

STATE OF GEORGIA

COUNTY OF BARTOW

**IRREVOCABLE TRUST AGREEMENT CREATING THE  
MCWHORTER CAPITAL PARTNERS CHARITABLE FOUNDATION**

THIS AGREEMENT, creating the MCWHORTER CAPITAL PARTNERS CHARITABLE FOUNDATION, is made as of the 7<sup>th</sup> day of August, 2014, between MCWHORTER CAPITAL PARTNERS, LLC, a Georgia limited liability company, as the Settlor, and the Trustees whose names appear at the end of this Agreement.

The Settlor hereby transfers the property listed on Schedule A attached hereto to the Trustees, and the Trustees hereby acknowledge receipt thereof and agree to hold such property, and any additions to it, and all investments and reinvestments thereof, irrevocably in trust, upon the following terms and conditions:

**ARTICLE ONE**

**Name**

This Trust shall be named THE MCWHORTER CAPITAL PARTNERS CHARITABLE FOUNDATION, and shall be referred to hereinafter as the "Fund."

## ARTICLE TWO

### Tax-Exempt Charitable Purposes

The Fund is created exclusively for charitable, religious, scientific, literary, and educational uses and purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code and for other charitable purposes.

## ARTICLE THREE

### Receipt and Acceptance of Property for Charitable Purposes

The Trustees may receive and accept property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, limited liability company, partnership, limited partnership or corporation, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Trust Indenture; but no gift, bequest, or devise of any such property shall be received or accepted if it is conditioned on or limited in such manner (i) as to require the disposition of the income or its principal to any person or organization other than a "charitable organization" or for other than "charitable purposes" within the meaning of such terms as defined in paragraphs (a) and (b) of Article Nine of this Trust Indenture, or (ii) as shall in the opinion of the Trustees, jeopardize the federal income tax exemption of the Fund pursuant to section 501(c)(3) of the Internal Revenue Code.

## ARTICLE FOUR

### Charitable Distributions and Private Foundation Restrictions

(a) The principal and income of all property received and accepted by the Trustees to be administered as a part of the Fund shall be held in trust by them; and the Trustees may make payments or distributions from income or principal, or both, to or for the benefit of such one or more organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, as the Trustees shall from time to time determine. The Trustees may make payments or distributions from income or principal, or both, directly for the charitable purposes of this Fund, as defined in paragraph (b) of Article Nine, as the Trustees shall from time to time determine.

(b) Income or principal derived from contributions by corporations shall be distributed by the Trustees for use solely within the United States or its possessions, to the extent so required by the Internal Revenue Code.

(c) No part of the net earnings of the Fund shall inure or be payable to or for the benefit of any private individual, and no substantial part of the activities of the Fund shall be the carrying on of propaganda, or otherwise attempting, to influence legislation.

(d) No part of the activities of the Fund shall be the participation in, or intervention in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(e) The Trustees shall distribute the income of the Fund for each tax year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code. Further, the Trustees shall be prohibited from:

(1) Engaging in any act of self-dealing, as defined in Section 4941(d) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4941 of the federal Internal Revenue Code;

(2) Retaining any excess business holdings, as defined in Section 4943(c) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4943 of the federal Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of the federal Internal Revenue Code, so as to give rise to any liability for the tax imposed by Section 4944 of the federal Internal Revenue Code; and

(4) Making any taxable expenditures, as defined in Section 4945(d) of the federal Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4945 of the federal Internal Revenue Code.

## **ARTICLE FIVE**

### **Amendments**

This Trust Indenture may be amended at any time or times by written instrument or instruments signed and acknowledged by the Trustees, provided that no amendment shall authorize the Trustees to conduct the affairs of the Fund in any manner or for any purpose contrary to the provisions of section 501(c)(3) of the Internal Revenue Code. An amendment of the provisions of this Article Five (or any amendment to it) shall be valid only if and to the extent that such amendment further restricts the Trustees' amending power. All instruments amending this Trust Indenture shall be noted upon or kept attached to the executed original of this Trust Indenture held by the Trustees.

## **ARTICLE SIX**

### **Trustees**

(a) Any Trustee under this Trust Indenture may, by written instrument, signed and acknowledged, resign his or her office. Whenever for any reason there is no trustee serving under this Trust Indenture, there shall be appointed one or more additional Trustees. Appointments shall be made by the person then serving as the Manager of McWhorter Capital Partners, LLC, a Georgia limited liability company (or its successors), by written instruments signed and acknowledged. The person then serving as the Manager of McWhorter Capital Partners, LLC, a Georgia limited liability company (or its successors) shall also have the power to

remove any Trustee at any time, by written instrument signed and acknowledged and delivered to the Trustee, and to appoint a successor Trustee or Trustees.

(b) Upon any change in any trusteeship hereunder, the continuing Trustee or the next successor Trustee or Trustees, as the case may be, shall have all the powers, authorities, rights, discretion, immunities, estates, titles, duties, and obligations of the original Trustees, without the necessity of any conveyance or the taking of any action whatsoever.

(c) None of the Trustees shall be required to furnish any bond or surety. None of them shall be responsible or liable for the acts or omissions of any other of the Trustees or of any predecessor or of a custodian, agent, depository, or counsel selected with reasonable care. No successor Trustee shall be required to inquire into or audit the acts or doings of any predecessor Trustee or to make any claim against any such predecessor Trustee or such predecessor Trustee's estate.

(d) The Trustee or Trustees from time to time in office shall have full authority to act even though one or more vacancies may exist. A Trustee may, by appropriate written instrument, delegate all or any part of his or her powers to another or others of the Trustees for such periods and subject to such conditions as such delegating Trustee may determine.

(e) The Trustees serving under this Trust Indenture are authorized to pay to themselves amounts for reasonable expenses incurred and reasonable compensation for services rendered in the administration of the Fund.

(f) The Trustees may appoint from time to time such officers or agents as they may deem necessary or desirable, each of whom shall hold office during the pleasure of the Trustees, and shall have such authority and perform such duties as the Trustees may from time to time determine. The Trustees shall also be authorized to adopt rules and procedures for the government and the administration of the Fund, so long as such rules and procedures are not inconsistent with this Trust Indenture or with applicable federal or state laws.

## **ARTICLE SEVEN**

### **Perpetual Duration**

The Fund shall continue forever unless the Trustees terminate it and distribute all of the principal and income, which action may be taken by the Trustees in their discretion at any time; provided, however, if and to the extent that state law prohibits perpetual duration, the Fund shall not extend beyond the maximum period permitted under applicable state law. On termination, the trust fund as then constituted shall be distributed to or for the use of such charitable organizations in such amounts and for such charitable purposes as the Trustees shall then select and determine.

## ARTICLE EIGHT

### Formation and Organization of Nonprofit Corporation

The Trustees are authorized to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Trust Indenture, such corporation to be organized under the laws of any state or under the laws of the United States, as may be determined by the Trustees. When organized, such corporation shall have the power to administer and control the affairs and property and to carry out the uses, objects, and purposes of the Fund. Upon the creation and organization of such corporation, the Trustees are authorized and empowered to convey, transfer, and deliver to such corporation all the property and assets to which the Fund may be or become entitled. The articles of incorporation, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall be such as the Trustees shall determine, consistent with the provisions of this Article.

## ARTICLE NINE

### Definitions

(a) In this Trust Indenture and in any amendments to it, references to "charitable organizations" or "charitable organization" mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or in any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia, or any possession of the United States,



organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which do not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office. It is intended that the organizations described in this paragraph shall be entitled to exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

(b) In this Trust Indenture and in any amendments to it, the term "charitable purposes" shall be limited to and shall include only charitable, religious, scientific, literary, or educational purposes within the meaning of those terms as used in section 501(c)(3) of the Internal Revenue Code, but only such purposes as also constitute charitable purposes under the law of trusts of the State of Georgia.

(c) All references in this Trust Indenture and in any amendments to it to sections of the Internal Revenue Code shall be considered references to the Internal Revenue Code of 1986, as from time to time amended, and to the corresponding provisions of any applicable future United States Internal Revenue Law, and to all regulations issued under such sections and provisions.

## ARTICLE TEN

### General Authority of Trustees and Powers by Reference

The Trustees shall have, in addition to the power and authority herein granted or conferred on them by law, the powers and authorities set forth in Section 53-12-261 of the Georgia Code, as the same may be amended from time to time, all of which may be exercised without order of or report to any court. No sales shall require advertisement. Without limiting the generality of the foregoing, the Trustees shall have full power and authority, in each case exercisable from time to time in their discretion.

(a) To invest and reinvest the principal and income of the Fund in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time change investments as they shall deem advisable.

(b) To invest in and retain any stocks, shares, bonds, notes, obligations, or personal or real property (including without limitation any interests in or obligations of any corporation, partnership, association, business trust, investment trust, common trust fund, or investment company), although some or all of the property so acquired or retained is of a kind or size which but for this express authority would not be considered proper and although all of the trust funds are invested in the securities of one company. It is the intention of the Settlor for the Trustees to retain any stocks, shares, bonds, notes, obligations, or personal or real property which are donated to the Trust in that the Settlor has confidence in the investments. No change needs to be made by the Trustees in these investments

solely for the purpose of creating a diversity of investments; rather, such duty of diversification is waived. No principal or income, however, shall be loaned, directly or indirectly, to any Trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to the Fund, nor to anyone except on the basis of an adequate interest charge and with adequate security.

(c) To sell, lease, or exchange any personal, mixed, or real property, at public auction, or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the trust property, as the Trustees consider advisable, whether or not such leases or contracts may extend beyond the duration of the Fund.

(d) To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees consider advisable, and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this Fund.

(e) To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other instruments, sealed or unsealed, incident to any transaction in which the Trustees engage.

(f) To vote, to give proxies, to participate in the reorganization, merger, or consolidation of any concern, or in the sale, lease, disposition, or other distribution of its assets; to join with other security holders in acting through a

committee, depositary, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depositary, or trustees and to deposit securities with them or transfer securities to them, to pay assessments levied on securities, or to exercise subscription rights in respect of securities.

(g) To employ a broker, financial investment company, bank or trust company as custodian of any funds or securities and to delegate to it such powers as the Trustees deem appropriate; to use depository institutions, and to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of this Fund; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, agents, attorneys, and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the Trustees.

(h) To compromise, arbitrate, or otherwise adjust or settle claims in favor of or against the Fund and to deliver or accept in either total or partial satisfaction of any indebtedness or other obligation any property, and to continue to hold for such period of time as the Trustee may deem appropriate any property so received.

(i) To manage any real property in the same manner as if the Trustees were the absolute owner thereof, including the power to lease the same for such term or terms, and upon such conditions, including, but not by way of limitation,

agreements for the purchase or disposal of buildings thereon, or options to the tenant to renew such lease from time to time or to purchase such property, as the Trustees may deem proper; to make ordinary and extraordinary repairs and alterations to any building; to raze all buildings and to erect new buildings; to insure against loss by fire or other casualties; and to employ agents and confer upon them such authority with respect to the management of any such real property as the Trustees deem appropriate.

The Trustees shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond.

## ARTICLE ELEVEN

### Trustees' Powers Exercisable Solely in Fiduciary Capacity

The powers of the Trustees are exercisable solely in the fiduciary capacity consistent with and in furtherance of the charitable purposes of the Fund as specified in this Trust Indenture, and not otherwise.

## ARTICLE TWELVE

### Miscellaneous

(a) The decision of a majority of the then qualified Trustees shall control, and such majority may act by any writing signed by them without meeting.

(b) The term "Trustees" as used in this Trust Indenture shall include the original Trustees and any successor or continuing Trustee or Trustees at the time acting. Where appropriate, with reference to the Trustees, the use of the masculine shall include the feminine and the neuter; and the plural shall include the singular, and vice versa.

(c) Any person may rely on a copy, certified by a notary public, of the executed original of this Trust Indenture held by the Trustees, and of any of the notations on it and writings attached to it, as fully as he or she might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by anyone who appears from such original documents or from such certified copy to be a Trustee under this Trust Indenture. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do. No one dealing with the Trustees need see to the application of anything paid or transferred to or upon the order of the Trustees of this Fund.

(d) The validity, effect, and construction of this Trust Indenture shall be determined in accordance with the laws of the State of Georgia. The original situs and original place of administration of the trust estate shall also be Georgia, but the situs and place of administration of the trust estate may be transferred at any time and from time to time to such place or places as the Trustees deem to be for the best interest of the trust estate. In so doing, the Trustees may resign and appoint a substitute Trustee, but may remove each substitute Trustee and appoint another, including any one or more of the appointing Trustees, at will. Each

substitute Trustee so appointed may delegate any and all of such substitute Trustee's powers, discretionary or ministerial, to the appointing Trustees.

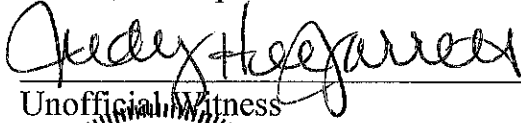
(e) No Trustee serving hereunder shall be liable, responsible or accountable in damages or otherwise (i) for mistakes of judgment or negligence, or losses or liabilities resulting there from, unless the result of dishonesty, (ii) for the negligence, dishonesty or bad faith of any employee, agent or broker of such fiduciary, (iii) for the operation, or results of such operation, of any business, enterprise or investment in which the fiduciary invests, (iv) for any acts or omissions performed or omitted in pursuance of the authority granted to the Trustee in this Trust Indenture, or (v) for any loss or depreciation in value of any of the property, or for any investment or reinvestment which any Trustee may make or continue to hold, or for any other act or omission, unless such acts, judgments, decisions, omissions or malfeasance have been caused by bad faith, dishonesty or fraud of such Trustee.

IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement as of the day and year first above written.

SETTLOR:

Signed, sealed, and delivered, and sworn to and subscribed, as to the Settlor, in the presence of:

MCWHORTER CAPITAL PARTNERS, LLC, a Georgia limited liability company

  
Unofficial Witness

 [Seal]  
By: JOSH A. MCWHORTER  
Its: Manager


TRUSTEE:

  
Unofficial Witness

 [Seal]  
JOHN T. MROCZKO

  
Notary Public

