

# ALSTON & BIRD LLP

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

404-881-7000  
Fax: 404-881-7777

Direct Dial (404) 881-7442

Jan R. Ezell  
Corporate Legal Assistant

November 12, 1997

## BY UPS OVERNIGHT

Mr. Buck Kohr  
Florida Department of State  
Division of Corporations  
409 E. Gaines Street  
Tallahassee, FL 32399

400002346044--3  
-11/13/97--01013--014  
\*\*\*122.50 \*\*\*122.50

Re: The Mockernut Foundation, Inc.

Dear Buck:

Enclosed for filing are the Articles of Incorporation of The Mockernut Foundation, Inc. Also enclosed is a check in the amount of \$122.50 in payment of the filing fee. Please file stamp the enclosed copy of the Articles of Incorporation and return it to me.

As always, thanks for your help. If you have any questions regarding the enclosed, please call me at (404) 881-7442.

Sincerely yours,

*Jan R. Ezell*  
Jan R. Ezell  
Corporate Legal Assistant

JRE:mw  
Enclosure  
cc: Mr. Benjamin T. White  
AD933220.025

1211 East Morehead Street  
P. O. Drawer 34009  
Charlotte, NC 28234-4009  
704-331-6000  
Fax: 704-334-2014

3605 Glenwood Avenue  
P. O. Drawer 31107  
Raleigh, NC 27622-1107  
919-420-2200  
Fax: 919-881-3175

601 Pennsylvania Avenue, N.W.  
North Building, Suite 250  
Washington, DC 20004-2601  
202-508-3300  
Fax: 202-508-3333

FILED  
97 NOV 13 AM 9:20  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION  
OF  
THE MOCKERNUT FOUNDATION, INC.**

**FILED**  
97 NOV 13 AM 9:20  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLE ONE**

**Name**

The name of the corporation shall be:

THE MOCKERNUT FOUNDATION, INC.

**ARTICLE TWO**

**Perpetual Duration; Public Benefit**

The corporation shall have perpetual duration. The corporation is a public benefit corporation.

**ARTICLE THREE**

**Corporation Not For Profit and Charitable Purposes**

The corporation shall be a corporation not for profit under the provisions of Florida law. It shall be organized, and at all times thereafter operated, exclusively for public charitable uses and purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. The specific purposes of the corporation shall include, but shall not be restricted to, the following:

(a) To promote for the benefit of the general public the preservation and improvement of natural resources principally in, but not limited to, that section of Marion County, Florida, containing the Mockernut Hill Botanical Garden. These resources shall include land and water resources, the plant and animal life thereon, and unique scenic, natural, and historic sites; and the preservation and improvement of these

resources shall include without limitation landscaping with a wide variety of native and exotic species and the development and management of trail systems.

(b) To engage in and promote the scientific study of and education regarding such natural and other resources.

(c) To use all properties held or controlled by the corporation and the net earnings therefrom for the benefit of the general public and for charitable, educational, conservation, scientific, and historical purposes.

In furtherance of such purposes, the corporation shall have full power and authority:

(a) To make distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code;

(b) To make distributions for other charitable purposes;

(c) To engage in charitable functions and activities, not inconsistent with its purposes, as set forth in these Articles of Incorporation;

(d) To receive and accept property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered, and disposed of in accordance with and pursuant to the governing instruments of the corporation, as the same may be amended from time to time;

(e) To solicit gifts, grants, and contributions and otherwise to raise funds to support and advance the charitable programs and activities of the corporation as provided above;

(f) To distribute property exclusively for charitable purposes in accordance with the terms of gifts, bequests, or devises to the corporation not inconsistent with its purposes, as set forth in these Articles of Incorporation, or in accordance with determinations made by the Board of Trustees pursuant to these Articles of Incorporation and the Bylaws of the corporation; and

(g) To perform all other acts necessary or incidental to the above and to do whatever is deemed necessary, useful, advisable, or conducive, directly or indirectly, as determined by the Board of Trustees, to carry out any of the purposes of the corporation, as set forth in these Articles of Incorporation, including the exercise of all other power and authority enjoyed by corporations generally by virtue of applicable provisions of Florida law (within and subject to the limitations of section 501(c)(3) of the Internal Revenue Code).

The corporation shall serve only such purposes and functions and shall engage only in such activities as are consonant with the purposes set forth in this Article Three and as are exclusively charitable and are entitled to charitable status under section 501(c)(3) of the Internal Revenue Code.

#### **ARTICLE FOUR**

##### **Tax-Exempt Corporation Not For Profit**

The corporation shall be neither organized nor operated for pecuniary gain or profit.

(a) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, any member, director, officer, or trustee of the corporation, or any other private person; but the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as set forth in Article Three hereof.

(b) No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; and the corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

(c) Notwithstanding any other provisions of these Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on:

- (i) By a corporation exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code; or
- (ii) By a corporation, contributions to which are deductible for federal income tax purposes under section 170(c)(2) of the Internal Revenue Code.

It is intended that the corporation shall have, and continue to have, the status of an organization which is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. All terms and provisions of these Articles of Incorporation and the Bylaws of the corporation, and all authority and operations of the corporation, shall be construed, applied and carried out in accordance with such intent.

#### **ARTICLE FIVE**

##### **Private Foundation Restrictions**

- (a) The corporation shall distribute its income for each taxable 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.
- (b) The corporation shall not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code.
- (c) The corporation shall not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code.
- (d) The corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Internal Revenue Code.

(e) The corporation shall not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

## **ARTICLE SIX**

### **Board of Trustees**

The Board of Trustees shall have general charge of the affairs and any property and assets of the corporation. It shall be the duty of the trustees to carry out the purposes and functions of the corporation. The trustees shall be elected in accordance with the Bylaws of the corporation and shall have the powers and duties set forth in these Articles of Incorporation and in the Bylaws, to the extent that such powers and duties are not inconsistent with the status of the corporation as a corporation not for profit which is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

## **ARTICLE SEVEN**

### **Members**

The corporation initially will have no members. However, the Board of Trustees of the corporation shall have the power to admit members to the corporation in such manner, subject to such qualifications, and upon such terms and conditions and with such rights and privileges as may be provided from time to time in the Bylaws of the corporation and as are not inconsistent with any provision of these Articles of Incorporation. Members may be divided into one or more classes.

## **ARTICLE EIGHT**

### **Initial Board of Trustees**

The initial Board of Trustees of the corporation shall consist of five (5) members, whose names and addresses are set forth below and who shall serve as trustees until their successors have been elected and have qualified.

#### **Name**

#### **Address**

H. McKinley Conway

4292 Ridgeway Drive  
Duluth, Georgia 30155

Linda Conway Duever

Conway Conservation  
507 Northeast Chulokka Boulevard  
Micanopy, Florida 32667

William A. Rosenthal

990 Lennox Valley  
Atlanta, Georgia 30324

Debbie Porter

1349 Millvale Court  
Lawrenceville, Georgia 30044

Laura Conway Lyne

5026 Broadgreen Drive  
Norcross, Georgia 30092

## **ARTICLE NINE**

### **Dissolution of Corporation**

Upon dissolution of the corporation, the Board of Trustees, shall, after paying or making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation by distributing those assets exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for public charitable uses and purposes as shall at the time qualify as exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction for the county in which the principal

office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized and operated exclusively for such purposes.

#### **ARTICLE TEN**

##### **Registered Office and Registered Agent**

The initial registered office of the corporation shall be at Conway Conservation, 507 Northeast Chulokka Boulevard, Micanopy, Alachua County, Florida 32667. The initial registered agent of the corporation at such address shall be Linda Conway Duever.

#### **ARTICLE ELEVEN**

##### **Principal Office**

The mailing address of the initial principal office of the corporation is Conway Conservation, 507 Northeast Chulokka Boulevard, Micanopy, Alachua County, Florida 32667.

#### **ARTICLE TWELVE**

##### **Definitions**

For purposes of these Articles of Incorporation, "charitable purposes" include charitable, religious, educational, literary, or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, contributions for which are deductible under section 170(c)(2) of the Internal Revenue Code. All references in these Articles of Incorporation 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 THIRTEEN**

#### **Limitation of Trustee Liability**

(a) A trustee of the corporation shall not be personally liable to the corporation or its members or to any other person for monetary damages for breach of duty of care or other duty as a trustee, or for any statement, vote, decision, or failure to act, regarding corporate management or policy, regardless of when such breach, statement, vote, decision, or failure to act may have occurred, except for liability under the provisions of Section 607.0831 of the Florida Statutes.

(b) Any repeal or modification of the provisions of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a trustee of the corporation with respect to any act or omission occurring prior to the effective date of such repeal or modification.

(c) If the Florida law hereafter is amended to authorize the further elimination or limitation of the liability of trustees, then the liability of a trustee of the corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Florida law.

(d) In the event that any of the provisions of this Article (including any provision within a single sentence) are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the fullest extent permitted by law.

## **ARTICLE FOURTEEN**

### **Indemnification**

The corporation shall indemnify any member of the Board of Trustees or officer or former member of the Board of Trustees or former officer and shall advance and bear expenses and costs (including attorneys' fees) actually and necessarily incurred by him or her in connection with any claim asserted, by reason of such person being or having been a member of the Board of Trustees or officer of the corporation, to the fullest extent permitted by the Florida Not For Profit Corporation Act. By resolution of the Board of Trustees or in the Bylaws of the corporation, the corporation may similarly indemnify and advance and bear expenses and costs of employees and agents of the corporation with respect to activities within the scope of their services to the corporation. The corporation may purchase insurance on such terms as the Board of Trustees may approve insuring trustees and officers against such claims.

## **ARTICLE FIFTEEN**

### **Incorporator**

The name and address of the Incorporator are as follows:

Benjamin T. White  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

## **ARTICLE SIXTEEN**

### **Amendments**

These Articles of Incorporation may be amended at any time and from time to time by the affirmative vote of no fewer than two-thirds (2/3) of the trustees then in office.

IN WITNESS WHEREOF, the Incorporator has executed these Articles  
of Incorporation, this 26th day of June, 1997.

*Benjamin T. White*

BENJAMIN T. WHITE  
Incorporator

ALSTON & BIRD LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
(404) 881-7000

**Acceptance by the Registered Agent as required in Section 607.0501(3) F.S.:**

The undersigned is familiar with and accepts the obligations  
provided for in Section 607.0505.

*Linda P. Duever*

LINDA CONWAY DUEVER  
Registered Agent

Date: June 29, 1997

FILED  
97 NOV 13 AM 9:20  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA