

**INFORMATION MEMORANDUM**

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**TO:** Bibb County Board of Education

**FROM:** Dr. Lori Rodgers, Assistant Superintendent of District Effectiveness and Federal Programs  
Tom Joyce and Cater Thompson, Jones Cork, LLP

**SUBJECT:** Bibb County School District Education Foundation

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**Summary**

The District is presenting information concerning the creation of the Bibb County School District Education Foundation. The purpose of the Foundation is to receive and disburse funds, property and gifts specifically for the purposes of improving the quality of education to the students of Bibb County.

**Background**

An Education Foundation is a 501(c)(3) corporation established to enhance education opportunities for students and staff within a school district. School districts have started Education Foundations to engage the community in the process of improving local schools by providing a wide array of programs to meet the diverse needs of the students and the community. The establishment of an Education Foundation will serve as a mechanism to collect and administer monetary donations to support district-wide efforts such as those listed below.

- Encourages excellence by recognizing and rewarding leader and teacher effectiveness.
- Facilitates student development by attaining public and private resources to complement educational initiatives.
- Cultivates and encourages community partnerships and fosters the development of alumni relations.

**Next Steps**

The District will present a resolution to the Board of Education at a later meeting for adoption to authorize the creation of an educational foundation for the district.

**Superintendent's Comments and Approval**

<b><u>Superintendent's Comments</u></b>	
Dr. Curtis L. Jones, Jr.	Approved

**ARTICLES OF INCORPORATION**  
**OF**  
**THE BIBB COUNTY EDUCATION FOUNDATION, INC.**

Article I

The name of the Corporation is:

“THE BIBB COUNTY EDUCATION FOUNDATION, INC.”

Article II

The Corporation is organized pursuant to the provisions of the Georgia Nonprofit Corporation Code.

Article III

The Corporation shall have perpetual duration.

Article IV

The corporation is a non-profit corporation and is organized for the following purposes:

A. For charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), including the making of distributions to organizations which qualify as exempt organizations under such Section 501(c)(3) or under the corresponding provision of any future United States Internal Revenue Code, and specifically for the purposes of improving education in the Bibb County School District.

B. To engage in any lawful business or activity related to such charitable purposes;  
and

C. To engage in any lawful act or activity for which corporations may be organized under the Georgia Nonprofit Corporation Code.

The corporation is not organized for, and shall not be operated for, pecuniary gain or profit. No part of the property or net earnings of the corporation shall inure to the benefit of, or be distributable to, the directors or officers of the corporation or to other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered to the corporation and to make distributions in accordance with the purposes set forth in this Article IV. The Corporation shall not carry on propaganda or otherwise attempt to influence legislation to such extent as would result in loss of its exemption from federal income tax under Section 501(c)(3) of the Code. The Corporation shall not participate or intervene (including the publishing or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

#### Article V

The business of the corporation shall be managed by a Board of Directors. The number, qualifications, terms of office and exact manner of election or appointment of the members of the Board of Directors shall be as set forth in the By-Laws of the corporation.

#### Article VI

The corporation shall have no members.

## Article VII

No director shall be personally liable to the corporation for monetary damages for breach of the duty of care or for breach of any other duty as a director; provided, however, that this provision shall limit or eliminate the liability of a director only to the extent permitted from time to time by the Georgia Nonprofit Corporation Code or any successor law or laws.

The limitation of liability conferred in this Article VII shall be in addition to and not in lieu of all other limitations, immunities, and indemnities conferred by the law, these Articles and the By-Laws of the corporation.

## Article VIII

The address of the initial registered office and initial principal office of the corporation in Bibb County, Georgia is:

484 Mulberry St.  
Macon, GA 31201

The initial registered agent of the corporation at such address is:

Dr. Curtis Jones, Jr.

## Article IX

The name and address of the incorporator is:

Dr. Curtis Jones, Jr.  
484 Mulberry St.  
Macon, GA 31201

Article X

Upon the dissolution of the Corporation and after adequate provision has been made for the discharge or assumption of its liabilities, the Board of Directors shall distribute all of the assets of the Corporation for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code. Any such assets not so disposed of by the Board of Trustees shall be disposed of by the superior court of the county in which the principal office of the Corporation is then located, exclusively for such purposes, or to such organization or organizations as are organized and operated exclusively for such purposes, as said court shall determine.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation on \_\_\_\_\_, 2021, in \_\_\_\_\_, Georgia.

\_\_\_\_\_  
THOMAS W. JOYCE  
Attorney for Incorporator

**BYLAWS**  
**OF**  
**THE BIBB COUNTY EDUCATION FOUNDATION, INC.**

**ARTICLE I**  
**PURPOSES**

The purposes of The Bibb County Education Foundation, Inc. (hereinafter "Foundation"), as stated in its Article of Incorporation, are for charitable and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, (or the corresponding provisions of any future United States Internal Revenue law). The Foundation shall receive and disburse funds, property and gifts specifically for the purposes of improving the quality of education the Bibb County School District.

**ARTICLE II**  
**OFFICES**

The Foundation shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Georgia as the board of directors may from time to time determine.

**ARTICLE III**  
**MEMBERS**

The Foundation shall have no members.

**ARTICLE IV**  
**BOARD OF DIRECTORS**

**SECTION 1. GENERAL POWERS**

The affairs of the Foundation shall be managed by or under the direction of its board of directors (hereinafter "Board").

**SECTION 2. NUMBER, TENURE AND QUALIFICATIONS**

The number of directors shall be no less than three (3) and no more than twelve (12), with the number to be fixed by the vote of the directors then serving. The initial Board of Directors shall consist of five (5) persons appointed as follows: one (1) member of the Bibb County Board of Education to be appointed by the Bibb County Board of Education; one (1) District level administrator of the Bibb County School District to be appointed by the Superintendent; and three (3) other persons, two of which are to be appointed by the Superintendent and one of which is to be appointed by the Bibb County Board of Education. The directors shall be persons who are interested in promoting the

quality of education in the Bibb County School District. Each director shall hold office until his or her term shall expire and until his or her successors shall have been elected and qualified. No decrease in the number of directors shall have the effect of shortening the term of an incumbent director. At least one of the directors serving at any time shall be a member of the Bibb County Board of Education. However, a majority of the directors from time to time serving shall not simultaneously serve as members of the Bibb County Board of Education. In addition to the appointed directors, the following individuals shall serve as ex-officio directors: the Superintendent of the Bibb County School District and the Board Chair of the Bibb County Board of Education.

### SECTION 3. ANNUAL AND REGULAR MEETINGS

The Board may provide, by resolution, the time and place for the holding of the annual and regular meetings of the Board without other notice than such resolution. Regular meetings of the Board of Directors shall be held at least quarterly.

### SECTION 4. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the Board may fix any place as the place for holding any special meeting of the Board called by them.

### SECTION 5. NOTICE

Notice of any special meeting of the Board shall be given at least two days previous thereto by written notice to each director at his or her address as shown by the records of the Foundation or by electronic transmission, except that no special meeting of directors may remove a director unless written notice of the proposed removal is delivered by mail or electronic transmission to all directors at least 20 days prior to such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by electronic transmission, such notice shall be deemed to be delivered when the email is sent. Notice of any special meeting of the Board may be waived in writing signed by the person or persons entitled to the notice either before or after the time of the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these bylaws.

### SECTION 6. QUORUM

A majority of the Board then in office shall constitute a quorum for the transaction of business at any meeting of the Board, provided that if less than a majority of the directors



are present at said meeting, a majority of the directors present may adjourn the meeting to another time without further notice.

#### SECTION 7. MANNER OF ACTING

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by statute, these Bylaws, or the Articles of Incorporation. No director may act by proxy on any matter.

#### SECTION 8. VACANCIES

Any vacancy occurring in the Board or any directorship to be filled by reason of death, resignation, removal, incapacity to serve, expiration of term, an increase in the number of directors, or otherwise, shall be filled by the remaining Directors. A director elected or appointed, as the case may be, to fill an unexpired term shall be elected for the unexpired term of his or her predecessor in office.

#### SECTION 9. RESIGNATION AND REMOVAL OF DIRECTORS

At any directors' meeting, with respect to which notice of such purpose has been given, any individual director may be removed, with or without cause, by the affirmative vote of the majority of the directors entitled to vote. A director may resign at any time upon written notice to the Board.

#### SECTION 10. INFORMAL ACTION BY DIRECTORS

The authority of the Board may be exercised without a meeting if a consent in writing, setting forth the action taken, is signed by all of the directors entitled to vote.

#### SECTION 11. COMPENSATION

There shall be no compensation for service on the Board of Directors.

#### SECTION 12. PRESUMPTION OF ASSENT

A director of the Foundation who is present at a meeting of the Board at which action on any Foundation matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the Foundation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

## SECTION 13. TERM

Except with regard to the initial Board (as discussed below), each member of the Board shall serve as a Director for a term of three (3) years and until his or her successor is elected or qualified. Board members may be re-elected for a maximum of two (2) consecutive terms. The terms of the members of the initial Board shall be on a staggered basis to be determined by the Board. Thereafter, each member of the Board shall serve as a Director for a term of three (3) years in accordance with the provisions of this section.

## ARTICLE V OFFICERS

### SECTION 1. OFFICERS

The officers of the Foundation shall be a President, one or more Vice-Presidents (the number thereof to be determined by the Board), a Treasurer, a Secretary, and such other officers as may be elected or appointed by the Board. Officers whose authority and duties are not prescribed in these Bylaws shall have the authority and perform the duties prescribed, from time to time, by the Board. Any two or more offices may be held by the same person.

### SECTION 2. ELECTION AND TERM OF OFFICE

The officers of the Foundation shall be elected annually by the Board at its annual meeting. Each officer shall be elected to a term of two (2) years. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is practicable. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election of an officer shall not of itself create contract rights.

### SECTION 3. REMOVAL

Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Foundation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

### SECTION 4. PRESIDENT

The President shall be the principal executive officer of the Foundation. Subject to the direction and control of the Board, he or she shall be in charge of the business and affairs of the Foundation; he or she shall see that the resolutions and directives of the Board are carried into effect, except in those instances in which that responsibility is assigned to some other person by the Board; and, in general, he or she shall discharge all duties

incident to the office of President and such other duties as may be prescribed by the Board. He or she shall preside at all meetings of the Board. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Foundation or a different mode of execution is expressly prescribed by the Board or these Bylaws, he or she may execute for the Foundation any contracts, deeds, mortgages, bonds, or other instruments which the Board has authorized to be executed, and he or she may accomplish such execution either under or without the seal of the Foundation and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board, according to the requirements of the form of the instrument. He or she may vote all securities which the Foundation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Foundation by the Board.

#### SECTION 5. VICE-PRESIDENT

The Vice-President (or in the event there be more than one Vice-President, each of the Vice-Presidents) shall assist the President in the discharge of his or her duties as the President may direct and shall perform such other duties from time to time may be assigned to him or her by the President or the Board. In the absence of the President or in the event of his or her inability or refusal to act, the Vice-President (or in the event there be more than one Vice-President, the Vice-Presidents, in order designated by the Board, or by the President if the Board has not made such a designation, or in the absence of any designation, the in order of their seniority of tenure) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Foundation or a different mode of execution is expressly prescribed by the Board or these Bylaws, the Vice-President (or any of them if there is more than one) may execute for the Foundation any contracts, deeds, mortgages, bonds or other instruments which the Board has authorized to be executed, and he or she may accomplish such execution either under or without the seal of the Foundation and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board, according to the requirements of the form of the instrument.

#### SECTION 6. TREASURER

The treasurer shall be the principal accounting and financial officer of the Foundation. He or she shall (a) have charge of and be responsible for the maintenance of adequate books of account for the Foundation; (b) have charge and custody of all funds and securities of the Foundation, and be responsible therefor, and for the receipt and disbursement thereof, and (c) perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board. If required by the Board, the treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board shall determine.

## SECTION 7. SECRETARY

The secretary shall (a) record the minutes of the meetings of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be a custodian of the corporate records and of the seal of the Foundation; (d) keep a register of the post office address of each director which shall be furnished to the secretary by such director; and (e) perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board.

## ARTICLE VI EXECUTIVE DIRECTOR; STAFF

### SECTION 1. EXECUTIVE DIRECTOR

The Board of Directors may appoint and retain an Executive Director pursuant to such arrangements, contractual or otherwise, as the Board deems appropriate. The Executive Director may be an employee of the Bibb County School District, in which case the Board may enter into such arrangement as the Board deems appropriate with the Bibb County School District relative to the Executive Director's compensation and duties. The Executive Director shall have the principal operating responsibility of the Foundation and shall, subject to the supervision of the Board and the President, direct the staff and operate the business and affairs of the Foundation. The Executive Director shall serve as an ex-officio, non-voting member of the Board, and of all committees. The Executive Director shall also perform such other specific duties as the Board may deem appropriate.

### SECTION 2. Other Staff

Upon recommendation of the Executive Director, or upon its own initiative, the Board may establish and fill additional staff positions as may be deemed necessary or appropriate to carry out the purposes of the Foundation. The staff shall perform such duties and exercise such powers as prescribed from time to time by the Board or the Executive Director.

## ARTICLE VII COMMITTEES, COMMISSIONS AND ADVISORY BOARDS

### SECTION 1. EXECUTIVE COMMITTEES

The Executive Committee of the Board shall consist of the President of the Board, the officers of the Foundation and such other persons as the Board may designate from among its members by majority vote. The Executive Committee may exercise all of the authority of the Board, provided that no such committee shall have the authority of the Board in reference to amending the Articles of Incorporation or these Bylaws,

recommending the sale, lease, exchange, or other disposition of all or substantially all of the assets of the Foundation or recommending a merger or voluntary dissolution of the Foundation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board or any member thereof of any responsibility imposed by law.

## SECTION 2. ADDITIONAL COMMITTEES

The Board, by resolution adopted by a majority of the directors in office, may designate one or more committees each of which will consist of two or more directors and such other persons as the Board designates, provided that a majority of each committee's membership are directors. The committees, to the extent provided in said resolution and not restricted by law, shall have and exercise the authority of the Board in the management of the Foundation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it, him or her by law.

## SECTION 3. COMMISSIONS OR ADVISORY BODIES

Commissions or advisory bodies not having and exercising the authority of the Board in the Foundation may be designated or created by the Board and shall consist of such persons as the Board designates. A commission or advisory body may or may not have directors as members, as the Board determines. The commission or advisory body may not act on behalf of the Foundation or bind it to any actions but may make recommendations to the Board or to the officers of the Foundation.

## SECTION 4. TERM OF OFFICE

Each member of a committee, advisory board or commission shall continue as such until his or successor is appointed, unless the committee, advisory board or commission shall be sooner terminated, or unless such member be removed from such committee, advisory board or commission by the Board, or unless such member shall cease to qualify as a member thereof.

## SECTION 5. CHAIR

One member of each committee, advisory board or commission shall be appointed chair of the committee.

## SECTION 6. VACANCIES

Vacancies in the membership of any committee, advisory board or commission may be filled by appointments made in the same manner as provided in the case of the original appointments.

## SECTION 7. QUORUM

Unless otherwise provided in the resolution of the Board designating a committee, advisory board or commission, a majority of the whole committee, advisory board or commission shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee, advisory board or commission.

## SECTION 8. RULES

Each committee, advisory board or commission may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board.

## SECTION 9. INFORMAL ACTION

The authority of a committee may be exercised without a meeting if a consent in writing, setting forth the action taken, is signed by all the members entitled to vote.

# ARTICLE VIII CONTRACTS, CHECKS, DEPOSITS, AND DISTRIBUTION OF FUNDS

## SECTION 1. CONTRACTS

The Board may authorize any officer or officers, agent or agents of the Foundation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation and such authority may be general or confined to specific instances.

## SECTION 2. CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Foundation shall be signed by such officer or officers, agent or agents of the foundation and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the treasurer or an assistant treasurer.

## SECTION 3. DEPOSITS

All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies, or other depositories as the Board may select.

## SECTION 4. GIFTS

The Board may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation.

ARTICLE IX  
BOOKS AND RECORDS

The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board and committees having any of the authority of the Board, and shall keep at the registered or principal office a record giving the names and addresses of the directors entitled to vote. All books and records of the Foundation may be inspected by any director, or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE X  
FISCAL YEAR

The fiscal year of the Foundation shall end on June 30 of each calendar year, unless changed by resolution of the Board.

ARTICLE XI  
SEAL

The corporate seal, if any, shall have inscribed thereon the name of the Foundation and the words "Corporate Seal, Georgia." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced, provided that the affixing of the corporate seal to an instrument shall not give the instrument additional force of effect, or change the construction thereof, and the use of the corporate seal is not mandatory.

ARTICLE XII  
WAIVER OF NOTICE

Whenever any notice is required to be given under provisions of *Georgia Nonprofit Corporation Code* or under the provisions of the Articles of Incorporation or the Bylaws of the Foundation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

ARTICLE XIII  
INDEMNIFICATION

SECTION 1. INDEMNIFICATION IN ACTIONS OTHER THAN AN ACTION  
BY OR IN THE RIGHT OF THE FOUNDATION

The Foundation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Foundation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation,

partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believe to be in, or not opposed to, the best interests of the Foundation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Foundation or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

## SECTION 2. INDEMNIFICATION IN ACTIONS BY OR IN THE RIGHT OF THE FOUNDATION

The Foundation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Foundation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Foundation as a director, officer, employee or agent of another Foundation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Foundation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Foundation, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

## SECTION 3. RIGHT TO PAYMENT OF EXPENSES

To the extent that a director, officer, employee or agent of the Foundation has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

## SECTION 4. DETERMINATION OF CONDUCT

Any indemnification under Sections 1 and 2 of this Article (unless ordered by a court) shall be made by the Foundation only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth



in Sections 1 or 2 of this Article. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

#### SECTION 5. PAYMENT OF EXPENSES IN ADVANCE

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt on an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Foundation as authorized in this Article.

#### SECTION 6. INDEMNIFICATION NOT EXCLUSIVE

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, or vote of disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### SECTION 7. INSURANCE

The Foundation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Foundation, or who is or was serving at the request of the Foundation as a director, officer, employee or agent of another Foundation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify such person against such liability under the provisions of this Article.

#### SECTION 8. REFERENCES TO FOUNDATION

For purposes of this Article, references to "the Foundation" shall include, in addition to the surviving corporation or foundation, any merging corporation or foundation (including any corporation/foundation having merged with a merging corporation/foundation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers, employees or agents, so that any person who was a director, officer, employee or agent of such merging corporation/foundation, or was serving at the request of such merging corporation/foundation as a director, officer, employee or agent of another corporation/foundation, partnership, joint venture, trust or another enterprise, shall stand in the same position under the provisions of this Article with respect to the surviving

corporation/foundation as such person would have with respect to such merging corporation/foundation if its separate existence had continued.

#### SECTION 9. OTHER REFERENCES

For purposes of this Article, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Foundation" shall include any service as a director, officer, employee or agent of the Foundation which imposes duties on, or involves services by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the best- interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Foundation" as referred to in this Article.

#### ARTICLE XIV AMENDMENTS

The power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board. Such action may be taken at a regular or special meeting for which written notice of the purpose shall be given. The Bylaws may contain any provisions for the regulation and management of the affairs of the Foundation not inconsistent with Georgia law or the Articles of Incorporation.