Approved by the Board of Trustees
March 15, 2012

Board Meeting
March 15, 2012

APPROVE AMENDED AND RESTATED OPERATING AGREEMENT FOR ILLINOISVENTURES, LLC

Action: Approve Amended and Restated Operating Agreement for IllinoisVENTURES, LLC

Funding: No New Funding Required

At its meeting on April 13, 2000, the Board of Trustees authorized formation of IllinoisVENTURES, LLC (VENTURES), as a University-Related Organization to promote the development of new companies commercializing University technologies and to assist companies in obtaining seed and venture capital funding, recruiting management talent, developing business plans, and acquiring other business services as needed. VENTURES is a limited liability company (LLC) governed by an Operating Agreement. The Board of Trustees is the "sole member" of VENTURES, which is a manager-managed type LLC. This means that the sole member appoints a Board of Managers (BOM), which is responsible for the day-to-day operations. The Operating Agreement of VENTURES sets forth the duties and responsibilities of the BOM, while specifically identifying those powers that are reserved to the sole member.

The Office of University Counsel recently consulted with outside counsel to assist in performing a comprehensive review of the Operating Agreement in light of the current operations and practices of VENTURES. As a result of this review, it is recommended that the Operating Agreement be amended and restated to conform to best practices and provide more flexibility for the Board of Trustees in its governance authority over VENTURES. The following are the principal proposed changes to be made:

1. Composition and Appointment of Board of Managers

Current Provision: Operating Agreement specifies fixed size of Board of Managers and specific composition and qualifications of Managers, with a majority of the voting Managers being external members who are business and industry leaders. Actual practice may not correspond to this provision.

Recommendation (Section 5.2): Restate relevant section of Operating Agreement with general provision: “The Board of Managers of the Company shall consist of such number of individuals and with such qualifications, and may include voting and non-voting Managers, as may be determined from time-to-time by resolution adopted by the Board of Trustees of the University of Illinois, as sole Member of the Company; provided that a majority of the voting Managers shall be business and industry leaders and shall not include any employee of (or person financially dependent upon) the University of Illinois, the State of Illinois, or any agency thereof, or any member of the immediate family of any such person. Subject to the immediately preceding sentence, Managers shall be appointed, and may be removed at any time, by resolution adopted by the Board of Trustees of the University of Illinois.”

Rationale: Provide greater flexibility for the Board of Trustees of the University to change the composition of the Board of Managers (including voting and non-voting Managers) from time-to-time without necessitating future amendments to the Operating Agreement. Outside the terms of the Operating Agreement, the Board of Trustees in its discretion may from time to time adopt a policy as to the desired composition of the Board of Managers so long as the majority of the voting Managers are business and industry leaders.

2. Term of Managers

Current Provision: No specified term generally, except that "external" Managers have three-year terms.

Recommendation (Section 5.7): No specified term for any Manager; each Manager continues to serve until his/her resignation or removal.

Rationale: Simplicity and flexibility, in light of the authority of the Board of Trustees, as sole Member, to remove or appoint Managers from time to time.

3. Action by Board of Managers

Current Provisions:

- No specification as to required vote (e.g., majority or majority of quorum); implication under Illinois LLC Act is that a majority of a quorum can act for the Board.
- Operating Agreement specifies a quorum of a majority of the Managers.
- Managers may participate in meeting by teleconference or similar means.
- Proxies permitted by implication under Illinois LLC Act.
- Action by written consent only if signed by all Managers.

Recommendations (Sections 5.11 and 5.12):

- Action by Board requires affirmative vote of a majority of voting Managers then holding office.
- Specify required quorum of a majority of voting Managers then holding office.
- Managers may participate in meeting by teleconference or similar means.
- Proxies are not permitted.
- Action by written consent requires execution by a majority of the voting Managers then holding office (same as required for in-person meeting).

Rationale:

- Better governance to require a majority of all voting Managers for any action by the Board (rather than a majority of a 50% quorum, i.e. 25% of Managers).
- Clarify that it is only voting Managers who are counted for quorum and voting requirement.
- Better governance does not permit proxies at a Board meeting; Managers should participate in the discussion and exchange of ideas if their vote is to be counted; permitted participation by teleconference or similar means eases any burden of participating in the meeting.
- For flexibility and efficiency, permit written action by majority of Managers, rather than requiring unanimity.

4. Executive Committee

Current Provisions:

- Executive Committee is a standing committee consisting of the Chair, Vice Chair, and one other Manager elected by the Board of Managers.
- Executive Committee has such powers as may be delegated by the Board of Managers.

Recommendations (Section 7.2):

- Maintain Executive Committee as standing committee as currently provided.
- Provide limited additional authority: In addition to exercising powers expressly delegated to it by the Board, Executive Committee "shall exercise the authority

of the Board of Managers at such times that action is necessary and it is impractical to convene a meeting of the Board of Managers."

Rationale: Limited added authority of Executive Committee is consistent with common corporate practice; provides flexibility at times when prompt action is necessary; and larger Board cannot be convened.

5. Term of Officers

Current Provision: One-year term for officers.

Recommendation (Section 6.4): Officers continue to hold office until successors are elected or appointed.

Rationale: Simplicity and practicality.

6. CEO/Managing Director

Current Provisions:
- Operating Agreement is not clear as to whether or not CEO/Managing Director is an "officer."
- Operating Agreement provides that no officer shall receive compensation.

Recommendations (Sections 6.1 and 6.11):
- Expressly add CEO/Managing Director to list of officers.
- Provide exception to "no compensation" clause, so that CEO/Managing Director may receive such compensation as may be determined by the Board of Managers.

Rationale: Reflect actual practice of the Company.

7. Reserved Powers of the Member

Current Provision: Operating Agreement currently restricts authority of the Board of Trustees, as sole Member, to take fundamental actions with regard to the Company by requiring prior recommendation of the Managers before the Member can act on certain matters: amendment of Articles of Organization; amendment of Operating Agreement; admission of additional Members; merger or consolidation of the Company with another entity or creation of a joint venture.

Recommendations (Section 4.6):
- Remove requirement for Managers' prior recommendation on these fundamental acts relating to the Company, except as to amendments to Article 5 of the

Operating Agreement regarding rights and duties of managers which shall continue to require the recommendation of the Board of Managers.

- Add additional reserved power that requires approval by the Member: "Approval of any transactions outside the ordinary course of the Company's business or any transaction in which a Manager has an interest."

Rationale: Control over fundamental corporate acts should be solely in the control of the Board of Trustees of the University as the sole Member which established the Company. Additional provision as to Member approval for transactions outside the ordinary course is a common safety check.

8. Authority to Sign Contracts and Leases

Current Provisions: Operating Agreement contains overlapping provisions that are not entirely clear. Some provisions seem to imply that any Manager may have authority to sign documents; and on the other hand, there is no clear statement as to the authority of the CEO/Managing Director.

Recommendation (Section 5.3): Add clear explicit statement: "All contracts, leases, documents and instruments (including checks and drafts on Company accounts) must be signed: (i) to the extent within the day-to-day affairs of the Company under the management of the CEO/Managing Director and not inconsistent with Board direction, by the Treasurer and either the Chair or the CEO/Managing Director (without the need for further authorization by the Board of Managers); or (ii) pursuant to authorization by the Board of Managers. Unless authorized by the Board of Managers, no individual Manager or Officer has the authority to execute any such contracts, leases, documents, or instruments."

Rationale: Clarity and internal controls.

Attached to this Board item is a comparison copy of the Amended and Restated Operating Agreement in a format to reflect all of the proposed amendments. The Board of Managers of IllinoisVENTURES, LLC approved these amendments at its meeting on February 13, 2012, by unanimous vote.

The Vice President for Research and the University Counsel recommend that the Board of Trustees approve the amended Operating Agreement as described above.

The Board action recommended in this item complies in all material respects with applicable State and federal laws, University of Illinois *Statutes*, *The General Rules Concerning University Organization and Procedure*, and Board of Trustees policies and directives.

The President of the University concurs.