

# OPERATING AGREEMENT

OF

\_\_\_\_\_, LLC

ANY SECURITIES CREATED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM SUCH REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933, NOR HAVE THEY BEEN REGISTERED UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY OTHER JURISDICTION. THE INTERESTS CREATED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS OPERATING AGREEMENT AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS.

**THIS OPERATING AGREEMENT** (this “Agreement”) of the Company (as defined on the signature page to this Operating Agreement), is made and entered into effective as of the Effective Date (as defined on the signature page to this Operating Agreement), by the individual or entity listed on the signature page as the sole member (the “Member”) and the Manager (as defined herein).

## ARTICLE 1 ORGANIZATIONAL MATTERS

1.1. Formation. The Company was formed as a Georgia limited liability company by the filing of the Articles of Organization with the Secretary of State of Georgia in accordance with the provisions of the Georgia Act. The Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

1.2. Name. The name of the Company is as set forth on the signature page to this Operating Agreement. The Company may conduct business under that name or any other name selected by the Manager and approved by the Member. The Manager, on behalf of the Company, shall execute and file any certificates, articles, fictitious business name statements, and the like, and any amendments or supplements thereto, as the Manager considers to be appropriate or advisable.

1.3. Principal Place of Business. The principal place of business of the Company shall be at such place as the Manager may determine from time to time.

1.4. Registered Office and Resident Agent. The name of the Company’s initial registered agent and the address of its initial registered office, shall each be as set forth in the Articles.

1.5. Term. The term of the Company commenced on the date of filing of the Articles with the Georgia Secretary of State and shall continue until such time as the Company is dissolved pursuant to the terms hereunder or pursuant to the Act.

1.6. Purpose. The Company has been formed for the purpose of engaging in one or more of the following activities: (a) acquiring, owning, holding, selling, leasing, transferring, exchanging, operating and managing such assets as the Manager shall approve; (b) undertaking such other lawful businesses, purposes, activities or transactions in which a limited liability company may be lawfully engaged and as may be approved by the Manager; and (c) undertaking such other lawful businesses, purposes, activities or transactions reasonably related to any of the foregoing purposes and which are

deemed, in the opinion of the Manager, to be necessary, advisable, or appropriate in order to further such purposes.

## **ARTICLE 2**

### **CAPITAL CONTRIBUTIONS; THE MEMBER**

2.1. Initial Capital Contributions. The Member has initially made to the Company such capital contributions as are set forth on Exhibit A, attached hereto. In consideration for such capital contributions, and for other valuable consideration, the Member is hereby admitted to the Company as the sole and only Member of the Company, and, as such, is hereby issued One Hundred Percent (100%) of the Membership Interests in the Company.

2.2. Additional Capital Contributions. The Member shall not have any obligation hereunder to make any additional capital contributions to the Company.

2.3. Admission of Additional Members. To the extent approved by the Manager, in its exclusive discretion, the Company may admit additional members to the Company, upon such terms and conditions, and in exchange for such capital contributions, as may be deemed appropriate from time to time by the Manager. Upon admission of any such additional member, Exhibit A, attached hereto, shall be revised accordingly.

2.4. No Withdrawal; No Interest. Except as specifically provided in this Agreement, no Member shall have the right to withdraw its capital or profits, or any portion thereof, from the Company. No Member shall be entitled to receive any interest on his, her or its capital contributions.

2.5. Limited Liability. Except as otherwise required by any non-waivable provision of the Act or other Applicable Law and except as provided in other agreements between the Company and the Members or its Affiliates: (a) the Member shall not be personally liable in any manner whatsoever for any debt, liability or other obligation of the Company, whether such debt, liability or other obligation arises in contract, tort, or otherwise; and (b) the Member shall not in any event have any liability whatsoever in excess of the amount of its capital contribution or its share of assets and undistributed profits of the Company, if any.

2.6. Title to Assets; Individual Obligations. All property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such property in its individual name, and each Member's interest in the Company shall be personal property for all purposes. At all times from and after the Effective Date, the Company shall hold title to all of its property in the name of the Company and not in the name of any Member, provided, however, that the Company may elect (with approval of the Members) to hold assets through one or more wholly owned entities. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of, any individual obligation of any Member.

2.7. Managerial Authority of Members. No Member, in its capacity as such, shall have power or authority to participate in the management of the Company except as expressly authorized by this Agreement or as expressly required pursuant to the Act notwithstanding this Agreement. Unless expressly and duly authorized in writing to do so by the Manager, none of the Members, in their capacity as such, shall have any power to sign for, bind or act on behalf of the Company in any way, to pledge the Company's assets or credit, or to render the Company liable for any purpose. Except as expressly provided in this Agreement, the Members, in their capacities as such, shall have no voting, approval or consent rights.

## ARTICLE 3 MANAGEMENT OF THE COMPANY

3.1. Management by the Member. The business, property and affairs of the Company will be governed by, and all powers of the Company will be exercised by, or under the direction of, the Company's manager (the "Manager"). Except as otherwise provided pursuant to this Agreement, the Manager shall have all necessary power to carry out the purposes, businesses, investments and activities of the Company

3.2. Appointment of Manager. The Company's initial Manager shall be the Person listed on the signature page, who, by its signature to this Agreement (in whatever capacity provided), hereby agrees to such appointment. The Manager shall serve as such until its resignation or removal hereunder. Any Manager may resign as such by provision of written notice to the Member. Any Manager may be removed at any time, and from time to time, and for any reason whatsoever, by the Member. The Member may, from time to time, in its discretion, appoint more than one person to serve as Manager as of any given point in time and any such additional persons shall become Manager hereunder upon receipt of written notice thereof by the Company and upon acceptance of such appointment by such person.

3.3. Appointment of Officers. The Manager may appoint one or more officers at any time. The officers of the Company may include a chief executive officer, a president, one or more vice presidents, a secretary, one or more assistant secretaries, a chief financial officer and one or more deputy chief financial officers, and a general counsel and one or more assistant general counsels. The officers, if any, shall serve at the pleasure of the Manager, subject to the rights, if any, of an officer under any contract of employment. An officer need not be a Member and may hold any number of offices. The officers shall exercise such powers and perform such duties as are specified in this Agreement and as shall be determined from time to time by the Manager. Generally, unless otherwise provided, each officer shall have the powers, duties, and responsibilities usually vested in like titled officers of a Georgia corporation and shall perform such other duties and have such other powers as the Manager may from time to time prescribe.

3.4. Liability. Neither the Manager, the Member nor any officer of the Company shall be liable to the Company or to the Member for any loss or damage sustained by the Company or the Member unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of the law by such Manager, Member or officer of the Company. Neither the Manager, the Member nor any officer of the Company, nor any shareholder, officer, director, partner, member, subsidiary, employee, agent or affiliate of such person (nor any officer, director, partner, member, subsidiary, employee, agent or any other person acting through or under the authority of any of the foregoing) shall be liable, responsible or accountable in damages or otherwise to the Member for any act performed in good faith by any or all such persons in connection with the affairs of the Company, where such action, inaction or failure to act is based upon the belief that such action, inaction or failure to act is reasonable under the circumstances and does not constitute gross negligence or intentional misconduct.

3.5. Indemnification. The Company shall defend, indemnify and hold harmless, and pay all judgments against, the Manager, the Member, and their respective shareholders, officers, directors, partners, members, subsidiaries, employees, agents and affiliates (and any stockholders, officers, directors, partners, members, subsidiaries, employees, agents and affiliates of any of the foregoing) arising from any claim, loss, liability or damage incurred by reason of an act performed, or omitted to be performed, in connection with the affairs of the Company by any or all of the aforementioned persons in good faith, including attorneys fees incurred by any of the aforementioned persons in good faith, including any such fees incurred in connection with the defense of any action based on any such alleged act or omission. All judgments against the Company and/or any of the aforementioned persons, wherein any of the aforementioned persons is entitled to indemnification, as herein provided, shall first be satisfied

from Company assets. The Company shall have the power to purchase and maintain insurance on behalf of any person who is or was an agent of the Company against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as an agent, whether or not the Company would have the power to indemnify such person against such liability under the provisions of this Section 3.5 or under applicable law.

3.6. Manager Has No Exclusive Duty to Company. The Manager shall not be required to manage the Company as the Manager's sole and exclusive function and the Manager may have other business interests and may engage in other activities in addition to those relating to the Company. The Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or ventures.

#### **ARTICLE 4 ALLOCATIONS AND DISTRIBUTIONS**

4.1. Allocations. All items of profit, income, gain, loss, deduction, cost or expense of the Company shall be allocated solely to the Member

4.2. Distributions. Subject to compliance with Applicable Law, the Company shall make distributions from time to time and in such amounts as shall be determined by the Manager in its sole discretion, any such distributions to be made solely to the Member.

#### **ARTICLE 5 BOOKS AND RECORDS; ACCOUNTING; MEMBER**

5.1. Company Books and Records. The books and records of the Company will be maintained at the principal office of the Company and will be available for examination by the Member or such Member's duly authorized representatives at any reasonable time. The Company will maintain the following books and records:

5.1.1 A current list of the full name and last known business or residential address of the Member, together with the capital contributions of the Member;

5.1.2 A copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

5.1.3 Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the three (3) most recent taxable years;

5.1.4 A copy of this Agreement and any and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which this Agreement or any such amendments or restatements thereto have been executed; and

5.1.5 Copies of the financial statements of the Company, if any, for the six (6) most recent fiscal years.

5.2. Accounting Period. The Company's accounting period shall be the calendar year.

5.3. Inspection of Records. The Member has the right, on reasonable request and subject to such reasonable standards as the Member may from time to time establish, to obtain from the Member the information set forth above in Section 5.1, as well as information regarding the status of the business and

financial condition of the Company (generally consisting of financial statements of the Company) and such other information regarding the affairs of the Company as is just and reasonable in light of the purpose related to the Member's Interest as a Member for which such information is sought.

5.4. Company Tax Returns and Tax Elections. The Company's accountants will be instructed to prepare and file all required tax returns for the Company. The Member will make any tax election necessary for completion of the Company tax returns.

5.5. Reports. The Company shall cause to be filed, in accordance with the Applicable Laws, all reports and documents required to be filed with any governmental agency.

5.6. Limitation on Liability. The Member's liability shall be limited as set forth in the Georgia Act.

5.7. No Liability for Company Obligations. The Member shall not have any personal liability for any debts or losses of the Company.

5.8. Loans to Company. To the extent approved by the Manager, the Member may make a secured or unsecured loan to the Company.

## **ARTICLE 6 DISSOLUTION OF THE COMPANY**

6.1. Events of Dissolution. The Company shall be dissolved and wound up on the first to occur of any of the following events:

6.1.1 The election of the Manager to dissolve the Company; or

6.1.2 Any other event that Applicable Law specifies must operate as an event causing the dissolution of a limited liability company notwithstanding any provision to the contrary in such limited liability company's limited liability company agreement.

6.1.3 Notwithstanding any provision of the Georgia Act or this Agreement to the contrary, the Company shall not be dissolved upon the sale of all or substantially all of the Company's assets and the collection of all proceeds therefrom, or the occurrence of an event specified in Section 14-11-601.1(b)(4) (relating to various voluntary insolvency and bankruptcy proceedings or dissolution), or Section 14-11-601.1(b)(5) (relating to various involuntary insolvency and bankruptcy proceedings or dissolution) of the Georgia Act (collectively an "Event of Dissociation") unless the Event of Dissociation is incurred by or is with respect to the last remaining Member.

6.2. Priority of Liquidating Distributions. Upon the occurrence of a dissolution event described in Section 6.1, above, the Company shall terminate. In the event of the dissolution and termination of the Company, the Manager shall proceed with an orderly liquidation of the Company and the proceeds of such liquidation shall be applied and distributed in the following order of priority:

6.2.1 To creditors of the Company for payment of the debts and liabilities of the Company and the expenses of liquidation;

6.2.2 To the setting up of any reserves that the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. Such reserves shall be paid over by the Member to a bank or other institutional escrow agent to be held for the purpose of disbursing such reserves in payment of the aforementioned contingencies, and at the expiration of such

period as the Member may deem advisable, to distribute the balance in the manner provided in this Section 6.2; and

6.2.3 To the Member.

## **ARTICLE 7 MISCELLANEOUS**

7.1. Governing Law. This Agreement is deemed to have been entered into and executed in the State of Georgia, and all questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be determined in accordance with the provisions of the laws of the State of Georgia.

7.2. Amendments. Unless otherwise provided herein, this Agreement may be amended only by written document executed by the Member.

7.3. Severable. The provisions of this Agreement are severable. If any article, section, paragraph, provision or clause of this Agreement shall be enforceable or invalid, it shall not affect the enforceability or validity of any one or more of the other articles, sections, paragraphs or provisions of this Agreement.

7.4. Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

7.5. Binding Effect. Except as otherwise provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties signatory hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

7.6. Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

7.7. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any Person not a party hereto.

7.8. Determination of Matters Not Provided For In This Agreement. The Manager shall decide any and all questions arising with respect to the Company and this Agreement which are not specifically or expressly provided for in this Agreement.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS HEREOF, the undersigned have set their hands and seals as of \_\_\_\_\_ (the “Effective Date”).

Company Name: \_\_\_\_\_

**MEMBER:**

**MANAGER:**

If an Individual:

If an Individual:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

If an Entity:

If an Entity:

Entity Name:

Entity Name:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**MEMBERS; INITIAL CAPITAL CONTRIBUTIONS; PERCENTAGE INTERESTS**

<i>Member</i>	<i>Initial Capital Contribution</i>	<i>Percentage Interest</i>
_____	\$ _____	100%



**EXHIBIT B**  
**DEFINITIONS**

Defined Terms. For purposes of this Agreement, capitalized terms utilized herein and not otherwise defined herein shall, unless the context clearly indicates otherwise, have the following definitions:

a. “Act” shall mean the Georgia Limited Liability Company Act at O.C.G.A. § 14-11-100, et seq.

b. “Affiliate” shall, with respect to any particular Person, mean any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, the term “control” shall be deemed satisfied to the extent that there exists direct or indirect ownership representing a minimum five percent (5%) ownership interest.

c. “Applicable Law” shall mean all existing and future applicable laws (including environmental laws), rules, regulations (including proposed, temporary and final income tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any governmental authority or regulatory body (including but not limited to the Securities and Exchange Commission, or comparable state law securities commission), and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction and any restrictive covenant or deed restriction or easement of record affecting any of the real estate owned or leased by the Company or any of its Affiliates.

d. “Articles” shall mean the Articles of Organization of the Company.

e. “Effective Date” shall have the meaning ascribed to such term in the introductory paragraph to this Agreement.

f. “Manager” shall have the meaning ascribed to such term in Section 3.1 of this Agreement.

g. “Member” or “Members” shall mean each Person who executes this Agreement or a counterpart thereof as a Member and each of the Persons who may hereafter become Members as provided in this Agreement.

h. “Membership Interest” or “Interest” shall mean the entire ownership interest of a Member in the Company at any particular time, any and all rights to vote and otherwise participate in the Company’s affairs, and the rights to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

i. “Person” shall mean and include any individual, corporation, partnership, limited liability company, trust, unincorporated organization, government or any department or agency thereof, or any entity similar to any of the foregoing.