.2.7 except as otherwise provided in Section 7.3, sell all or any portion of the Property;

7.2.8 approve any leasing plan or enter into a lease to the extent such lease involves



a retail lease outside of the Company's approved leasing plan as set forth in the "Riverside District Leasing Plan" dated January 31, 2006;

7.2.9 pledge the Property whether by mortgage or otherwise;

7.2.10 propose any plan or obtain governmental approval regarding financing of infrastructure improvement;

7.2.11 propose any material change to the zoning of the Property or other entitlement to which the Property is subject;

7.2.12 approve any development plan or perform or contract for any construction of a project not in furtherance of the Company's approved development plans as set in Plan Unit Development 904 as approved by the City of Chicago;

7.2.13 make any expenditure, regardless of whether such expenditure is in the Approved Budget, that would cause the payee to receive in any calendar year payments from the Company in excess of \$50,000; or

7.2.14 make any expenditure other than those set forth in the Approved Budget for the respective calendar year and determined in accordance with Section 8.4 herein.

7.3 *Co-Investment Rights*

7.3.1 The Company may, with the consent of all of the Members, at any time or from time to time, sell or transfer all or any portion of the Property to an entity (other than Heritage) in which Heritage or its members hold any of the voting interest (the "Vertical Development Entity") if all of the following conditions are satisfied: (i) the purchase price to be paid by the Vertical Development Entity in such a purchase is equal to or in excess of the fair market value of that portion of the Property, as determined by a qualified appraiser; (ii) under the terms of such sale, all of the purchase price is paid in cash at closing (as adjusted for items that are typically debited to or credited against the purchase price); and (iii) the requirements of Section 7.3.2 hereof have been satisfied.

7.3.2 The Company shall not enter into any transaction whereby all or any portion of the Property is sold or transferred to a Vertical Development Entity unless, prior to the completion of the transaction, the Vertical Development Entity first offers in writing (the "Development Co-Investment Notice") to the Members that do not own an equity interest in the Vertical Development Entity (the "Co-Investment Member"), the right to provide the funds that would be raised by the Vertical Development Entity from Independent Third Parties to fund the amount by which (x) the cash needed to acquire that portion of the

Property that will be developed by the Vertical Development entity in the transaction and the cash that is anticipated by the Vertical Development Entity for the development of such property exceeds (y) the amount that is being provided to the Vertical Development Entity by a lender that is an Independent Third Party (the "Equity Raise Amount"). The Development Co-Investment Notice shall provide that date on which the Co-Investment Member is to provide the Equity Raise Amount is no less than 90 days after the date of the Development Rights Notice. In the event that the Co-Investment Member exercises its right to provide the Equity Raise Amount as provided in the Development Co-Investment Notice, the interest in the Vertical Development Entity issued to the Co-Investment Member in exchange for its funding of the Equity Raise Amount (the "Co-Investment Interest") shall be as a shareholder if the Vertical Development Entity is a corporation or as a member if the Vertical Development Entity is a limited liability company, or as indebtedness) and shall consist following:

(i) 100% of the authorized preferred interests of the Vertical Development Entity, which will provide the Co-Investment Member with a preferred return, preferred distribution, and liquidation preference that are materially equivalent to the terms that the Preferred Members have with respect to the Company pursuant to this Agreement;

(ii) 50% of the common interests of the Vertical Development Entity, which will provide the Co-Investment Member with the rights that are materially equivalent to the rights that a holder of a Common Unit has with respect to the Company pursuant to this Agreement; and

(iii) 51% of the voting interests of the Vertical Development Entity, which will provide the Co-Investment Member the rights that are materially equivalent to the rights of a holder of 51% of the voting interests with respect to the Company pursuant to this Agreement.

Provided, however, that, upon the request of the Co-Investment Member, the Co-Investment Interest shall be structured as a loan having terms that are not more favorable to the Co-Investment Member as those set forth above.

The Co-Investment Member shall have the right to provide all, but not less than all, of the Equity Raise Amount as set forth in the Development Co-Investment Notice. The Co-Investment Member shall exercise its rights to provide the Equity Raise Amount pursuant to this Section by providing written notice to the Vertical Development Entity within 45 days after receipt of the Development Co-Investment Notice. The Co-Investment Member may not assign its rights in the Development Co-Investment Notice except to an Affiliate of such Co-Investment Member.

7.4 *Transactions Requiring Super-Majority Approval.* The Company shall be prohibited



from undertaking any of the following actions, without first obtaining the approval of the Members holding at least 75% of the Voting Units then outstanding held by such Members:

7.4.1 amend the Articles, except as permitted in the Act;

7.4.2 increase or decrease (other than by conversion) the total number of issued and outstanding Units or amend the terms of the Company's Articles to affect such Members in a materially adverse manner;

7.4.3 authorize or issue, or obligate itself to issue, any convertible debt or any other equity security, including any other security or debt instrument convertible into or exercisable for any such equity security, having a preference over any Units with respect to dividends or liquidation;

7.4.4 redeem or repurchase any Units; or

7.4.5 consummate any merger or consolidation of this Company with any other entity, other than any wholly owned subsidiary of the Company, or any subsidiary owned through any one or more intermediary entities all of which are wholly owned directly or indirectly by the Company.

**ARTICLE 8;
ROLE OF MEMBERS; INDEMNIFICATION OF MEMBERS**

8.1 *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 stated in this Agreement or required under the Act, any action of the Members shall be taken by the affirmative vote of the Members holding more than 50% of the Voting Units then outstanding.

8.2 *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:

8.2.1 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 for the purpose of electing the one or more Managers and conducting such other proper business as may come before the meeting.

8.2.2 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 Manager or by any Member.

8.2.3 Place of Meetings. The Manager 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.

8.2.4 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 and to the Manager not less than 30 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 40 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 Manager, 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.

8.2.5 Quorum. Unless otherwise provided herein or by statute, the Member or Members holding more than 50% of the outstanding Voting 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. 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.

8.2.6 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.

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8.2.7 Voting of Units. Each outstanding Voting Unit shall be entitled to one vote, and each outstanding fractional Voting Unit shall be entitled such percentage of one vote that is represented by the fractional Voting Unit, in each matter submitted to vote at a meeting of Members, and in all elections for the Manager, every Member shall have the right to vote the number of Voting Units owned by such Member for the Manager. Each Member may vote either in person or by proxy as provided herein. Preferred Units and Common Units shall not be taken into account for purposes of voting on any matter relating to the Company.

8.2.8 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 Voting 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 Voting 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.

8.3 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.

8.4 Approved Budgets.

(a) On or before November 1 of each calendar year, the Manager shall prepare or cause to be prepared and submitted to the Members, for the review and approval of the majority voting interest of the Members, an annual budget for the Company for the next calendar year. Each such budget shall contain projections of expense, capital expenditures and anticipated cash needs (including, without limitation, for operating deficits) for the Company and such other matters as the

Members shall request. Each such budget, as so approved and as same may be updated and modified in accordance herewith, is herein called an "Approved Budget."

(b) In the event that there shall not be an Approved Budget for any fiscal year by the first day of such year, the Manager shall be authorized to operate the Company based upon, and in compliance with, the last Approved Budget with appropriate reasonable adjustments to reflect increases in taxes, utility costs, insurance costs and other expenses which are not within the Manager's control.

(c) In the event that the Manager determines that in a particular year that the Approved Budget for such year must be increased for a specific expenditure, the Manager shall prepare or cause to be prepared and submitted to the Members, for the Members' review and approval, an amended annual budget for such year for the Company. Upon approval of the Members in accordance with this Section 8.4, such amended budget shall be the Approved Budget for that year for all purposes of this Agreement.

8.5 *Expenditure Approvals.* In the event that the Manager seeks approval for expenditures which require approval pursuant to Section 7.2.13, the following process shall apply:

(a) Unless otherwise approved by the Members or unless the services are not susceptible to obtaining multiple bids (for example: employment offers, legal services, utility services, etc.), the Manager shall request a minimum of three (3) bids from contractors providing the services which are the subject of the proposed expenditure, which bids shall be available for review by and approval of the Members as provided in Section 7.2.13; and

(b) The Manager shall provide the Members, via facsimile and e-mail, with a request for approval for each such expenditure. The Members shall have seven (7) business days from receipt of such request to review the request (the "Review Period"). The Manager shall provide the Members, via facsimile and e-mail, an additional notice of the request three (3) business days before the expiration of the Review Period, stating that it is the second notice. If the Members have not rejected the request by the end of the Review Period, the request shall be deemed approved.

Should the Manager fail to obtain such approvals pursuant to the process in this Section 8.5, it shall be responsible for any loss to the Company resulting from such expenditure, after considering any benefit to the Company from such expenditure.

ARTICLE 9 MANAGEMENT

