

**OPERATING AGREEMENT OF
[NEWCO] LLC,
A GEORGIA LIMITED LIABILITY COMPANY**

THE MEMBERSHIP INTEREST SET OUT IN THIS OPERATING AGREEMENT (“SECURITIES”) HAS NOT BEEN REGISTERED UNDER THE SECURITIES LAWS OF THE UNITED STATES IN RELIANCE UPON AN EXEMPTION FROM SUCH REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933 PROVIDED BY SECTION 4(2) THEREOF, NOR HAVE THEY BEEN REGISTERED UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY OTHER JURISDICTION, AND MAY NOT BE TRANSFERRED UNLESS (I) A REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IS THEN IN EFFECT WITH RESPECT TO THE SECURITIES REPRESENTED HEREBY; OR (II) A WRITTEN OPINION FROM COUNSEL FOR THE ISSUER IS OBTAINED TO THE EFFECT THAT NO SUCH REGISTRATION IS REQUIRED; OR (III) A NO ACTION LETTER OR ITS THEN EQUIVALENT WITH RESPECT TO SUCH DISPOSITION HAS BEEN ISSUED BY THE STAFF OF THE SECURITIES AND EXCHANGE COMMISSION.

THESE SECURITIES WERE ACQUIRED FOR INVESTMENT AND WERE NOT REGISTERED UNDER THE GEORGIA SECURITIES ACT OF 1973 (THE "ACT") IN RELIANCE ON THE EXEMPTION CONTAINED IN § 9(M) [O.C.G.A. 10-5-9(13)] OF THE ACT, AND THEY MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER THE ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR IN A TRANSACTION WHICH IS OTHERWISE IN COMPLIANCE WITH THE ACT.

I. PRELIMINARY PROVISIONS

1. **Effective Date:** This operating is adopted by the members whose signatures appear at the end of this agreement (the “Agreement”) and is effective as of the date of formation.

2. **Formation:** On [Formation Date], [NEWCO] LLC organized a Georgia Limited Liability Company by executing and delivering Articles of Organization to the Georgia Secretary of State in accordance with and pursuant to the Georgia Limited Liability Company Act, §14-11-100, et seq. ("Georgia Act.")

3. **Name.** The name of the Company is _____.

4. **Principal Place of Business.** The principal place of business of the Company within the State of Georgia shall be [Principal place of business of the llc]. The Company may locate its places of business and registered office at any other place or places as the Members may from time to time deem advisable.

5. **Registered Office and Agent:** The registered office of this LLC and the registered agent at this address are as follows:

event a Manager is designated to manage the daily operations, they may be removed by the affirmative vote of Members holding a Majority Interest.

3. **Limitations of Authority.** No Member shall, on behalf of the Company, enter into any loan, equity line, credit arrangement or other situation as a borrower without the affirmative consent of Members holding a Majority Interest.

4. **Limitation of Liability.** Each Member's liability shall be limited as set forth in this Operating Agreement, the Georgia Act, and other applicable law.

5. **Reimbursement for Organizational Costs:** Members shall be reimbursed by the LLC for organizational expenses paid by the members. The LLC shall be authorized to elect to deduct organizational expenses and start-up expenditures ratably over a period of time as permitted by the Internal Revenue Code and as may be advised by the LLC's tax advisor.

6. **Members' Percentage Interests:** A member's percentage interest in this LLC shall be computed as a fraction, the numerator of which is the total of a member's capital account and the denominator of which is the total of all capital accounts of all members. This fraction shall be expressed in this agreement as a percentage, which shall be called each member's "percentage interest" in this LLC.

7. **Quorum.** Members holding at least two-thirds of all Capital Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members.

8. **Manner of Acting.** If a quorum is present, the affirmative vote of Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Georgia Act, by the Articles of Organization, or by this Operating Agreement.

9. **Meetings.** No annual meeting shall be required.

10. **Notice of Meetings.** Notice of meetings shall be as provided in the Georgia Act.

11. **Title to Assets:** All personal and real property of the Company shall be held in the name of the Company, not in the names of individual members.

12. **Approval of Sale of All Assets.** The Members shall have the right, by the affirmative vote of Members holding at least two-thirds of all Capital Interests, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets (other than in the ordinary course of the Company's business) which is to occur as part of a single transaction or plan.

IV. CAPITAL CONTRIBUTIONS, TAX AND FINANCIAL PROVISIONS

1. **Members' Capital Contributions.** Each Member shall contribute such amount as is set forth in appended Exhibit A as its share of the Initial Capital Contribution.

2. **Withdrawal or Reduction of Members' Contributions to Capital.** A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of

the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them. A Member, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

3. No Interest on Capital Contributions: No interest shall be paid on funds or property contributed as capital to this LLC, or on funds reflected in the capital accounts of the members.

4. Loans to Company. To the extent approved by affirmative vote or written consent of Members holding one hundred percent (100%) of the Membership Interests held by all Members, any Member may make a secured or unsecured loan to the Company.

5. Allocations of Profits and Losses from Operations. The Net Profits and Net Losses of the Company for each fiscal year will be allocated as follows:

| Member | Allocation |
|--------------------|---|
| <u>[Member #1]</u> | <u>[Percent ownership of Member#1]%</u> |
| <u>[Member #2]</u> | <u>[Percent ownership of Member#2]%</u> |

6. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Company with the greatest tax benefits.

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

8. Records, Audits, and Reports. At the expense of the Company, the Company shall maintain records and accounts of all operations and expenditures of the Company.

9. Returns and Other Elections. The Company shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the IRC and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

10. Tax Elections. All elections permitted to be made by the Company under federal or state laws shall be made by the affirmative vote of Members owning a Majority Interest.

V. TRANSFERABILITY

1. General. Except as otherwise specifically provided in this Operating Agreement neither a Member nor an Economic Interest Owner shall have the right to:

- a. Sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration, (collectively, "Sell") all or any part of its Membership Interest or Economic Interest;

b. Gift, bequeath or otherwise transfer (whether or not by operation of law, except in the case of bankruptcy) all or part of its Membership Interest or Economic Interest.

2. A Transferee is Not Member in Absence of Unanimous Consent.

3. Single Member. In the event there is only one Member, his interest herein shall pass as personal property pursuant to his Last Will and Testament, or, in the event of intestacy, pursuant to the laws of intestate succession of said Member's state of domicile.

VI. ADDITIONAL MEMBERS

1. Admission to Membership. From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote may become a Member in this Company either by the issuance by the Company of a Membership Interests for such consideration as the Members by their unanimous vote shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Operating Agreement.

2. Financial Adjustments. No new Members shall be entitled to any retroactive allocation of losses, income, or expense deductions incurred by the Company. The Members may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make pro rata allocations of loss, income, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of IRC § 706(d) and the Treasury Regulations promulgated thereunder.

VII. DISSOLUTION PROVISIONS

1. The Company shall be dissolved upon the occurrence of any of three events:

a. When the period fixed for the duration of the Company shall expire;

b. By the unanimous written agreement of all Members; or

c. Upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a Member or occurrence of any other event which terminates the continued Membership of a Member in the Company (a "Withdrawal Event"), unless the business of the Company is continued by the consent of all the remaining Members within 90 days after the Withdrawal Event and there are at least two remaining Members. Each of the Members hereby agrees that within the 60 days after the occurrence of a Withdrawal Event (and provided that there are then at least two remaining Members of the Company), they will promptly consent, in writing, to continue the business of the Company. The consents shall be mailed or hand delivered to the principal place of business of the Company (or to such other address designated by the Member(s)) no later than 80 days after each Withdrawal Event. The sole remedy for breach of a Member's obligation to

consent to continue the business of the Company under this section shall be money damages (and not specific performance).

2. Winding Up, Liquidation, and Distribution of Assets. Upon dissolution, an accounting shall be made by the Company's independent accountants of all the accounts of the Company and of the Company's assets, liabilities, and operations, from the date of the last previous accounting until the date of the dissolution. The Company shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to be wound up, the Company shall:

a. Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Member(s) may determine to distribute any assets to the Members in kind);

b. Allocate any profit or loss resulting from such sales to the Members' and Economic Interest Owners' Capital Accounts in accordance with Article IX above;

c. Discharge all liabilities of the Company, including liabilities to Members and Economic Interest Owners who are creditors, to the extent otherwise permitted by law, other than liabilities to Members and Economic Interest Owners for distributions, and establish such Reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such Reserves shall be deemed to be an expense of the Company);

d. Distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of those assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Those assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and Economic Interest Owners shall be adjusted pursuant to the provisions of Article IX and section 8.03 of this Operating Agreement to reflect such deemed sale;

(ii) The positive balance (if any) of each Member's and Economic Interest Owner's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind, as determined by the Company, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to section 11.03(b)(i). Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Treas. Reg. §1.704-1(b)(2)(ii)(b)(2).

(iii) Notwithstanding anything contrary in this Operating Agreement, upon a liquidation within the meaning of Treas. Reg. §1.704-1(b)(2)(ii)(g), if any Member has a Deficit Capital Account (after giving effect to all contributions,

distributions, allocations, and other Capital Account adjustments for all tax-able years, including the year during which such liquidations occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of the Member's Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose whatsoever.

e. Upon completion of winding up, liquidation, and distribution of the assets, the Company shall be deemed terminated.

f. The Company shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

VIII. GENERALPROVISIONS

1. Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered in accordance with the Georgia Act.

2. Application of Georgia Law. This Operating Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Georgia, and specifically the Georgia Act.

3. Waiver of Action for Participation. Each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

4. Amendments. This Operating Agreement may not be amended except by the unanimous written agreement of all of the Members.

5. Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, power of attorney, and other instruments necessary to comply with any laws, rules, or regulations.

6. Construction. Whenever the singular number is used in the Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

7. Headings. The headings in this Operating Agreement are 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 of its provision.

8. Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, that would have originally constituted a violation, from having the effect of an original violation.

9. Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said right and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

10. Severability. If any provision of this Operating Agreement or its application to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Operating Agreement and its application shall not be affected and shall be enforceable to the fullest extent permitted by law.

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

12. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13. Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14. Rule Against Perpetuities. The parties to this Operating Agreement intend that the Rule against Perpetuities (and any similar rule of law) not apply to any provisions of this Operating Agreement. However, notwithstanding anything to the contrary in this Operating Agreement, if any provision in this Operating Agreement would be invalid or unenforceable because of the Rule against Perpetuities or any similar rule of law but for this section 12.15, the parties to this Operating Agreement hereby agree that any future interest which is created pursuant to said provision shall cease if it is not vested within 21 years after death of the survivor of the group composed of [Member #1 and Member #2], and their issue, if any, who are living on the effective date of this Operating Agreement.

15. Investment Representatives. The parties to this Operating Agreement agree as follows with respect to investment representation.

a. The undersigned Members and Economic Interest Owners, if any, understand:

i) That the Membership Interests and Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, 15 U.S.C. § 15b et. seq., the Georgia Securities Act or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemptions from the registrations requirements of the Securities Act providing for issuance of securities not involving a public offering;

ii) That the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member for investment; and

iii) That exemption from registration under the Securities Acts would not be available if the Membership Interests and Economic Interests were acquired by a Member with a view to distribution.

b. Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that the Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for the Member's and Economic Interest Owner's own account, for investment and not with a view to the resale of distribution.

i) Each Member and Economic Interest Owner agrees not to transfer, sell, or offer for sale any portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that the registration or other qualification under the Securities Act of 1933 and applicable state securities laws is not required in connection with the transfer, offer, or sale.

ii) Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist the Member or Economic Interest Owner in complying with any exemption from registration under the Acts if the Member or Economic Interest Owner should at a later date wish to dispose of the Member-ship Interest or Economic Interest.

iii) Furthermore, each Member realizes that the Membership Interests and Economic Interests are unlikely to qualify for disposition under Rule 144, 17 C.F.R. § 230.44 (1992), of the Securities and Exchange Commission unless the Member is not an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by the Member or Economic Interest Owner for at least three years.

c. Before acquiring the Membership Interests and Economic Interests, each Member and Economic Interest Owner has investigated the Company and its business and has had made available to each Member and Economic Interest Owner all information necessary for the Member or Economic Owner to make an informed decision to acquire the Membership Interest or Economic Interest. Each Member and Economic Interest Owner considers itself to be a person possessing experience and sophistication as an investor adequate for the evaluation of the

merits and risks of the Member's or Economic Interest Owner's investment in the Member-ship Interest or Economic Interest.

CERTIFICATE

The undersigned hereby agree, acknowledge, and certify that the foregoing Operating Agreement, consisting of 11 pages, excluding the Table of Contents, constitutes the Operating Agreement of [NEWCO] LLC Limited Liability Company adopted by the Members of the Company as of [Date of Operating Agreement Execution].

MEMBERS:

[Member #1]

Date

[Member #2]

Date

EXHIBIT A
INITIAL CAPITAL CONTRIBUTION

[Member #1]

[Member #2]
