

Exhibit 5

part H

**ARTICLE 12
BOOKS AND RECORDS**

12.1 *Books and Records; Accounting.* The Manager shall keep or cause to be kept at the address of the Company (or at such other place the Manager shall determine) accurate and proper books and records regarding the status of the business and financial conditions of the Company. The Fiscal Year of the Company shall be the calendar year.

12.2 *Access to Records, Financial Statements.* Each Member shall have the right to review all Company records, agreements, tax returns, financial statements, balance sheet, and financial projections of the Company, which may be prepared from time to time by or at the request of the Manager or an officer of the Company. The Company shall prepare and furnish to each Member promptly after the close of each fiscal quarter an unaudited statement showing the operations of the Company for such quarter and the balance in each Member's Capital Account. The Manager has the authority to select the Company's accountants and determine whether or not to obtain an audit of the Company's books and records.

12.3 *Annual Reports.* Within ninety (90) days after the end of each Fiscal Year, the Manager shall cause to be prepared and each Member furnished with unaudited financial statements accompanied by a report thereon of the Company's accountants stating that such statements are prepared and fairly stated in all material respects in accordance with generally accepted accounting principles, and, to the extent inconsistent therewith, in accordance with this agreement, including: (i) a copy of the balance sheet of the Company as of the last day of such Fiscal Year; (ii) a statement of income or loss for the Company for such Fiscal Year; (iii) a statement of the Members' Capital Accounts and changes therein for such Fiscal Year; and (iv) a statement of Company cash flow for such Fiscal Year.

12.4 *Bank Account(s).* All funds of the Company shall be deposited in the name of the Company in such bank or banks as may be agreed upon by the Manager and checks drawn on such account(s) shall require the signature of a Manager. All funds received from the operation and business of the Company shall be promptly deposited in the account(s) maintained in its name and all debts, expenses and charges shall be paid by checks drawn on such account(s). There shall be no commingling of the funds of the Company with the funds of any other entity.

**ARTICLE 13
TAX MATTERS**

13.1 *Company Tax Returns:*

13.1.1 The Manager shall cause to be prepared and timely filed all tax returns required to be filed for the Company, and shall cause to be timely paid all taxes owed by the

Company. The Company shall make an election under Code Section 754. The Manager may, in its discretion, make or refrain from making, any other foreign, federal, state or local income or other tax elections for the Company that it deems necessary or advisable.

13.1.2 MT Property Holdings, LLC is hereby designated as the Company's "Tax Matters Partner" under Code Section 6231(a)(7) and shall have all the powers and responsibilities of such position as provided in the Code. The Manager is specifically directed and authorized to take whatever steps the Manager, in its discretion, deem necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under the regulations issued under the Code. Each Member hereby agrees to cooperate with the Tax Matters Partner with respect to all matters within its authority as Tax Matters Partner. Expenses incurred by the Tax Matters Partner, in its capacity as such, will be borne by the Company.

13.2 *Schedules K-1 and Forms 1065.* The Manager shall, as promptly as practicable and in any event within 90 days after the end of each Fiscal Year, cause to be prepared and mailed to each Member of record an Internal Revenue Service Form K-1, Internal Revenue Service Form 1065, and any other forms which are necessary or advisable for the Members to satisfy their federal tax reporting obligations.

13.3 *Taxation as Partnership.* The Members agree that the Company will seek to be treated as a partnership for United States federal income tax purposes. The Manager shall operate the Company in a manner intended to preserve, to the extent practical, the Company's treatment as a partnership for United States federal income tax purposes.

13.4 *Withholding.* Each Member certifies that they are U.S. persons within the meaning of code Section 7701(a)(30). Any Person who may subsequently become a Member shall either (i) provide a certificate of non-foreign status to all Members or (ii) be subject to withholding on all distributions as may be required under the Code.

**ARTICLE 14
MISCELLANEOUS**

14.1 *Reimbursements.* The Company shall reimburse the Members and the Managers for all expenses incurred and paid by any of them in the organization of the Company and as authorized by the Company, in the conduct of the Company's business, including, but not limited to, expenses of maintaining an office, telephones, travel, office equipment and secretarial and other personnel as may reasonably be attributable to the Company. Such expenses shall not include any expenses incurred in connection with a Member's or Manager's exercise of its rights, as a Member or a Manager apart from the authorized conduct of the Company's business. The sole determination of the Manager of which expenses are allocated to and reimbursed as a result of the Company's activities or business and the amount of such expenses shall be conclusive. Such reimbursement shall be treated as expenses of the Company and shall not be deemed to constitute distributions to any Member of profit, loss or capital of the Company.

14.2 *Amendments.* In addition to amendments to this Agreement otherwise authorized under this Agreement, the Manager may, at any time and without consent of any Member, make any amendment to this Agreement provided that such amendment:

14.2.1 does not adversely affect the rights of the Members or their assignees in any material respect;

14.2.2 merely corrects an error or resolves an ambiguity in, or inconsistency among, the provisions of this Agreement;

14.2.3 deletes or adds any provision of this Agreement that is required to be so deleted or added by any federal or state governmental authority;

14.2.4 merely amends this Agreement or the Company's Articles to admit new Members in accordance with this Agreement;

14.2.5 amends Article 4 in accordance with Section 4.3.3;

14.2.6 amends Article 5 in accordance with Section 5.2.8; or

14.2.7 reflects a change in the Act that permits or requires an amendment, without adversely affecting the rights of any Member in any material respect.

Except as otherwise provided in this Agreement, this Agreement may be amended solely by a written instrument executed by the holders of a majority of the Class B Units then outstanding.

14.3 *Successors.* This Agreement shall be binding as to the executors, administrators, estates, heirs and legal successors, or nominees or representatives, of the Members. Except as otherwise provided in this Agreement, no persons other than the Members and their respective executors, administrators, estates, heirs and legal successors, or their nominees or representatives, shall obtain any rights by virtue of this Agreement.

14.4 *Counterparts.* This Agreement may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

14.5 *Integration.* This Agreement constitutes the entire agreement among the Members pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and undertakings of the Members in connection therewith.

14.6 *Entire Agreement.* This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. It supersedes any prior agreement or understandings between them relating to the subject matter hereof, and it may not be modified or amended except in a writing executed by all parties hereto.

14.7 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to the principles of conflict of laws thereof.

14.8 *Severability.* This Agreement shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Act. If, notwithstanding the previous sentence, a court of competent jurisdiction concludes that any provisions or wording of this Agreement is invalid or unenforceable under the Act or other applicable law, the invalidity or unenforceability of such provisions or wording will not invalidate the entire Agreement. In such a case, this Agreement will be construed so as to limit any term or provision so as to make it valid or enforceable within the requirements of applicable law and, in the event such term or provisions cannot be so limited, this Agreement will be construed to omit such invalid or unenforceable provisions or term. If it is determined that any provision relating to the distributions and allocations of the Company or to any fee payable by the Company is invalid or unenforceable, this Agreement shall be construed or interpreted so as (a) to make it enforceable or valid and (b) to make the distributions and allocations as closely equivalent to those set forth in this Agreement as permissible under applicable law.

14.9 *Headings.* The Headings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

14.10 *Waiver.* No consent or waiver, express or implied, by any Member to or of any breach or default by the other in the performance of obligations hereunder shall be deemed or construed to be a consent or waiver of any other obligations of such Member hereunder. Failure on the part of any Member to complain of any act or failure to act of any other Member or to declare any

of any party aggrieved as against the other for a breach or threatened breach of any provision hereof, it being the intention by this subsection to make clear the agreement of the Members that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.

14.16 *Company Losses Due to Member's Litigation.* In the event the Company is made a party to any litigation or otherwise incurs any losses or expenses as a result of or in connection with any Member's obligations or liabilities which do not arise out of or relate to the business of the Company, and which are not covered by the Company's insurance coverage, such Member shall reimburse the Company for all such expenses incurred, including attorneys' fees, and the interest of such Member in this Company may be charged therefor.

14.17 *Title to Company Assets.* The assets of the Company shall be owned by the Company as an entity, and no Member shall have any direct ownership interest in such assets or any portion thereof.

14.18 *Execution of Additional Documents.* Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments reasonably necessary for the Company to comply with any applicable laws, rules or regulations.

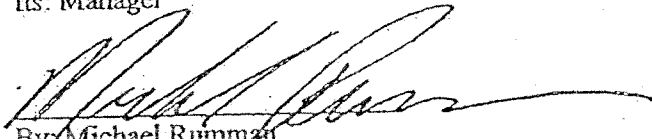
14.19 *Confidentiality.* Any mediators or mediators appointed pursuant to this Agreement shall be under a duty to maintain in confidence, to the greatest extent reasonably possible, any and all information relating to the Company and/or its Members or creditors.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Operating Agreement of Limited Liability Company as of the date first above written.

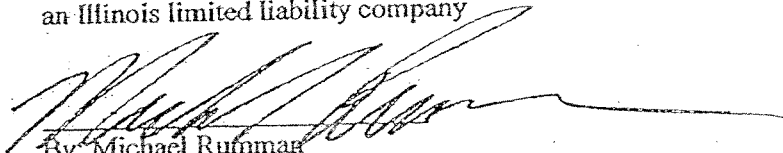
COMPANY: HERITAGE DEVELOPMENT PARTNERS, LLC,
an Illinois limited liability company

By: HERITAGE PROPERTY DEVELOPMENT, INC.
Its: Manager

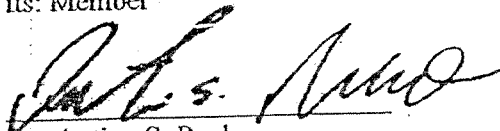


By: Michael Rumman
Its: President

MEMBER: MT PROPERTY HOLDINGS, LLC,
an Illinois limited liability company



By: Michael Rumman
Its: Member

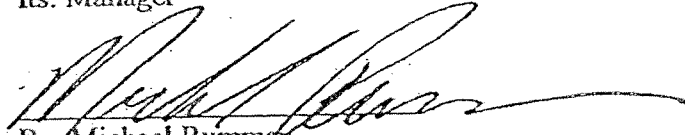


By: Antion S. Rezko
Its: Member

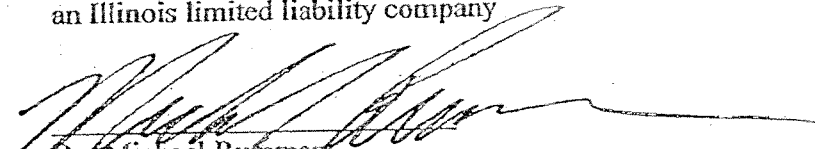
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Operating Agreement of Limited Liability Company as of the date first above written.

COMPANY: **HERITAGE DEVELOPMENT PARTNERS, LLC,**
an Illinois limited liability company

By: **HERITAGE PROPERTY DEVELOPMENT, INC.**
Its: Manager


By: Michael Rumman
Its: President

MEMBER: **MT PROPERTY HOLDINGS, LLC,**
an Illinois limited liability company


By: Michael Rumman
Its: Member

By: Antion S. Rezko
Its: Member

ADDITIONAL MEMBER SIGNATURE PAGE

The undersigned hereby executes the Operating Agreement, dated as of August 15, 2005 ("Agreement"), by and among Heritage Development Partners, LLC, an Illinois limited liability company (the "Company"), and the Members listed on the signature pages thereto. Each of the parties other than the Company may be referred to individually as a "Member" and collectively as the "Members".

Date: _____, 2206

Name

Address

Signature

HERITAGE DEVELOPMENT PARTNERS, LLC
(on behalf of itself and the Members)

By: _____
Authorized Manager

SCHEDULE 1
TO THE
HERITAGE DEVELOPMENT PARTNERS, LLC OPERATING AGREEMENT

Ownership of Members as of January 1, 2006

<u>Member</u>	<u>Class A Units</u>	<u>Class B Units</u>	<u>Capital Contribution</u>
MT Property Holdings, LLC	None	72,000	\$1,000
	1.9	<u>None</u>	
Total		72,000	\$1,000

54,000

Tab No. 17

AMENDED AND RESTATED
OPERATING AGREEMENT
OF
MT PROPERTY HOLDINGS, LLC

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**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, 200~~6~~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

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

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

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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.

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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(i) 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

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 5.2.8.1 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