

PLANNING AND DEVELOPMENT DEPARTMENT  
2875 BROWNS BRIDGE ROAD, GAINESVILLE, GA, 30504  
MAILING ADDRESS: PO BOX 1435, GAINESVILLE, GA 30503  
t: 770-531-6809 | f: 770-531-3902



## CONDITIONAL USE APPLICATION

### Applicant (Name & Mailing Address)

GARRY L. ENGLISH  
5010 MCKINZEY LANE  
FLOWERY BRANCH, GA 30542

Phone 770-654-2670

Email Address: [REDACTED]

Proposed Use SINGLE FAMILY RESIDENTIAL - 6 LOT SUBDIVISION

### Contact Person (Name & Mailing Address)

GARRY ENGLISH  
5010 MCKINZEY LANE  
FLOWERY BRANCH, GA 30542

Phone 770-654-2670

Email Address: [REDACTED]

Tax Parcel Number 08089 001019A

Location Address MCKINZEY LANE, HALL COUNTY, GA

### Property Owner (Name & Mailing Address)

MCKINZEY LANE DEVELOPMENT  
5010 MCKINZEY LANE  
FLOWERY BRANCH, GA

Phone 770-654-2670

Email Address: [REDACTED]

### Status of Applicant

☐ Owner

☐ Option to Purchase

☐ Area Resident

☐ Other

### Requested Action

Permissive Use:

☐ HCPC ☐ HCC

Fee: \$

Receipt #:

Zoning: VC

Check #:

Acreage 5.930 ACRES

I hereby certify that the above information and all attached information are true and correct.

Sign Gary L English

Date: 2-21-2025

Applicant must complete all information above. Failure to complete this section will result in the refusal of the application. The Planning Department has 15 days to review all applications and will set the dates for each application. If the application is found insufficient, an agenda date will not be set until the required information is submitted. Please note that the Planning Commission and County Commission dates are tentative.

**Application Withdrawal:** I hereby **withdraw** the application.

Sign \_\_\_\_\_ Date: \_\_\_\_\_

### Staff Use Only

Application Date: \_\_\_\_\_

Taken by: \_\_\_\_\_

Tentative Planning Commission Date: \_\_\_\_\_

Tentative County Commission Date: \_\_\_\_\_

County Commission District: \_\_\_\_\_

PLANNING AND DEVELOPMENT DEPARTMENT  
 2875 BROWNS BRIDGE ROAD, GAINESVILLE, GA. 30504  
 MAILING ADDRESS: PO BOX 1436 GAINESVILLE, GA 30501  
 t: 770-531-6809 f: 770-531-3902



### AUTHORIZATION OF PROPERTY OWNERS

Note: If the applicant is the property owner, please disregard this form.

Name of owner(s) MCKINZEY LANE DEVELOPMENT, LLC  
 Address 5010 MCKINZEY LANE  
FLOWERY BRANCH, GA 30542  
 Phone Number 770-654-2670

Name of applicant(s) GARRY ENGLISH  
 Address 5010 MCKINZEY LANE  
FLOWERY BRANCH, GA 30542  
 Phone Number \_\_\_\_\_

I swear that I am the owner of the property which is the subject matter of the attached applications as shown in the records of Hall County, Georgia.

I authorize the person named above to act as applicant in the pursuit of a rezoning, permissive use, or variance of this property.

Signature of Owner(s)

David P. English

Personally appeared before me

DAVID P. ENGLISH

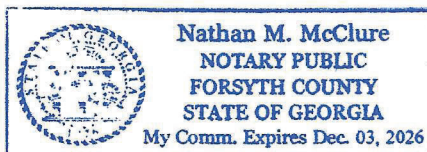
who swears that the information contained in this authorization is true and correct to the best of his/her knowledge and belief.

Nathan M. McClure

Notary Public

2-21-2025

Date





GEORGIA  
CORPORATIONS DIVISION

4.21.2025 - Item 6

GEORGIA SECRETARY OF STATE  
BRAD RAFFENSPERGER

[HOME \(/\)](#)

## BUSINESS SEARCH

### BUSINESS INFORMATION

Business Name:	<b>McKinze Lane Development, LLC</b>	Control Number:	<b>22227690</b>
Business Type:	<b>Domestic Limited Liability Company</b>	Business Status:	<b>Active/Owes Current Year AR</b>
NAICS Code:	<b>Any legal purpose</b>	NAICS Sub Code:	
Principal Office Address:	<b>5010 McKinze Lane, Flowery Branch, GA, 30542, USA</b>	Date of Formation / Registration Date:	<b>10/27/2022</b>
State of Formation:	<b>Georgia</b>	Last Annual Registration Year:	<b>2024</b>

### REGISTERED AGENT INFORMATION

Registered Agent Name: **Garry L. English**  
Physical Address: **5010 McKinze Lane, Flowery Branch, GA, 30542, USA**  
County: **Hall**

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**OPERATING AGREEMENT**

**OF**

**MCKINZEY LANE DEVELOPMENT, LLC**

Any securities created by this operating agreement have not been registered under the Georgia Securities Act of 1973, as amended, in reliance upon the exemption from registration set forth in Section 10-5-11(14) of such Act. In addition, any securities created by this operating agreement, if any 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 provided by Section 4(2) thereof, 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 is made and entered into effective the 30 day of November, 2022, by the parties who have executed counterparts of this Operating Agreement as indicated on the signature pages attached.

**ARTICLE I.**

**DEFINITIONS**

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein);

“Additional Capital Contributions.” With respect to each Member, all additional Capital Contributions made by such Member pursuant to Section 8.2 of this Agreement.

“Adjusted Capital Account Deficit.” With respect to each Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the applicable fiscal year or other period, after giving effect to the following adjustments:

- (a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provisions of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and,
- (b) Debit to such Capital Account the items described in (4), (5), and (6) of Section 1.704-1(b)(2)(ii)(d) of the Regulations.

“Agreement.” This Operating Agreement as originally executed and as amended from time to time.

"Affiliate." With respect to any Person, (i) in the case of an individual, any relative of such Person, (ii) any officer, director, trustee, partner, member, manager, employee or holder of ten percent (10%) or more of any class of the voting securities of or equity interest in such Person; (iii) any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with such Person; or (iv) any officer, director, trustee, partner, member, manager, employee or holder of ten percent (10%) or more of the outstanding voting securities of any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with such Person.

"Articles of Organization." The Articles of Organization of McKinzey Lane Development, LLC, as filed with the Secretary of State of Georgia, as the same may be amended from time to time.

"Capital Account." A capital account maintained for each Member in accordance with the rules set forth in Section 1.704-1(b)(2)(iv) of the Regulations, as amended from time to time. Subject to the foregoing, a Member's Capital Account generally shall be:

- (a) Increased by (i) the amount of money contributed by such Member to the Company, including Company liabilities assumed by such Member; (ii) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code); and, (iii) allocations to such Member of Net Profits (and items thereof) and items of income and gain that are specially allocated to such Member pursuant to Section 10.5; and,
- (b) Decreased by (i) the amount of money distributed to such Member by the Company, including such Member's individual liabilities assumed by the Company; (ii) the fair market value of all property distributed to such Member by the Company (net of liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code); and, (iii) allocations to such Member of Net Losses and items of deduction or loss that are specially allocated to such Member pursuant to Section 10.5.

Upon the transfer of an interest in the Company, the transferee shall succeed to the Capital Account of the transferor with respect to the transferred Company interest unless such transfer results in a termination of the Company pursuant to Section 708 of the Code.

"Capital Contribution." With respect to each Member, the amount of cash or the agreed fair market value of property (net of liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code) paid in or transferred to the Company by that Member pursuant to Sections 8.1 or 8.2 of this Agreement.

"Code." The Internal Revenue Code of 1986, as amended from time to time, or any provision of succeeding law.

"Company." McKinzey Lane Development, LLC, a Georgia limited liability company.

"Distributable Cash." All cash received by the Company from Company operations or otherwise, plus any cash that becomes available from Reserves, less the sum of the following to the extent paid or set aside by the Company; (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the operation of the Company's business; and (iii) Reserves.

"Economic Interest." A Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses and rights to distributions of the Company's assets pursuant to this Operating Agreement and the Georgia Act, but shall not include any right to vote on, consent to or otherwise participate in any decision of the Members.

"Economic Interest Owner." The owner of an Economic Interest who is not a Member.

"Entity." Any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

"Event of Dissociation." An event defined in Section 14.1.

"Fiscal Year." The Company's fiscal year, which shall be the calendar year.

"Georgia Act." The Georgia Limited Liability Company Act at O.C.G.A. §14-11-100, *et seq.*

"Initial Capital Contribution." The initial contribution to the capital of the Company made by a Member pursuant to Section 8.1 of this Operating Agreement.

"Interest." Any interest in the Company, including a Membership Interest, an Economic Interest, any right to vote or participate in the business of the Company, or any other interest in the Company.

"Majority Interest." Ownership Percentages of Members which, taken together, constitute a majority of all Ownership Percentages.

"Majority Vote." Vote or written consent of Persons holding a majority of the Ownership Percentages held by all such Persons entitled to vote on or consent to the issue in question.

"Manager." One or more managers designated pursuant to this Operating Agreement. Specifically, Manager shall mean Garry L. English and Gale W. English, or any other Person(s) that succeed such Person(s) in the capacity as Manager. A Manager does not need to be a Member of the Company.

"Member." Each Person who executes this Operating Agreement or a counterpart thereof as a Member and each of the Persons who may hereafter become Members as provided in this Operating Agreement. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Interest.

"Membership Interest." A Member's entire interest in the Company including such Member's Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement or the Georgia Act.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability.

"Member Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

"Member Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(i) of the Regulations. Subject to the foregoing, the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during that fiscal year over the aggregate amount of any distribution during that fiscal year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i) of the Regulations.

"Net Capital Contributions." An account maintained for each Member equal to (i) the Initial Capital Contribution to the Company made by such Member, plus (ii) the aggregate Additional Capital Contributions to the Company made by such Member, less (iii) the aggregate distributions to such Member pursuant to Section 9.1(b) of this Agreement.

"Net Profits" and "Net Losses" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss determined in accordance with Code Section 703(a) for each of its Fiscal Years (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(1)(1) will be included in taxable income or loss); provided, such Net Profits and Net Losses will be computed as if items of tax-exempt income and nondeductible, noncapital expenditures (under Code Section 705(a)(1)(B) and 705(a)(2)(B) were included in the computation of taxable income or loss. If any Member contributes property to the Company with an initial book value to the Company different from its adjusted basis for federal income tax purposes to the Company, or if Company property is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Regulations or as otherwise required by the Regulations, Net Profits and Net Losses will be computed as if the initial adjusted basis for federal income tax purposes to the Company of such contributed or revalued property equaled its initial book value to the Company as of the date of contribution or revaluation. Credits or debits to Capital Accounts due to a revaluation of Company assets in accordance with Section 1.704-(b)(2)(iv)(f) of the Regulations, or due to a distribution of noncash assets, will be taken into account as gain or loss from the disposition of such assets for purposes of Article X hereof.

"Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(b)(1) and 1.704-2(c)

of the Regulations. Subject to the preceding sentence, the amount of Nonrecourse Deductions for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year (determined under Section 1.704-2(d) of the Regulations) over the aggregate amount of any distributions during the fiscal year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain (determined under Section 1.704-2(h) of the Regulations).

"Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"Officer." One or more individuals appointed by the Managers to whom the Managers delegate specified responsibilities. The Managers may, but shall not be required to, create such offices as they deem appropriate, including, but not limited to, President, Executive Vice President, Senior Vice Presidents, Vice Presidents, Secretary and Treasurer. The Officers shall have such duties as are assigned to them by the Managers from time to time. All Officers shall serve at the pleasure of the Members and the Managers may remove any Officer from office without cause and any Officer may resign at any time.

"Operating Agreement." This Operating Agreement as originally executed and as amended from time to time.

"Ownership Percentage." The Ownership Percentage of each Member shall be determined at any time by dividing each Member's aggregate Capital Contributions by the aggregate Capital Contributions of all Members. The initial Ownership Percentage of the Members are set forth on Exhibit A attached hereto and incorporated herein.

"Person." Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

"Regulations" means the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Reserves." Funds set aside and amounts allocated to reserves in amounts determined by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

"Treasury Regulations" or "Regulations." The federal income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Withdrawing Member." As defined in Section 14.1.

## **ARTICLE II.**

### **FORMATION OF A COMPANY**

2.1 Formation. On October 30, 2022, 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.

2.2 Name. The name of the Company is McKinzey Lane Development, LLC, a Georgia limited liability company.

2.3 Principal Place of Business. The principal place of business of the Company within the State of Georgia is 5010 McKinzey Lane, Flowery Branch, GA 30542. The Company may locate its places of business and registered office any other place or places as the Managers may from time to time deem advisable.

2.4 Registered Office and Registered Agent. The Company's initial registered office shall be 5010 McKinzey Lane, Flowery Branch, GA 30542. The initial registered agent is Garry L. English. The registered office and registered agent may be changed from time to time pursuant to the Georgia Act and the applicable rules promulgated thereunder.

2.5 Term. The term of the Company commenced on the date the Articles of Organization were filed with the Secretary of State of Georgia and shall continue until the Company is dissolved and its affairs wound up in accordance with the provisions of this Operating Agreement or the Georgia Act.

### **ARTICLE III. BUSINESS OF COMPANY**

The business of the Company shall be to engage in any lawful activity. In furtherance thereof, the Company may exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Georgia Act, and may engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

### **ARTICLE IV. NAMES AND ADDRESSES OF MEMBERS**

The names and address of the Members are set out on Exhibit A attached hereto and incorporated herein.

### **ARTICLE V. RIGHTS AND DUTIES OF MANAGERS**

5.1 Management. The business and affairs of the Company shall be managed by its Managers. The Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Except as otherwise provided, herein, at any time when there is more than one Manager, all decisions and actions of any one Manager shall be binding and

authorized on behalf of Company.

5.2 Number, Tenure and Qualifications. The Company shall initially have two Managers and Garry L. English and Gale W. English, shall serve as Managers until occurrence of an Event of Dissociation as to Garry L. English or Gale W. English, as defined in Section 14.1. Notwithstanding any other provision of this Operating Agreement to the contrary, unless and until Garry L. English or Gale W. English, shall have suffered or incurred an Event of Dissociation, Garry L. English and Gale W. English, shall not be removed or replaced as Managers, nor shall any other Managers be elected as Managers of the Company without the prior written consent of Garry L. English and Gale W. English. Subject to the foregoing, the number of Managers of the Company shall be fixed from time to time by the affirmative Majority Vote of Members, but in no instance shall there be less than one Manager. Subject to the foregoing, each Manager shall hold office until his successor shall have been elected and qualified or until their earlier death, resignation or removal. If there is more than one Manager, upon the death, resignation or removal of a Manager the remaining Manager shall remain and have the Management authority detailed in Section 5.1. Subject to the foregoing and Section 5.10, Managers shall be elected by the affirmative Majority Vote of Members. Managers need not be residents of the State of Georgia and need not be Members of the Company.

5.3 Certain Powers of Managers. Without limiting the generality of Section 5.1, the Managers shall have power and authority, on behalf of the Company:

- (a) To acquire property from any Person as the Managers may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Managers from dealing with that Person;
- (b) To borrow money for the Company from banks, other lending institutions, Managers, Members, or Affiliates of the Manager or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;
- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold and own any Company real and/or personal properties in the name of the Company;
- (e) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;
- (f) Subject to Section 6.4, to sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition is not in violation of or a cause of a default under any other agreement to

which the Company may be bound;

- (g) To execute on behalf of the Company, all instruments and documents, including, without limitation: checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreement; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company;
- (h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;
- (i) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve;
- (j) To create offices and designate Officers, who need not be Members; and
- (k) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by the Managers of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Managers to act as an agent of the Company in accordance with the previous sentence.

5.4 Liability for Certain Acts. No Manager has guaranteed or shall have any obligation with respect to the return of a Member's Capital Contributions or profits from the operation of the Company. Notwithstanding Section 14-11-305(1) of the Georgia Act, no Manager shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member except loss or damage resulting from intentional misconduct or knowing violation of law or a transaction for which such Manager received a personal benefit in violation or breach of the provisions of this Operating Agreement. Each Manager shall be entitled to rely on information, opinions, reports or statements, including but not limited to financial statements or other financial data prepared or presented by: (i) any one or more Members, Managers, Officers or employees of the Company whom the Manager reasonably believes to be reliable and competent in the matter presented, (ii) legal counsel, public accountants, or other persons as to matters the Manager reasonably believes are within the person's professional or expert competence, or (iii) a committee of Managers of which he or she is not a member if the Manager reasonably believes the committee merits confidence.

5.5 Managers Have No Exclusive Duty to Company. A Manager shall not be required to manage the Company as the Manager's sole and exclusive function and any Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement,

to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom. 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.

5.6 Bank Accounts. The Managers may from time to time open bank accounts in the name of the Company, and designated Manager(s) shall be the sole signatories thereon, unless the Managers determine otherwise.

5.7 Indemnity of the Managers, Members, Employees and Other Agents. To the fullest extent permitted by Section 14-11-306 of the Georgia Act, the Company shall indemnify each Manager and Member and make advances for expenses to each Manager and Member arising from any loss, cost expense, damage, claim or demand, in connection with the Company, the Manager's or Member's status as a Manager or Member of the Company, the Manager's or Member's participation in the management, business and affairs of the Company or such Manager's or Member's activities on behalf of the Company. To the fullest extent permitted by Section 14-11-306 of the Georgia Act, the Company shall also indemnify its Officers, employees and other agents who are not Managers or Members arising from any loss, cost, expense, damage, claim or demand in connection with the Company, any such Person's participation in the business and affairs of the Company or such Person's activities on behalf of the Company.

5.8 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager as a Manager shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Manager as a Member or an Event of Dissociation as to the Manager.

5.9 Removal. Subject to the special provisions of Section 5.2 as to Garry L. English, at a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time, with or without cause, by the affirmative Majority Vote of the Members. The removal of a Manager as a Manager shall not affect the Manager's rights as a Member and shall not constitute a withdrawal by such Manager as a Member or an Event of Dissociation as to such Manager.

5.10 Vacancies. Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of a majority of the remaining Managers then in office, provided that if there are no remaining Managers, the vacancy(ies) shall be filled by the affirmative Majority Vote of Members. Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by the affirmative vote of a majority of the Managers then in office or by Majority Vote of the Members at a meeting of Members called for that purpose. A Manager elected to fill a vacancy or fill a position resulting from a increase in the number of Managers shall hold office until his successor shall be elected and shall qualify, or until his earlier death, resignation or removal.

5.11 Salaries. The salaries and other compensation of the Managers shall be fixed from time to time by a Majority Vote of the Members, and no Manager shall be prevented from receiving

such salary by reason of the fact that the Manager is also a Member of the Company.

## **ARTICLE VI.**

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

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

6.2 No Liability for Company Obligations. No Member will have any personal liability for any debts or losses of the Company.

6.3 List of Members. Upon written request of any Member, the Company shall provide a list showing the names, addresses and Membership Interest and Economic Interest of all Members and the other information required by the Georgia Act and maintained pursuant to Section 11.2.

6.4 Approvals of Members. The Members shall have the right, by the Majority Vote of the Members, (i) to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan within the meaning of Section 14-11-308(b)(3) of the Georgia Act, or (ii) the merger of the Company within the meaning of Section 14-11-308(b)(2) of the Georgia Act. Except as otherwise provided in this Operating Agreement, the other actions identified in Section 14-11-308(b) of the Georgia Act may be taken by the Managers without any further consent or approval of the Members.

## **ARTICLE VII.**

### **MEETINGS OF MEMBERS**

7.1 Meetings. Meetings of the Members, for any purpose or purposes, may only be called by the Manager or a Member or Members holding at least twenty-five percent (25%) of the Ownership Percentages.

7.2 Place of Meetings. The Persons calling any meeting may designate any place, either within or outside of the State of Georgia, as the place of meeting for any meeting of the Members. If no designation is made the place of meeting shall be the principal executive office of the Company in the State of Georgia.

7.3 Notice of Meetings. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than two (2) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid. Notice provided in accordance with this Section shall be effective notwithstanding anything in Section 14-11-311 of the Georgia Act to the contrary.

7.4 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the State of Georgia, and consent to the holding of a meeting at such time

and place, such meeting shall be valid without call or notice, and at such meeting any lawful action may be taken.

7.5 Record Date. For the purpose of determining Members entitled to notice of or to vote any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose the date on which notice of the meeting is mailed or the date on which such distribution is made, as the case may be, shall be the record date for such determination of Members unless the Managers shall otherwise specify another record date. When a determination of Members entitled to vote any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.6 Quorum. Members holding a Majority Interest represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Ownership Percentages so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if at the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Ownership Percentages whose absence would cause less than a quorum to be present.

7.7 Manner of Acting. The affirmative vote of Members holding a Majority Interest shall be the act of the Members. Section 14-11-307 of the Georgia Act (relating to conflicting interest transactions) shall not apply in the case of the Company, and Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Ownership Percentage, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

7.8 Proxies. A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such written proxy shall be delivered to the Company.

7.9 Action by Members Without a Meeting. Action required or permitted to be taken by the Members at a meeting may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the Members entitled to vote and having the requisite Ownership Percentage required to approve such action. Action taken under this Section is effective when the Members required to approve such action have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

7.10 Waiver of Notice. In lieu of any procedures contained in Section 14-11-312 of the Georgia Act, when any notice is required to be given to any Member, a waiver thereof in writing

signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.11 Meeting by Telephone. In lieu of any procedures contained in Section 14-11-310(b)(3) of the Georgia Act, Members may also meet by conference telephone call if all Members can hear one another on such call and the requisite notice is given or waived.

## **ARTICLE VIII.**

### **CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

8.1 Members' Capital Contributions. Each Member shall contribute the amount set forth next to such Member's name on Exhibit A hereto as the Member's Initial Capital Contribution.

8.2 Additional Contributions. Except as set forth in Section 8.1, no Member shall be required to make any capital contributions. To the extent unanimously approved by the Manager, from time to time, one or more Members may be permitted to make additional Capital Contributions if and to the extent such Members so desire and if the Manager determines that such additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business (including without limitation, expansion or diversification). In such event, the Members shall have the opportunity (but not the obligation) to participate in such additional Capital Contributions on a pro rata basis in accordance with their Ownership Percentages.

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

## **ARTICLE IX.**

### **DISTRIBUTION TO MEMBERS**

9.1 Distributions. All distributions of cash or other property shall be made to the Members and Economic Interest Owners pro rata in accordance with their Ownership Percentages.

9.2 Limitation Upon Distributions. No distribution shall be made to Members if prohibited by Section 14-11-407 of the Georgia Act.

9.3 Interest On and Return of Capital Contributions. No Member shall be entitled to interest on such Member's Capital Contribution or to a return of its Capital Contribution, except as otherwise specifically provided for herein.

9.4 Priority and Return of Capital. No Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions. This Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

**ARTICLE X.**  
**ALLOCATIONS OF NET PROFITS**  
**AND NET LOSSES**

10.1 Allocation of Net Profits. The Net Profits of the Company shall be allocated, after taking into account the special allocations pursuant to Section 10.5 and subject to the overall directions of Section 10.4, as follows:

- (a) First, to the Members in proportion to and to the extent of the amounts necessary to cause their Capital Accounts to equal the sum of (i) the accrued but unpaid balance of their Preferred Return, and (ii) the balance of their Net Capital Contributions (it being acknowledged that an allocation to a Member pursuant to this subparagraph may be zero because such Member's Capital Account already equals or exceeds the sum referred to in this sentence);
- (b) Next, to the Members in a manner which causes the amounts by which their respective Capital Accounts exceed the sum referred to in Section 10.1(a) to be in the same proportion as their respective Ownership Percentages;
- (c) All remaining Net Profits shall be allocated among the Members in accordance with their relative Ownership Percentages as of the end of the period with respect to which such Net Profits relate, or, in the case of any Net Profits derived from the sale, exchange or other dispositions of the Property, as of the date of such sale, exchange or disposition of the Property.

For purposes of determining the Net Profit to be allocated pursuant to Section 10.1 for any year, the Capital Account of each Member shall be increased by such Member's share of "Company Minimum Gain" as of the last day of such year, determined pursuant to Regulation Section 1.704-2(g)(1), and by such Member's share of "Member Minimum Gain" as of the last day of such year, determined pursuant to Regulation Section 1.704-2(i)(5).

10.2 Allocation of Net Losses. The Net Losses of the Company shall be allocated, after taking into account the special allocations pursuant to Section 10.5 and subject to the overall directions of Section 10.4, as follows:

- (a) First, to the Members in proportion to and to the extent of the amounts necessary to cause the amounts by which such Members' Capital Accounts exceed the sum referred to in Section 10.1(a) to be in the same proportions as their Ownership Percentages (it being acknowledged that an allocation to a Member pursuant to this subparagraph may be zero because such Member's Capital Account is already equal to or less than the sum referred to in this sentence);
- (b) Next, to the Members in proportion to and to the extent of the amounts necessary to cause their Capital Accounts to equal the sum referred to in Section 10.1(a)(it being acknowledged that an allocation to a Member pursuant to this subparagraph may be zero because such Member's Capital Account is already equal to or less than the sum referred to in this sentence);

- (c) Next, to the Members in proportion to, and to the extent of the amounts necessary to cause their respective Capital Accounts to equal zero;
- (d) Subject to the limitation in Section 10.3, the balance, if any, shall be allocated to the Members in accordance with their respective Ownership Percentages.

For purposes of determining the Net Loss to be allocated pursuant to Section 10.2 for any year, the Capital Account of each Member shall be increased by such Member's share of "Company Minimum Gain" as of the last day of such year, determined pursuant to Regulation Section 1.704-2(g)(1), and by such Member's share of "Member Minimum Gain" as of the last day of such year, determined pursuant to Regulation Section 1.704-2(i)(5).

10.3 Limitations on Loss Allocations. Notwithstanding anything in this Agreement to the contrary, no loss or item of deduction shall be allocated to a Member if such allocation would cause such Member to have an Adjusted Capital Account Deficit as of the last day of the fiscal year or other period to which such allocation relates. Any amounts not allocated to a Member pursuant to the limitations set forth in this paragraph shall be allocated to the other Members to the extent possible without violating the limitations set forth in this paragraph, and any amounts remaining to be allocated shall be allocated among the Members in accordance with their Ownership Percentages.

10.4 Intention and Construction of Allocations. It is the intention of the Members to allocate Net Profits and Net Losses in such a manner as to cause each Member's Capital Account to always equal the amount of cash such Member would be entitled to receive if the Company sold its assets for their book values and, after satisfying all Company liabilities, the proceeds from such sale, as well as all other funds of the Company, were then distributed to the Members pursuant to Section 9.1. These provisions shall be so interpreted as necessary to accomplish such result.

10.5 Special Allocations. The following special allocations shall be made in the following order:

- (a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, in the event there is a net decrease in Company Minimum Gain during a Company taxable year, each Member shall be allocated (before any other allocation is made pursuant to this Article X) items of income and gain for such year (and, if necessary, for subsequent years) equal to that Member's share of the net decrease in Company Minimum Gain.
  - (i) The determination of a Member's share of the net decrease in Company Minimum Gain shall be determined in accordance with the Regulations Section 1.704-2(g).
  - (ii) The items to be specially allocated to the Members in accordance with this Section 10.5(a) shall be determined in accordance with Regulation Section 1.704-2(f)(6).
  - (iii) This Section 10.5(a) is intended to comply with the Minimum Gain chargeback requirement set forth in Section 1.704-2(f) of the Treasury

Regulations and shall be interpreted consistently therewith.

- (b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, in the event there is a net decrease in Member Minimum Gain during a Company taxable year, each Member who has a share of that Member Minimum Gain as of the beginning of the year, to the extent required by Regulation Section 1.704-2(i)(4) shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to that Member's share of the net decrease in Member Minimum Gain. Allocations pursuant to this subparagraph (b) shall be made in accordance with Regulations Section 1.704-2(i)(4). This Section 10.5(b) is intended to comply with the Minimum Gain chargeback requirement set forth in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.
- (c) Qualified Income Offset Allocation. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) which would cause such Member to have an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible. This Section 10.5(c) is intended to constitute a "qualified income offset" in satisfaction of the alternate test for economic offset set forth in Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.
- (d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Company fiscal year which is in excess of the sum of (i) any amounts such Member is obligated to restore pursuant to this Agreement, plus (ii) such Member's distributive share of Company Minimum Gain as of such date, plus (iii) such Member's share of Member Minimum Gain determined pursuant to Regulation Section 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 10.5(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article X have been made, except assuming that Section 10.5(c) and this Section 10.5(d) were not contained in this Agreement.
- (e) Allocation of Nonrecourse Deductions. Nonrecourse Deductions shall be allocated to the Members in accordance with their respective Ownership Percentages.
- (f) Allocation of Member Nonrecourse Deductions. Member Nonrecourse Deductions shall be allocated as prescribed by the Regulations.

10.6 Built-In Gain or Loss/Section 704(c) Tax Allocations. In the event that the Capital Account of any Member is credited with or adjusted to reflect the fair market value of a Company

property or properties, the Members' distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to such property, shall be determined pursuant to Section 704(c) of the Code and the Regulations promulgated pursuant thereto, so as to take account of the variation between the adjusted tax basis and book value of such property. Any deductions, income, gain or loss specially allocated pursuant to this subsection 10.6 shall not be taken into account for purposes of determining Net Profits or Net Losses or for purposes of adjusting a Member's Capital Account.

10.7 Recapture. Ordinary taxable income arising from the recapture of depreciation and/or investment tax credit shall be allocated to the Members in the same manner as such depreciation and/or investment tax credit was allocated to them.

10.8 Prohibition Against Retroactive Allocations. Notwithstanding anything in this Agreement to the contrary, no Member shall be allocated any loss, credit, or income attributable to a period prior to his admission to the Company. In the event that a Member transfers all or a portion of his Company interest, or if there is a reduction in a Member's Ownership Percentage due to the admission of new Members or otherwise, each Member's distributive share of Company items of income, loss, credit, etc., shall be determined by taking into account each Member's varying interests in the Company during the Company's taxable year. For this purpose, unless the Manager, in his sole discretion, elects to provide for an interim closing of the Company's books, each Member's distributive share shall be estimated by taking the pro rata portion of the distributive share such Member would have included in his taxable income had he maintained his Ownership Percentage throughout the Company year. Such proration shall be based upon the portion of the year during which such Member held the Ownership Percentage, except that extraordinary, non-recurring items shall be allocated to the persons holding Company interests at the time such extraordinary items occur.

10.9 Allocation of Nonrecourse Liability. The "excess nonrecourse liabilities" of the Company (within the meaning of Section 1.752-3(a)(3) of the Regulations) shall be share by the Members in accordance with their respective Ownership Percentages.

## **ARTICLE XI. BOOKS AND RECORDS**

11.1 Accounting Period. The Company's accounting period shall be the Fiscal Year.

11.2 Records and Reports. At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. The Company shall keep at its principal place of business the following records:

- (a) A current list of the full name and last known address of each Member, Economic Interest Owner and Manager;
- (b) Copies of records to enable a Member to determine the relative voting rights, if any, of the Members;

- (c) A copy of the Articles of Organization of the Company and all amendments thereto;
- (d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (e) Copies of this Operating Agreement, together with any amendments thereto;
- (f) Copies of any financial statements of the Company for the three most recent years.

The books and records shall at all times be maintained at the principal office of the Company and shall be opened to the reasonable inspection and examination of the Members, Economic Interest Owners, or their duly authorized representatives during reasonable business hours.

11.3 Tax Returns. The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

## **ARTICLE XII.**

### **TRANSFERABILITY**

12.1 General Prohibition. No Member or Economic Interest Owner may assign, convey, sell, transfer, liquidate, encumber, or in any way alienate (collectively a "Transfer"), all or any part of its Interest without the prior written consent of all of the Managers and Members (including the Managers) holding at least a Majority Interest, which consent may be given or withheld in the sole discretion of each Manager or Member. Any attempted Transfer of all or any portion of any interest without the necessary consent, or as otherwise permitted hereunder, shall be null and void and shall have no effect whatsoever.

12.2 Conditions of Transfer and Assignment. A transferee of an Interest shall become a Member only if all Managers and Members (including the Managers) holding at least a Majority Interest consent in writing thereto as provided in Section 12.1 and the following conditions have been satisfied:

- (a) The transferor, his legal representative or authorized agent must have executed a written instrument of transfer of such Interest in form and substance satisfactory to the Managers;
- (b) The transferee must have executed a written agreement, in form and substance satisfactory to the Managers to assume all of the duties and obligations of the transferor under this Operating Agreement with respect to the transferred Interest and to be bound by and subject to all of the terms and conditions of this Operating Agreement;

- (c) The transferor, his legal representative or authorized agent, and the transferee must have executed a written agreement, in form and substance satisfactory to the Managers to indemnify and hold the Company, the Managers and the other Members harmless from and against any loss or liability arising out of the transfer;
- (d) The transferee must have executed such other documents and instruments as the Managers may deem necessary to effect the admission of the transferee as a Member; and,
- (e) Unless waived by the Managers, the transferee or the transferor must have paid the expenses incurred by the Company in connection with the admission of the transferee to the Company.

A permitted transferee of an Economic Interest who does not become a Member shall be an Economic Interest Owner only and shall be entitled only to the transferor's Economic Interest to the extent assigned. Such transferee shall not be entitled to vote on any question regarding the Company, and the Ownership Percentage associated with the transferred Economic Interest shall not be considered to be outstanding for voting purposes.

12.3 Successors as to Economic Rights. References in this Operating Agreement to Members shall also be deemed to constitute a reference to Economic Interest Owners where the provision relates to economic rights and obligations. By way of illustration and not limitation, such provisions would include those regarding Capital Accounts, distributions, allocations, and contributions. A transferee shall succeed to the transferor's Capital Contributions and Capital Account to the extent related to the Economic Interest transferred, regardless of whether such transferee becomes a Member.

### **ARTICLE XIII.** **ISSUANCE OF ADDITIONAL** **MEMBERSHIP INTERESTS**

Any Person approved by all the Managers and Members holding at least a Majority Interest may become a Member in the Company by the issuance by the Company of Membership Interests for such consideration as the Managers and Members holding a Majority Interest shall determine.

### **ARTICLE XIV.** **DISSOLUTION AND TERMINATION**

#### 14.1 Dissolution.

- (a) The Company shall only be dissolved upon Majority Vote of the Members.
- (b) Notwithstanding any provision of the Georgia Act or this Operating 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(a)(1) [relating to cessation

of Member status in certain circumstances], Section 14-11-601.1(a)(2) [relating to removal of a Member], Section 14-11-601.1(a)(3) [relating to redemption of a Member's interest], Section 14-11-601.1(a)(4) [relating to various voluntary insolvency and bankruptcy proceedings or dissolution], Section 14-11-601.1(a)(5) [relating to various involuntary insolvency and bankruptcy proceedings or dissolution], or Section 14-11-601.1(a)(6) [relating to death or incompetency of a Member] of the Georgia Act (collectively an "Event of Dissociation").

- (c) Any successor in interest of a Member as to whom an Event of Dissociation occurred shall become an Economic Interest Owner but shall not be admitted as a Member except in accordance with Article XII hereof.
- (d) A Member shall not voluntarily withdraw from the Company or take any other voluntary action which causes an Event of Dissociation.
- (e) Unless otherwise approved by Members holding a Majority Interest, a Member who suffers or incurs an Event of Dissociation or whose status as a Member is otherwise terminated (a "Withdrawing Member"), regardless of whether such termination was the result of a voluntary act by such Withdrawing Member, shall not be entitled to receive the fair value of his Membership Interest, and such Withdrawing Member shall become an Economic Interest Owner.
- (f) Any damages for breach of Section 14.1(d) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Withdrawing Member would otherwise be entitled.

14.2 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Georgia Act. Upon dissolution, the Managers shall file a statement of commencement of winding up and publish the notice permitted by the Georgia Act.

14.3 Winding-Up, Liquidation and Distribution of Assets.

- (a) Upon dissolution, an accounting shall be made by the Company's accountants of 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 dissolution. The Manager(s), or if none, the Persons or Persons selected by Majority Vote of the Members (the "Liquidators") shall immediately proceed to wind up the affairs of the Company.
- (b) If the Company is dissolved and its affairs are to be wound up, the Liquidators shall:
  - (i) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Liquidators may determine to distribute any assets to the Members in kind);
  - (ii) Allocate any profit or loss resulting from such sales to the Members and Economic Interest Owners in accordance with Article X hereof;

- (iii) 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 contingent or liabilities of the Company;
  - (iv) Distribute the remaining assets to the Members, either in cash or in kind, in accordance with the positive balance (if any) in each Member's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's Fiscal Year during which the liquidation occurs), with any balance in excess thereof being distributed in proportion to the Members' respective Ownership Percentages. Any such distributions in respect to Capital Accounts shall, to the extent practicable, be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations; and
  - (v) If any assets of the Company are to be distributed in kind, the net fair market value of such assets shall be determined by independent appraisal or by agreement of the Members. Such 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 this Operating Agreement to reflect such deemed sale.
- (c) Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Member's Capital Account.
- (d) Upon completion of the winding-up, liquidation and distribution of the assets, the Company shall be deemed terminated.

14.4 Certificate of Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a certificate evidencing such termination may be executed and filed with the Secretary of State of Georgia in accordance with the Georgia Act.

14.5 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member's Capital Account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Account of one or more Members, including, without limitation, all or any part of that Capital Account attributable to Capital Contributions, then such Member or Members shall have no recourse against any other Member.

**ARTICLE XV.**  
**MISCELLANEOUS PROVISIONS**

15.1 Application of Georgia Law. This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the Georgia Act.

15.2 No Action for Partition. No Member has any right to maintain any action for partition with respect to the property of the Company.

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

15.4 Construction. Whenever the singular number is used in this 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.

15.5 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.

15.6 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, which would have originally constituted a violation, from having the effect of an original violation.

15.7 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. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15.8 Exhibits. All exhibits referred to in this Operating Agreement and attached hereto are incorporated herein by this reference.

15.9 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 Operating Agreement, their respective heirs, legal representatives, successors and assigns.

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

15.11 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.

15.12 Federal Income Tax Elections; Tax Matters Partner. All elections required or permitted to be made by the Company under the Code shall be made by the Managers. For all purposes permitted or required by the Code, the Members constitute and appoint Garry L. English as Tax Matters Partner or, if Garry L. English is no longer a Member, then such other Member as shall be elected by the Members by Majority Vote. The provisions or limitations of liability of the Managers and Members and indemnification set forth in Article V hereof shall be fully applicable to the Tax Matters Partner in his or her capacity as such. The Tax Matters Partner may resign at any time by giving written notice to the Company and each of the other Members. Upon the resignation of the Tax Matters Partner, a new Tax Matters Partner may be elected by Majority Vote of the Members.

15.13 Notices. Any and all notices, offers, demands or elections required or permitted to be made under this Operating Agreement ("Notices") shall be in writing, signed by the party giving such Notice, and shall be deemed given and effective (i) when hand-delivered (either in person by the party giving such notice, or by its designated agent, or by commercial courier) or (ii) on the third (3rd) business day (which term means a day when the United State Postal Service, or its legal successor ("Postal Service") is making regular deliveries of mail on all of its regularly appointed week-day rounds in Atlanta, Georgia) following the day (as evidenced by proof of mailing) upon which such notice is deposited, postage pre-paid, certified mail, return receipt requested, with the Postal Service, and addressed to the other party at such party's respective address as set forth on Exhibit A, or at such other address as the other party may hereafter designate by Notice.

15.14 Certification of Non-Foreign Status. In order to comply with the applicable Treasury Regulations thereunder, in the event of the disposition by the Company of a United States real property interest as defined in the Code and Treasury Regulations, each Member shall provide to the Company an affidavit stating, under penalties of perjury, (i) the Member's address, (ii) United States taxpayer identification number, and (iii) that the Member is not a foreign person as that term is defined in the Code and Treasury Regulations. Failure by any Member to provide such affidavit by the date of such disposition shall authorize the Managers to withhold ten percent (10%) of each such Member's distributive share of the amount realized by the Company on the disposition.

15.15 Amendments. Any amendment to this Operating Agreement shall be made in writing and signed by members holding all of the Ownership Percentages.

15.16 Invalidity. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and the Operating Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. If any particular provision herein is construed to be in conflict with the provisions of the Georgia Act, the provisions of this Operating Agreement shall control to the fullest extent permitted by applicable law. Any provision found to be invalid or unenforceable shall not affect or invalidate the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such conflicting provision were omitted.

15.17 Arbitration. Any dispute, controversy or claim arising out of or in connection with, or relating to, this Operating Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Cumming, State of

Georgia, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel's fee, except that in the discretion of the arbitrator, any award may include the cost of a party's counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic.


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

15.19 Further Assurances. The Members each agree to cooperate, and to execute and deliver in a timely fashion any and all additional documents necessary to effectuate the purposes of the Company and this Operating Agreement.

15.20 No Partnership Intended for Non-Tax Purposes. The Members have formed the Company under the Georgia Act, and expressly disavow any intention to form a partnership under Georgia's Uniform Partnership Act, Georgia's Uniform Limited Partnership Act or the partnership act or laws of any other state. The Members do not intend to be partners one to another or partners as to a third party. To the extent any Member, by work or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

15.21 Time. Time is of the essence of this operating agreement, and to any payments, allocations and distributions provided for under this operating agreement.

IN WITNESS WHEREOF, the undersigned members have set their hands and seals as of the date first above written.

 (SEAL)  
David Parks English, Member


 (SEAL)  
Garry L. English, Manager

EXHIBIT A

MEMBERS OF MCKINZEY LANE DEVELOPMENT, LLC

NAME:

ADDRESS:

SSN or FEIN:

**David Parks English**

**767 Techwood Drive  
Atlanta, GA 30313**

Initial Capital Contribution of David Parks English: \_\_\_\_\_

Initial Ownership Percentage of David Parks English: 100%

PLANNING AND DEVELOPMENT DEPARTMENT  
 2875 BROWNS BRIDGE ROAD, GAINESVILLE, GA, 30504  
 MAILING ADDRESS: PO BOX 1435, GAINESVILLE, GA 30503  
 t: 770-531-6809 | f: 770-531-3902



## CAMPAIGN CONTRIBUTIONS DISCLOSURE FORM

This form must be completed by the applicant and property owner, or person representing the property owner, for all zoning actions.

OCGA § 36-67A-3[C] Disclosure of campaign contributions:

- (b) When any applicant for zoning action has made, within two years immediately preceding the filing of the applicant's application for the zoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
- (3) The name and official position of the local government official to whom the campaign contribution was made; and
- (4) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- (b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the zoning action is first filed. (Code 1981, Section OCGA § 36-67A-3[C], enacted by GA L. 1986, page 1269, Section 1, GA L. 1991, page 1365, Section 1).

I hereby certify that I have read the above and that:

I have\*\* \_\_\_\_\_

I have not ☒ \_\_\_\_\_

within the two years immediately preceding this date, made any contribution(s) aggregating \$250.00 or more to any local government official involved in the review or consideration of this application.

**\*\*If you have made such contributions, you must provide the data required below within ten (10) days of filing this application.**

Name of Official(s): \_\_\_\_\_

Office: \_\_\_\_\_

Dollar Amount: \_\_\_\_\_

Date of Contribution: \_\_\_\_\_

Applicant's/Owner's Signature: David P. English

Date: 2-21-2025

Applicant's/Owner's Name (Printed): DAVID P. ENGLISH

PLANNING AND DEVELOPMENT DEPARTMENT  
 2875 BROWNS BRIDGE ROAD, GAINESVILLE, GA, 30504  
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Name of Official(s): \_\_\_\_\_

Office: \_\_\_\_\_

Dollar Amount: \_\_\_\_\_

Date of Contribution: \_\_\_\_\_

Applicant's/Owner's Signature: Garry L. English

Date: 2-21-2025

Applicant's/Owner's Name (Printed): GARRY L. ENGLISH