

c. any and all instruments, certificates, and other documents which may be deemed necessary or desirable to transform (whether by conversion, merger or similar transaction) the Company from a Delaware limited liability company to a New York limited liability company;

d. all amendments or modifications to this Agreement to the extent made in accordance with Section 25 hereof; and

e. if a Note Default Event occurs and is continuing under any Note, to take any action pursuant to Section 19 relating to the Note Collateral pledged under such Note.

The power of attorney hereby granted by each of the Members is coupled with an interest, is irrevocable, and shall survive, and shall not be affected by, the subsequent death, disability, incapacity, incompetency, termination, bankruptcy or insolvency of such Member.

28. Enforceability. If any provision of this Agreement shall be deemed invalid or unenforceable as written, it shall be construed, to the greatest extent possible, in a manner that shall render it valid and enforceable, and any limitations on the scope or duration of any such provision necessary to make it valid and enforceable shall be deemed to be part thereof, and no invalidity or unenforceability of any provision shall affect any other portion of this Agreement unless the provision deemed to be so invalid or unenforceable is a material element of this Agreement, taken as a whole.

29. Judicial Modification. If at any time any of the provisions of this Agreement shall be deemed invalid or unenforceable by reason of being vague or unreasonable or for any other reason, such provisions shall be considered divisible and shall become and be immediately amended to include only such provisions and to such extent as shall be deemed to be reasonable and enforceable by the courts having jurisdiction over this Agreement pursuant to Section 24,