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Transaction will be aggregated for purposes of allocating Profits and Losses for any Company Fiscal Year.

4.4.2 **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in Company minimum gain [as defined in Regulations Section 1.704-2(d)(2)], items of income and gain shall be allocated to all Members in accordance with Regulations Section 1.704-2(f), and such allocations are intended to comply with the minimum gain chargeback requirements of Regulations Section 1.704-2 and shall be interpreted consistently therewith.

4.4.3 **Section 704(c) Allocation.** Solely for federal, state, and local income tax purposes and not for book or Capital Account purposes, depreciation, amortization, gain, or loss with respect to property that is properly reflected on the Company's books value that differs from its adjusted basis for federal income tax purposes shall be allocated in accordance with the principles and requirements of Code Section 704(c) and the Regulations promulgated thereunder, and in accordance with the requirements of the relevant provisions of the Regulations issued under Code Section 704(b). For Capital Account purposes, depreciation, amortization, gain, loss with respect to property that is properly reflected on the Company's books at a value that differs from its adjusted basis for tax purposes shall be determined in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv)(g).

4.4.4 **Risk of Loss Allocation.** Any item of Member nonrecourse deduction [as defined in Regulation Section 1.704-2(i)(2)] with respect to a Member nonrecourse debt [as defined in Regulation Section 1.704-2(b)(4)] shall be allocated to the Member or Members who bear the economic risk of loss for such Member nonrecourse debt in accordance with Regulations Section 1.704-2(i)(1).

4.4.5 **Allocation of Excess Nonrecourse Liabilities.** For the purpose of determining each Member's share of Company nonrecourse liabilities pursuant to Regulations Section 1.752-3(a)(3), and solely for such purpose, each Member's interest in Company profits is hereby specified to be such Member's Company Interest.

4.4.6 **Unexpected Allocations and Distributions.** No allocation may be made to a Member to the extent such allocation causes or increases a deficit balance in such Member's Adjusted Capital Account. Notwithstanding any other provisions of this

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Agreement except Sections 4.4.2 and 4.4.4 hereof, in the event that a Member unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5), or (6) which results in such Member having negative Adjusted Capital Account balance (as determined above), then such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Regulations, such negative balance in such Member's Adjusted Capital Account as quickly as possible. This provision is intended to satisfy the "qualified income offset" items of the Code.

4.4.7 **Unreimbursed Business Expenses of Members.** From time to time, a Member will require incurring certain expenses related to the trade or business of the Company for which the Company will not reimburse that Member. These expenses included, but are not limited to: (a) use of the Member's personal automobile for Company business; (b) meals and entertainment of persons who are clients or prospective clients of the Company; (c) professional organization dues, licenses, publications, etc. for the Member related to the Company's business; (d) use of a Member's personal computer (including software purchased for business purposes) or other office equipment on behalf of the Company; (e) conventions; or (f) charitable contributions.

Any Member, who has incurred unreimbursed expenditures which that Member has determined are appropriately documented and deductible as expenses related to the trade or business of the Company, shall notify the Treasurer of the Company of the total amount of these expenditures that the Member intends to deduct on their individual return.

The unreimbursed business expenses paid from the personal funds of a Member will be treated, for purposes of this Operating Agreement, as contribution to the capital of the Company with a corresponding allocation of the Company's deductions back to the capital of the contributing Member. It is the responsibility of the Member to maintain records to support any such expenditure.

4.5 **Capital Accounts of Transferred Company Interest.** Upon the transfer of all or any part of a Company Interest as permitted by this Operating Agreement, the Capital Account (or portion thereof) of transferor that is attributable to the transferred interest (or portion thereof) shall carry over to

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the transferee, as prescribed by Regulations Section 1.704-1(b)(2)(iv)(1).

4.6 **Transfers During Taxable Year.** All income, gain, loss, and deductions allocable pursuant to Sections 4.2, 4.3, and 4.4 hereof for a Fiscal Year with respect to any Interest which may have been transferred during such year shall be allocated between the transferor and transferee based upon the number of days that each was recognized by the Company as the owner of such Interest, without regard to the results of Company operations during the particular days of such fiscal year and without regard to which cash distributions were made to the transferor or transferee, provided, however, that all income, gain, loss, and deductions so allocated as the result of a capital transaction shall be allocated to the recognized owner of the Interest for the day on which the capital transaction giving rise to such gain occurred.

4.7 **Time of Allocation.** The allocations set forth above shall be made as of the end of each Fiscal Year.

4.8 **Right to Use Alternative Method of Calculations.** Notwithstanding anything else in this Article IV, the Company shall have the right to use a different method of allocating Company income and loss if it is advised by the Company accountant or tax counsel that the method of allocation provided herein violates the Code of Regulations. The Manager shall notify each Member of any change in the method of allocating Company income or loss in accordance with this paragraph promptly after the occurrence thereof.

4.9 **Adjustment of Capital Accounts.** After all allocations for taxable year are made, Capital Accounts shall be adjusted by the Company to the extent necessary to comply with applicable laws, regulations, and administrative pronouncements. The tax allocation provisions of this Operating Agreement are intended to produce final Capital Account balances that are at levels ("Target Final Balances"), which permit liquidating distributions that are made in accordance with such final Capital Account balances to be equal to the distributions that would occur under Section 4.1. To the extent that the tax allocation provisions of this Agreement would not produce the Target Final Balances, the Members agree to take such actions as are necessary to amend such tax allocation provisions to produce such Target Account Balances. Notwithstanding the other provisions of this Operating Agreement, allocations of income, gain, loss, and deduction (including items of gross income,

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gain, loss, and deduction) shall be made prospectively as necessary to produce such Target Final Balances (and, to the extent such prospective allocations would not effect such result, the prior tax returns of the Company shall be amended to reallocate items of gross, gain, loss, and deductions to produce such Target Final Balances).

4.10 **Change in Economic Arrangement.** Notwithstanding any other provision of this Operating Agreement, if the Percentage Interest of any Member is adjusted at any time pursuant to the terms of this Operating Agreement, the Member whose Percentage interest is increased pursuant to such adjustment shall have the right to amend this Operating Agreement to take into account the revised economic arrangement of the Members, but only to the extent required to satisfy the tax allocation rules of Code Section 704 and the Regulations thereunder based on the opinion of legal counsel selected by such Member.

4.11 **Tax Credits.** All tax credits for federal or state income tax purposes shall be allocated in the same manner as Losses, except as otherwise provided by the Code or Treasury Regulations.

ARTICLE V
MANAGEMENT AND OPERATION

5.1 **Manager.**

5.1.1 **Manager; Power and Authority.** Except as otherwise expressly set forth herein, the management and control of the Company and its business shall be vested exclusively in the Manager and the Manager shall have all the rights, powers, and authority generally conferred under the Act or other applicable law, on behalf and in the name of the Company, to carry out any and all of the objects and purposes of the Company and to perform all acts and enter into, perform, negotiate, and execute any and all leases, documents, contracts, and agreements on behalf of the Company that the Manager, exercising sole discretion, deems necessary or desirable (including, without limitation, any mortgage, promissory note, or other documents evidencing or securing any loan benefiting the Company or Transaction). Except as otherwise expressly set forth herein, the consent or authorization of any Member shall not be required for any lease, document, contract, agreement, mortgage, or promissory note to be valid and binding obligation of the Company.

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5.1.2 **Specific Authority.** Without limiting the generality of Subsection 5.1.1 and subject to the terms of Subsection 5.1.3, all Members agree that the Manager shall, exercising sole discretion, have the following rights and powers, except to the extent such rights and powers may be limited by other provisions of this Agreement:

(a) The making of any expenditure incurred in connection with the business of the Company;

(b) The use of the assets of the Company in connection with the business of the Company;

(c) The negotiation, execution, and performance of any contracts, conveyances, or other instruments;

(d) The distribution of Company cash other than as required pursuant to any other provision of this Agreement;

(e) The selection and dismissal of employees and outside attorneys, accountants, consultants, and contractors, and the determination of their compensation and other terms of employment or hiring;

(f) The maintenance of insurance for the benefit of the Company and the Members;

(g) The control of any matters affecting the rights and obligations of the Company, including the conduct of litigation and incurring of legal expense and the settlement of claims and litigations;

(h) The indemnification of any person against liabilities and contingencies to the extent permitted by law;

(i) The making or revoking of the elections referred to in Code Section 754 or any similar provision enacted in lieu thereof, or any corresponding provision of state tax laws (and each Member will, upon request of the Manager, supply the information necessary to properly give effect to such elections);

(j) The filing of such amendments to the Articles as may be required or as Manager may deem necessary from time to time;