

Approved by the Board of Trustees,
March 23, 2011

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Board Meeting
March 23, 2011

APPROVE AMENDMENTS TO THE OPERATING AGREEMENT OF THE
UNIVERSITY OF ILLINOIS RESEARCH PARK, LLC

Action: Approve Amendments to the Operating Agreement of the University of Illinois Research Park, LLC

Funding: No New Funding Required

In January 2000, the Board of Trustees of the University of Illinois (Board of Trustees) authorized the formation of the University of Illinois Research Park, LLC (UIRP), as a University Related Organization to assist the University in developing and operating research parks. The UIRP is a limited liability company (LLC) governed by an Operating Agreement. The Board of Trustees is the “sole member” of the UIRP, 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 operation of the UIRP. The Operating Agreement of the UIRP sets forth the duties and responsibilities of the BOM, while specifically identifying those powers that are reserved only 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 the UIRP and the needs of the expanding Research Park. As a result of this review, it is recommended that the Operating Agreement be amended and restated to conform to best practices and to create greater efficiencies and

more flexibility for the Board of Trustees in its governance authority over the Research Park. The following are the principal changes proposed to be made:

1. Composition and Appointment of Board of Managers

Current Provision: Operating Agreement specifies fixed size of Board of Managers and composition and qualifications of voting and non-voting Managers; this section of Operating Agreement has been amended multiple times.

Recommendation: 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. Managers shall be appointed, and may be removed at any time, by resolution adopted by the Board of Trustees of the University of Illinois." Section 5.2.

Rationale: Provide greater flexibility for the Board of Trustees to change the composition of the Board of Managers without necessitating future amendments to the Operating Agreement.

2. Term of Managers

Current Provision: No specified term, except that three-year staggered terms are specified for the representative of the Research and Technology Transfer Council and the representative of Chicago Technology Park/Illinois Medical District Commission.

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

3. Action by Board of Managers

Current Provisions:

- No specification as to required vote (e.g., majority or majority of quorum).
- Operating Agreement specifies a quorum of 3 Managers (based on original 5 member Board of Managers).
- Proxies permitted.
- 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.
- Proxies are not permitted (but teleconference, videoconference, etc., are permitted).

- Action by written consent requires execution by a majority of the voting Managers then holding office.

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.
- Executive Committee shall have such powers as may be delegated by the Board of Managers and, in addition, 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 or to seek written consent of the Board of Managers.

Rationale:

- Provide ability of Board of Managers, when necessary, to act quickly when it is impractical to convene the Board of Managers or to seek written consent.

5. **Reserved Powers of the Member**

Current Provision: Reserved powers (requiring action by Member and not by Board of Managers) include: "Approval of any transactions outside the ordinary course of the Company's business or any transaction in which a Manager has an interest."

Recommendation: Add clarification to this reserved power: "Approval of any transactions outside the ordinary course of the Company's business (including, without limitation, the approval of any long-term development agreement) or any transaction in which a Manager has an interest." Section 4.6.10.

6. **Authority to Sign Contracts and Leases**

Current Provisions: Overlapping provisions, and not entirely clear. Any Manager may have authority to sign documents. Operating Agreement also states that all contracts and leases must be signed by the Treasurer and the Director.

Recommendation: All contracts, leases, documents and instruments must be signed (i) by the Treasurer and either the Chair or the Director, or (ii) pursuant to authorization by the Board of Managers. Section 5.3, last paragraph.

7. **Director of UIRP**

Current Provision: Specifies that the Vice President of Technology and Economic Development will serve as Director unless otherwise decided by the Board of Managers.

Recommendation: Change the provision to state that the Vice President for Research or his/her designee will serve as Director unless otherwise determined by the Board of Trustees of the University. Section 6.2.

Rationale: Updates the title of the officer previously known as the Vice President for Technology and Economic Development. Gives the Vice President for Research the ability to name a designee. Also clarifies that the Board of Trustees, and not the Board of Managers, may otherwise determine who is to serve as Director.

8. **Services and Management Agreement** For simplicity, revised Section 5.1 acknowledges the Services and Management Agreement that was previously entered into by the Company and the Member and eliminates the further description of its operation.

Attached to this Board item is a comparison copy of the proposed Amended and Restated Operating Agreement in format to reflect all the above proposed amendments.

The Interim Vice President for Research and the University Counsel recommend that the Board of Trustees approve the amended Operating Agreement as described above. In addition, it is recommended that the six current managers of the Company be confirmed as voting members of the Board of Managers: one Board of Trustees representative (Edward L. McMillan); three business and industry leaders (Patrick Daly, Roderick Johnson, and Rick Stephens); and the Vice Chancellors for Research at the Urbana and Chicago campuses. The Vice President/Chief Financial Officer and Comptroller and Vice President for Research will continue to serve as non-voting members. It is contemplated that two academic representatives (one each from the Urbana and Chicago campuses) will be recommended for appointment as voting members of the Board of Managers at a future meeting, following consultation with the

Vice Presidents/Chancellors, to complete a board composition of eight voting managers and two non-voting managers.

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.