

STATE OF ALABAMA

DOMESTIC LIMITED LIABILITY COMPANY
AMENDMENT TO FORMATION/ORGANIZATION

PURPOSE: In order to amend a Limited Liability Company's (LLC) Certificate of Formation/Articles of Organization under Section 10A-1-3.13 and 10A-5-2.03 of the Code of Alabama 1975 this Amendment and the appropriate filing fees must be filed with the Office of the Judge of Probate in the county where the LLC was initially formed/ incorporated.

INSTRUCTIONS: Mail one (1) signed original and two (2) copies of this completed form and the appropriate filing fee to the Office of the Judge of Probate in the county where the LLC's Certificate of Formation was recorded. Contact the Judge of Probate's Office to determine the county filing fees. Make a separate check or money order payable to the **Secretary of State for the state filing fee of \$50.00 for standard processing or \$150.00 if expedited processing within 3 business days of receipt by the Office of the Secretary of State is requested (10A-1-4.31)** and the Judge of Probate's Office will transmit the fee along with a certified copy of the Amendment to the Office of the Secretary of State within 10 days after the filing is recorded. Once the Secretary of State's Office has indexed the filing, the information will appear at www.sos.alabama.gov under the Government Records tab and the Business Entity Records link – you may search by entity name or number. You may pay the Secretary of State fees by credit card if the county you are filing in will accept that method of payment (see attached). Your Amendment will not be indexed if the credit card does not authorize and will be removed from the index if the check is dishonored.



20131220000486490 1/35 \$83.00
Shelby Cnty Judge of Probate, AL
12/20/2013 11:06:14 AM FILED/CERT

(For County Probate Office Use Only)

This form must be typed or laser printed.

1. The name of the Limited Liability Company from the Certificate of Formation/Articles of Organization:

Leadership Underground, LLC

2. The date the Certificate of Formation was filed in the county: 10 / 22 / 2013 (format MM/DD/YYYY)

3. Alabama Entity ID Number (Format: 000-000): _____ - **INSTRUCTION TO OBTAIN ID NUMBER TO COMPLETE FORM:** If you do not have this number immediately available, you may obtain it on our website at www.sos.alabama.gov under the Government Records tab. Click on Business Entity Records, click on Entity Name, enter the registered name of the entity in the appropriate box, and enter. The six (6) digit number containing a dash to the left of the name is the entity ID number. If you click on that number, you can check the details page to make certain that you have the correct entity – this verification step is strongly recommended.

(For SOS Use Only)

This form was prepared by: (type name and full address)

DOMESTIC LIMITED LIABILITY COMPANY AMENDMENT

4. The titles, dates, and places of filing of any previous Amendments: None

Attach a listing if necessary.

[Instruction on Amendment completion: Be very specific about what must be changed if you are amending existing information. If the amendment includes a name change, a copy of the Name Reservation form issued by the Office of Secretary of State **must** be attached.]

Registered agents and registered agent addresses are changed by filing a Change Of Registered Agent Or Registered Office By Entity form directly with the Office of the Secretary of State (the new agent's signature is required agreeing to accept responsibility). You may file the information as a Amendment also, but the change form must be on file with the Secretary of State per 10A-1-3.12(a)(2) to effect the change in the public records database.]

5. The following amendment was adopted on 12 / 01 / 2013 (format MM/DD/YYYY):

Wendy N. McDougal was removed as a minority Member. Therefore, Leadership Underground, LLC shall have one
Member, Tom R. McDougal, Jr. Accordingly, the revised Articles of Organization and the revised Operating
Agreement are attached to reflect this change in Membership.

☐ Additional Amendments and the dates on which they were adopted are attached.

6. The undersigned authorized signature certifies that the amendment or amendments have been approved in the manner required by Title 10A of the *Code of Alabama of 1975* and the governing documents of this entity.

12 / 01 / 2013
Date (MM/DD/YYYY)


Signature as required by 10A-5-2.04

Tom R. McDougal, Jr.
Typed Name of Above Signature

Member, CEO and Founder
Typed Title/Capacity to Sign under 10A-5-2.04



Articles of Organization
of
LEADERSHIP UNDERGROUND, LLC

Original Filing 10/22/13
Amended 12/1/13

The undersigned adopt the following Articles of Organization for the purpose of becoming a limited liability company under the Alabama Limited Liability Company Act (Alabama Code §10-12-1 et seq.):

ARTICLE I

Name

The name of the limited liability company referred to in these Articles as “Company,” is **LEADERSHIP UNDERGROUND, LLC**.

ARTICLE II

Duration

The Company shall dissolve upon the occurrence of the following events, unless the legal existence of the Company is continued by the written consent of all the remaining members within ninety (90) days after the event of dissociation or as otherwise stated herein or in the Operating Agreement:

- (a) Expiration of the period ending thirty (30) years from the date these Articles are filed with the Office of the Judge of Probate for Shelby County, Alabama;
- (b) By the unanimous written consent of all the members of the Company that the Company be dissolved;
- (c) By the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member, or any other event which would terminate the continued membership of a member, unless the business and legal existence of the Company is continued by the consent of all remaining members or in any manner authorized under the Company’s Operating Agreement; or
- (d) Upon the occurrence of any other event of dissolution set forth in the Operating Agreement.

ARTICLE III

Purpose

The purposes for which the Company has been organized is to: (1) To provide consulting, analysis and support to clients, (2) to provide leadership development and coaching training; and (3) to engage and transact any or all



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lawful business for which limited liability companies may be organized under the Alabama Limited Liability Company Act.

ARTICLE IV

Principal Address

The address of Company's principal place of business in Alabama is 253 Cahaba Oaks Trail, Indian Springs Village, Alabama, 35124.

ARTICLE V

Registered Agent and Office

The name of Company's initial registered agent in Alabama is Tom R. McDougal, Jr. The address of the Company's registered office in Alabama is 253 Cahaba Oaks Trail, Indian Springs Village, Alabama, 35124.

ARTICLE VI

Initial Members

The names and addresses of the initial members are:

- (1) Tom R. McDougal, Jr.**
253 Cahaba Oaks Trail
Indian Springs Village, Alabama 35124

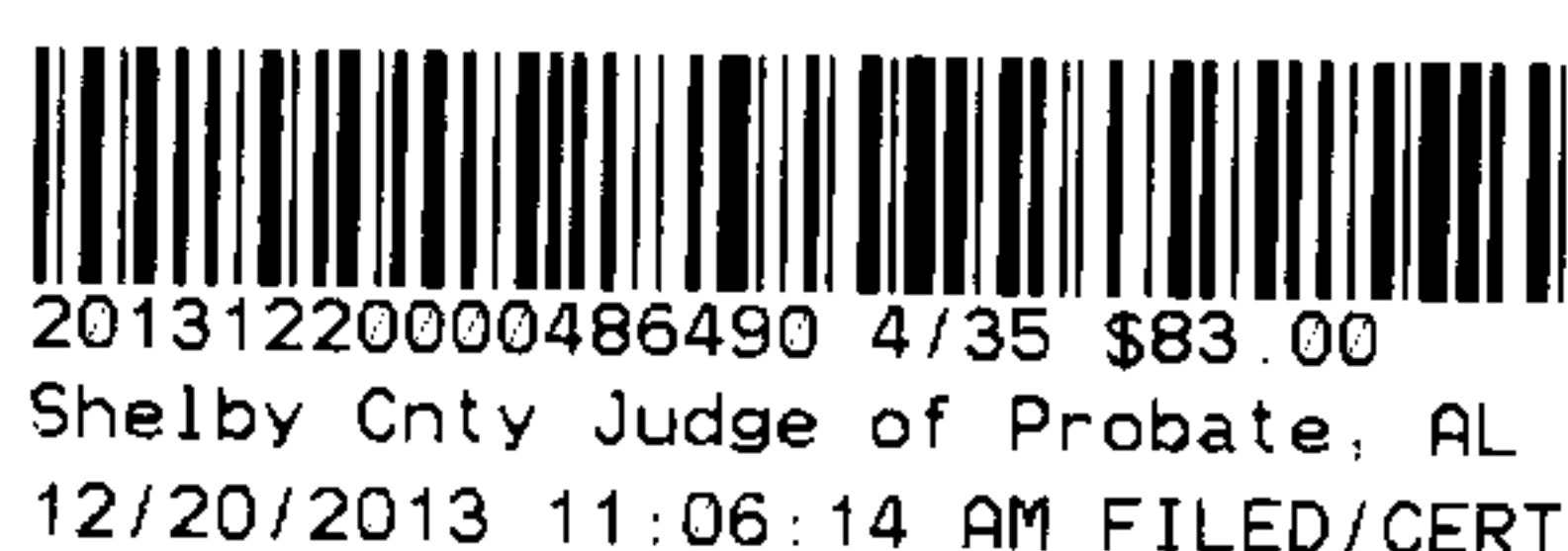
who holds a 100% ownership/membership interest in the Company.

ARTICLE VII

Capital Contributions

The total amount of cash contributions is \$1000.00.
Contributions to the Company by each member are as follows:

Tom R. McDougal, Jr. has made a cash contribution of \$1000.00



ARTICLE VIII

Management

The Company is to be managed by managers. The initial managers will serve until the first annual meeting of the members or until their successors are elected and qualify. Managers shall be elected and subject to removal as provided in the Operating Agreement. The initial manager is identified as follows: Tom R. McDougal, Jr. 253 Cahaba Oaks Trail, Indian Springs Village, Alabama, 35124.

ARTICLE IX

Admission of New Members

Members shall have the right to admit new members. Additional members may be admitted only on the unanimous written consent of existing members, and the existing members shall determine the amount and nature of contributions by, and the proportionate ownership interest of, new members at the time the new members are admitted.

ARTICLE X

Initial Member Replacement Due to Death

In the event of death of an Initial Member, the remaining Initial Member shall thereafter hold the combined ownership in the Company of the Initial Members at the time of the death of the Initial Member. Such provision shall supersede any and all other provisions and terms of this Agreement.

ARTICLE XI

Additional Provisions

(a) The power to adopt, alter, amend, or repeal the regulations of the Company and/or the Operating Agreement is vested entirely in the members listed in Article VI.

(b) The proportionate ownership interest of each member in the Company, management rights and the basis for sharing and/or allocating the profits and losses, income, deductions and credits, and items of income, deductions and credits of the Company shall be allocated among the members in the manner provided in the Operating Agreement.

IN WITNESS WHEREOF, for the purpose of forming this limited liability company in accordance with the Alabama Limited Liability Company



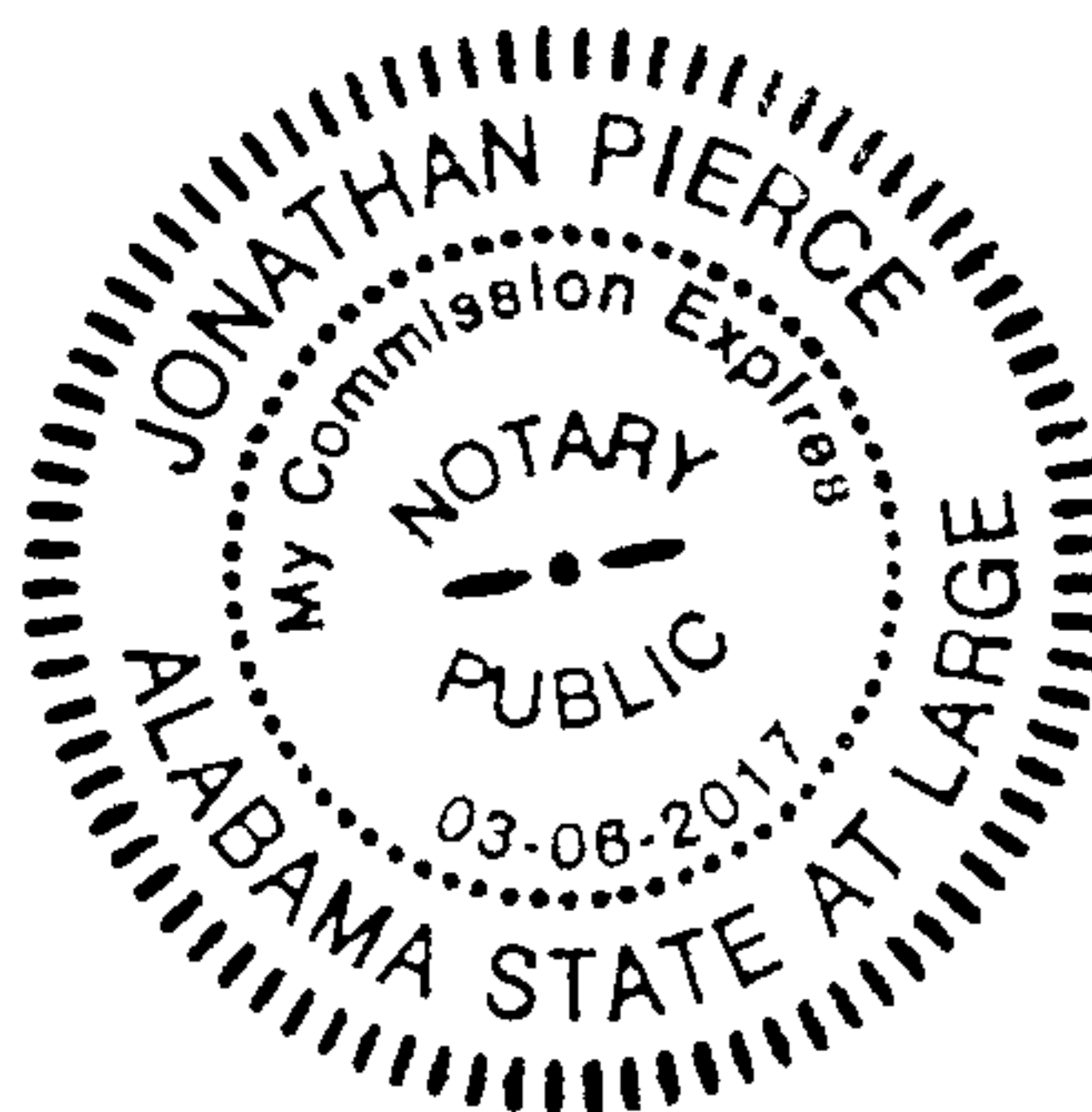
Act, the undersigned have executed these Articles of Organization on this the 19th
day of December, 2013, at Indian Springs Village, Alabama.

[Signature] [L.S.]
Tom R. McDougal, Jr.

State of Alabama)
County of Shelby)

Before me, the undersigned authority, a notary public in and for said
county and state, personally appeared Tom R. McDougal, Jr. ~~and Wendy N. McDougal~~ 7/2m
~~McDougal~~, who are known to me to be the person who executed the foregoing
Articles of Organization and acknowledged before me that he made and
subscribed the same for the purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this
19th day of December, 2013, at Shelby County, Alabama.



[Signature]
Notary Public

My Commission Expires: 03-06-2017

OPERATING AGREEMENT

OF

LEADERSHIP

UNDERGROUND, LLC

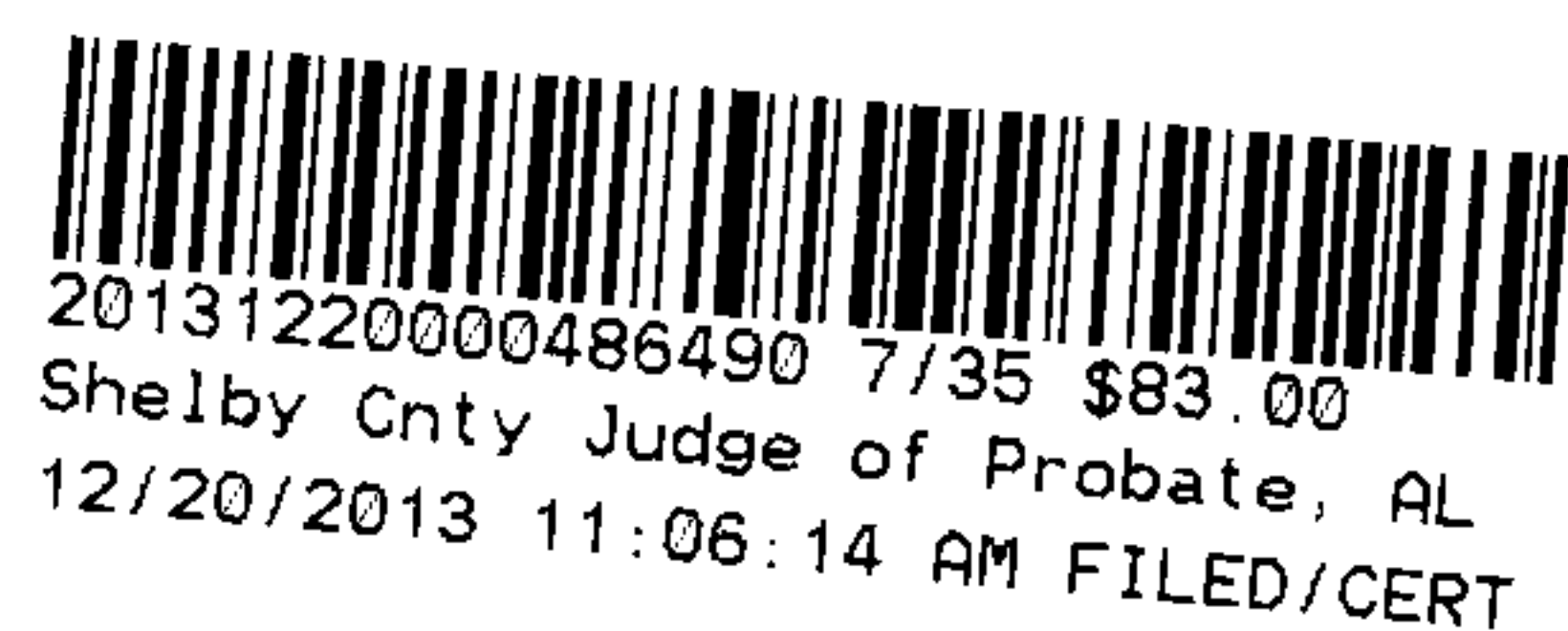
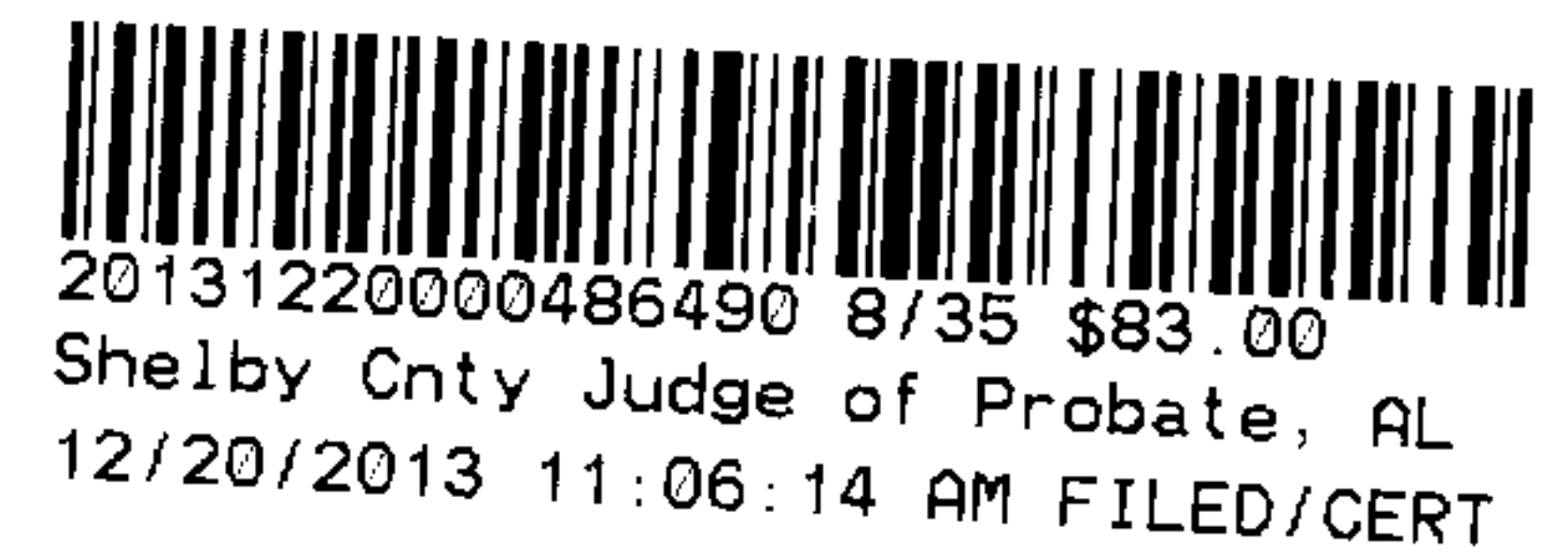


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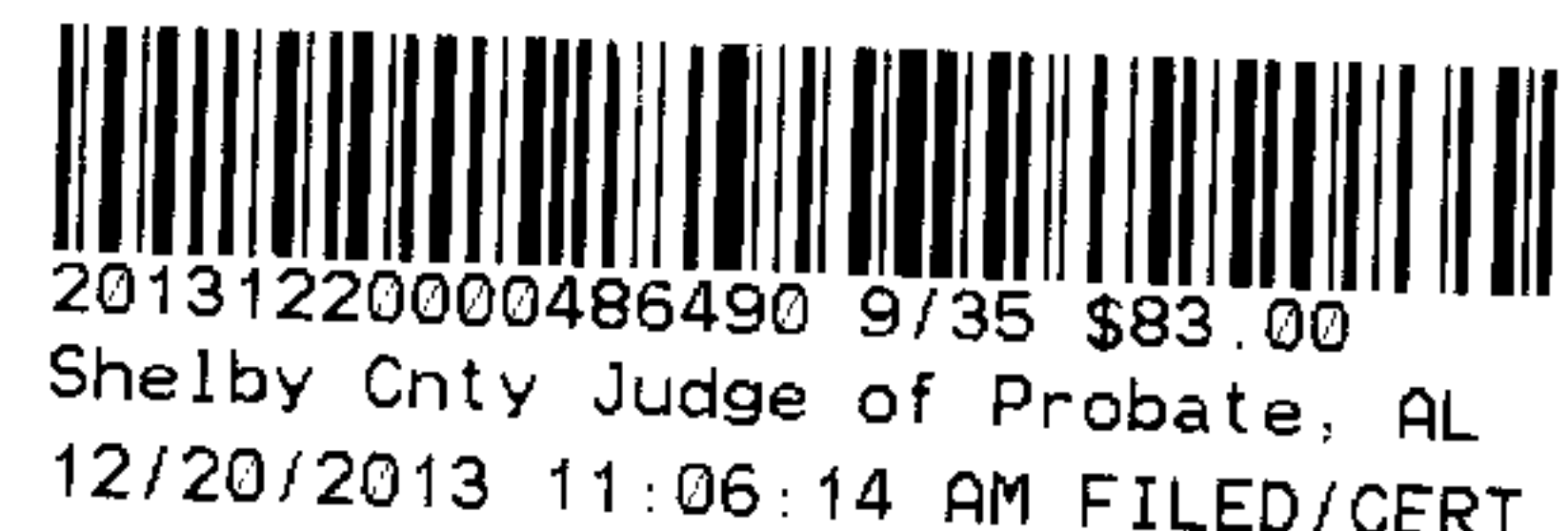
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Operating Agreement

of

LEADERSHIP UNDERGROUND, LLC

THIS OPERATING AGREEMENT is made as of the ____ day of _____, 2013,
by Tom R. McDougal, Jr.

WHEREAS, the parties have formed a limited liability company pursuant to Section 10-21-1 *et seq.* of the *Code of Alabama*, 1975.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree to form a limited liability company upon the following terms and conditions:

1. FORMATION AND TERM

A. Formation

The parties hereby confirm that they have formed a limited liability company pursuant to Section 10-21-1 *et seq.* of the *Code of Alabama*, 1975 by causing articles of organization to be filed with the Office of the Probate Judge of Shelby County, Alabama.

B. Term

The company shall continue until December 31, 2043, unless sooner terminated in accordance with this Agreement.

2. DEFINITIONS

The following terms used in this agreement shall (unless otherwise expressly provided or unless the context otherwise requires) have the following respective meanings:

Act

The Alabama Limited Liability Company Act, as set forth in the Code of Alabama, 1975, as it may be amended or superseded from time to time.

Additional Capital Contributions

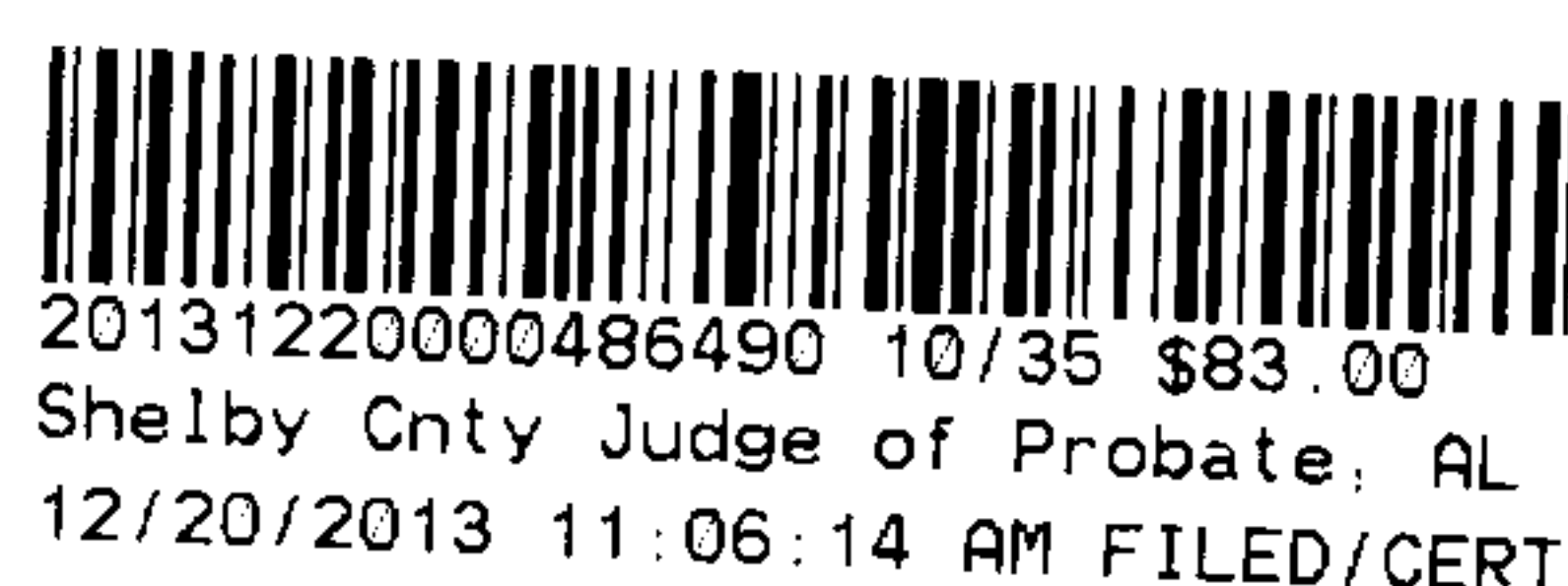
The voluntary Additional Capital Contributions of a Member under Section 5C.

Agreement

This Operating Agreement, as originally executed and as amended from time to time, as the context requires.

Bankruptcy

(1) The filing of an application by a Member for, or his consent to, the appointment of a trustee, receiver, or custodian of his assets;



- (2) The entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superceded from time to time;
- (3) The making by a Member of a general assignment for the benefit of creditors;
- (4) The entry of an order, judgement, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days;
- (5) The failure by a Member generally to pay his debts as the debts become due within the meaning of Section 303 (h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or admission in writing of his inability to pay his debts as they become due; or
- (6) Suffering or permitting a Member's Interest to become subject to the enforcement of any rights of a creditor of a Member, whether arising out of an attempted charge upon that Member's Interest by judicial process or otherwise, if that Member fails to effectuate the release of those enforcement rights, whether by legal process, bonding, or otherwise, within ninety (90) days after actual notice of that creditor's action.

Capital Account

As of any date the capital account maintained for each Member under Section 5E.

Capital Contribution

The total amount of money and the agreed upon fair market value of property contributed to the Company by a Member or his predecessor in interest on the date of the contribution.

Code

The 1986 Internal Revenue Code, as amended from time to time.

Company

LEADERSHIP UNDERGROUND, LLC

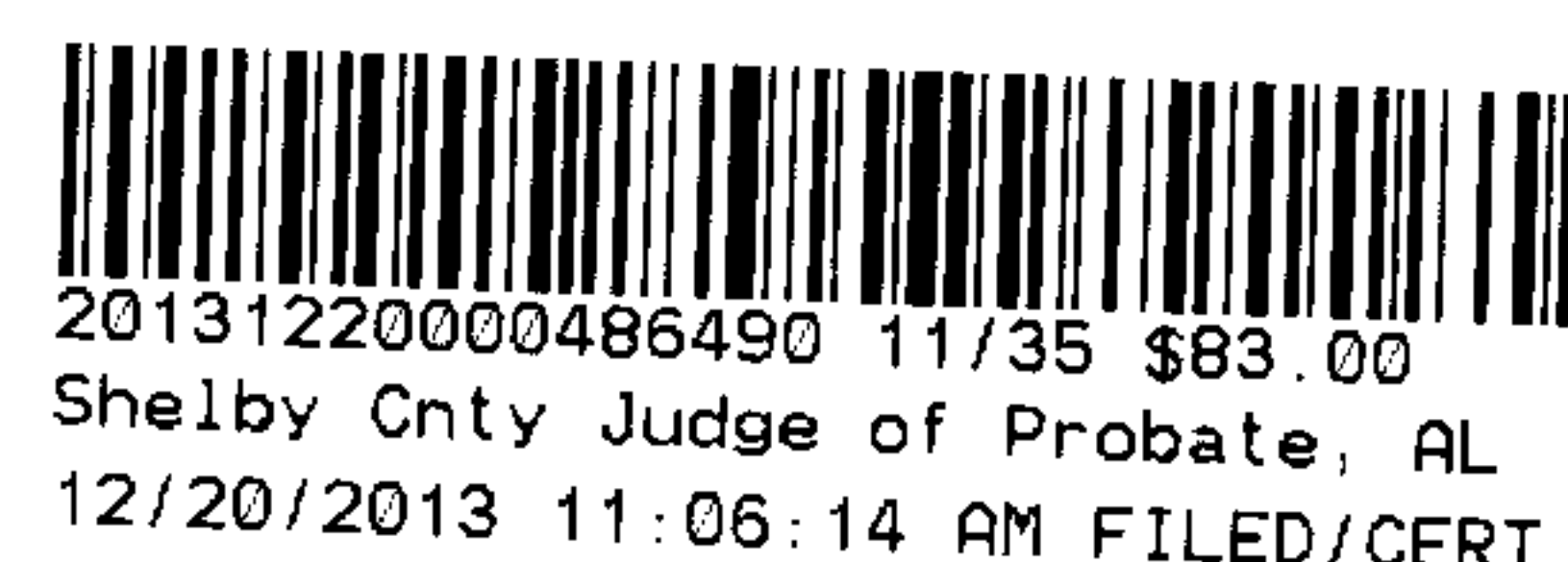
Company Minimum Gain

As of any date, the amount determined under Regulations Section 1.704-2 (b)(2) and 1.704-2 (d).

Company Nonrecourse Deduction

The Amount of deductions of the Company calculated under Regulations Section 1.704-2 (c).

Debt Service



The total of all payments, including principle and interest, due with respect to any loans to the Company or to which Company property or assets, including the Project, are subject.

Development Loan

The loan, if any, made to the Company to finance the acquisition, development and/or operation of any Project.

Disposition

The sale, assignment, transfer, exchange or other disposition of an Interest, in any manner, whether voluntary or involuntary, or by operation of law or otherwise.

Gain or Loss from Sale

Any gain or loss for federal income tax purposes resulting from the sale or other disposition of the capital assets of the Company not in the ordinary course of the Company's business, except that for purposes of Capital Account adjustments, gain or loss shall be computed by reference to the asset's book value as of the date of sale or other disposition reflecting adjustments under Section 5E (2)(c) rather than by reference to its adjusted tax basis as of that date.

Interest

The ownership interest, expressed as a percentage, of a Member in the Company at any particular time, initially as set forth in Section 5A, including the right of the Member to any and all benefits to which the Member is entitled and the obligations to which the Member is subject under the Agreement.

Manager

A person appointed pursuant to Section 8A, and any person or entity appointed as successor Manager under this Agreement.

Member Nonrecourse Debt

A nonrecourse debt of the Company within the meaning of Regulations Section 1.704-2 (b)(4).

Member Nonrecourse Debt Minimum Gain

As of any date, the amount determined under Regulations Section 1.704-2 (j)(3).

Member Nonrecourse Deductions



The items of loss, deduction, and expenditure attributable to Member Nonrecourse Debt under Regulations Section 1.704-2 (i)(2).

Members

The persons so identified in Section 5A and any person who becomes an additional or substituted Member under this Agreement.

Modified Negative Capital Account

The deficit balance of a Capital Account in excess of the amount of the deficit, if any, the Member is obligated to contribute to the Company under the Agreement or is deemed obligated to restore pursuant to the Code Section 704 (b) Regulations.

Net Cash from Operations

For any taxable year, the excess of Operating Revenues over the sum of (1) Operating Expenses of the Company paid in cash during the year, (2) Debt Service, and (3) any reasonable reserves as determined by the Manager, for Operating Expenses for the repair, replacement or preservation during the current or subsequent years of any Company asset, for Debt Service or for contingencies and unanticipated obligations.

Net Income or Net Loss

The income or loss, as the case may be, for the Company for a period as determined in accordance with Section 703 (a)(1) of the Code, including each item of income, gain, loss, or deduction required to be separately stated, with the following adjustments:

- (1) Gain or Loss from Sale shall be excluded:
- (2) Items specifically allocated under Section 6 shall be excluded;
- (3) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall compute such deductions based on the book value of Company property, in accordance with Regulations Section 1.704-1 (b)(2)(iv)(g)(3).

Net Proceeds from Financing

Net cash realized by the Company from borrowing by the Company or refinancing of indebtedness of the Company, reduced by (1) all expenses related to the borrowing or refinancing, (2) the amount applied, at the sole discretion of the Manager, toward the payment of any indebtedness of the Company other than to a Member, and



(3) reasonable exercise of his discretion, to satisfy other obligations of the Company or anticipated capital expenditures.

Net Proceeds from Sale

Net cash realized by the Company from the sale, exchange, condemnation, or other disposition of all or a portion of the Project or other capital assets of the Company or from policies of insurance from damage to, or destruction of, or defects of title to, the Project or other capital assets (to the extent insurance proceeds exceed the actual or estimated costs of repairing or replacing the Project or other assets damaged or destroyed or curing defects of title), reduced by (1) all expenses related to the transaction, (2) the amount applied at the sole discretion of the Manager toward the payment of any indebtedness of the Company other than to a Member, and (3) reasonable reserves, as determined by the Manager in the reasonable exercise of his discretion to satisfy other obligations of the Company or anticipated capital expenditures.

Operating Expenses

All costs and expenses of ownership and operation of the Company and Project, including but not limited to, costs of operation, taxes, insurance premiums, utility costs, charges for cleaning and cleaning supplies, costs of repairs and maintenance, costs and fees associated with management, payroll costs, costs for general, administrative and overhead, audit and appraisal expenses, any other expenses incurred in the ordinary course of operating the Project and reserves for operating expenses and capital expenditures as determined by the Manager.

Operating Revenues

All cash revenue from the operation of the Project, interest income received during the year, and reserves set aside in prior years and no longer deemed necessary for the Company's business, in the reasonable discretion of the Manager.

Prime Rate

The prime rate (or base rate) reported in the "Money Rates" column or section of the The Wall Street Journal as being the base rate on corporate loans at larger U.S. Money Center banks on the first date on which The Wall Street Journal is published in each month. In the event The Wall Street Journal ceases publication of the Prime Rate, then the "Prime Rate" shall mean the "prime rate" or "base rate" announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank) or as otherwise designated by the Manager. In the event that bank discontinues the practice of announcing that rate, Prime Rate shall mean the highest rate charged by that bank on short-term, unsecured loans to its most

credit-worthy large corporate borrowers, unless otherwise designated by the Manager.

Project

All transactions entered into by the Company to provide occupational health related services, marketing, educational programs and products, directly or through contractual arrangements with other parties and organizations, to employers; and any other lawful activity in which a limited liability company organized under the Alabama Limited Liability Company Act may engage.

Regulations

The regulations issued under the Code, as amended from time to time.

Successor in Interest

The person who succeeds to an Interest upon the death, incompetency, termination, or Bankruptcy (including the debtor in possession) of a Member.

3. NAME, OFFICE OF THE COMPANY, AND REGISTERED AGENT

A. Name

The name of the Company is LEADERSHIP UNDERGROUND, LLC. The business of the Company may be conducted under such trade or fictitious names as the Members may determine.

B. Specified Office of the Company

The principal place of business of the Company and the specified office of the Company at which the records required to be maintained by the Company under the Act to be kept shall be 253 Cahaba Oaks Trail, Indian Springs Village, Alabama 35124, or such other place or places as the Managers shall deem available. The Managers shall notify the other Members of any change of the specified office.

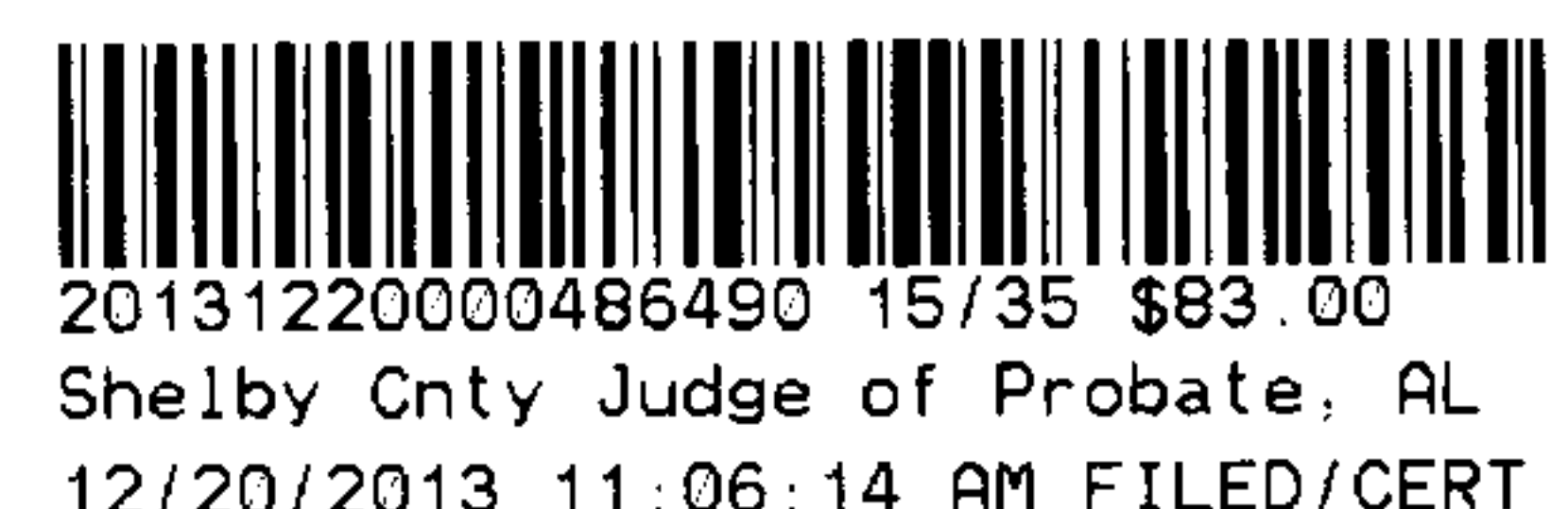
C. Registered Agent

The Company's agent for service of process shall be Tom R. McDougal, Jr., 253 Cahaba Oaks Trail, Indian Springs Village, Alabama, 35124, or such other person as the Manager may designate.

4. BUSINESS OF THE COMPANY

The business of the Company shall be to acquire or engage in a Project or Projects and engage in any and all lawful business activities related or incidental thereto.

5. MEMBERS, INTERESTS, AND CAPITAL



A. Members and Interests

The Names and Interests of the Initial Members are as follows:

<u>Name</u>	<u>Interests</u>
Tom R. McDougal, Jr.	100 %

B. Initial Capital Contributions

Prior to or contemporaneously with the execution of this Agreement, the Members have made initial capital contributions to the Company of the amounts set forth below opposite the name of each:

<u>Name</u>	<u>Capital Contributions</u>
Tom R. McDougal, Jr.	\$1000.00

C. Additional Capital Contributions and Loans

(1) If Members holding a majority of the Interests agree in writing that additional capital in excess of that which the Members are obligated to contribute pursuant to Section 5B is needed by the Company for Operating Expenses or other Company obligations incurred in accordance with this agreement or to protect and preserve the value of the Company's property or assets, a Member may, but is not required to, lend money to the Company, which loan shall bear interest at a fluctuating rate equal to the lowest commercial lending rate actually available to the Company from time to time. Any loan under this subsection shall be repaid in full before any distributions are made under Section 7.

(2) Subject to approval of the Members, any Member may make Additional Capital Contributions to the Company. A Member who makes an Additional Capital Contribution shall not be entitled to an increase in his Interest.

D. No Third Party Beneficiaries

The foregoing provisions of this Section are not intended to be for the benefit of any creditor or other person to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members; and no creditor or other person shall obtain any right under any of the foregoing provisions or shall by reason of any of the foregoing provisions make any claim in respect of any debt, liability, or obligation (or otherwise) against the Company or any of the Members.

E. Capital Accounts

(1) A Capital Account shall be established and maintained for each Member. A Member shall have a single Capital Account, regardless of class and regardless of the time or manner in which any portion of that Interest was acquired. If an Interest is



transferred in accordance with this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(2) (a) As of any date, a Member's Capital Account shall consist of: (A) the amount of the Member's Capital Contributions to the Company, (B) allocations to him of Net Income and Gain from Sale (or items thereof) (other than gain under Section 6G), including income and gain exempt from tax and any other items in the nature of income or gain that are specially allocated pursuant to this Agreement, and (C) that the amount of any Company liabilities assumed by that Member or that are secured by any Company by any Company assets distributed to that Member (to the extent of the value of the securing assets); minus (ii) the sum of (A) the amount of any money distributed to him by the Company, (B) the fair market value of property distributed to him by the Company, (C) the amount of any liabilities of that Member assumed by the Company or secured by any property contributed by that Member to the Company (to the extent of the value of the securing assets), (D) allocations to him of expenditures of the Company described in Section 705 (a)(2)(B) of the Code or treated as such expenditures under the Regulations, and (E) allocations to him of Net Loss and Loss from Sale (or items thereof) and any other items in the nature of expenses or losses that are specifically allocated pursuant to this Agreement.

(b) (i) In the discretion of the Members the Capital Account of each Member may be adjusted to reflect a revaluation of the Company's assets upon the occurrence of the following events:

(A) The contribution of money or other property (other than a *de minimis* amount) to the Company by a new or existing Member as consideration for an Interest;

(B) The distribution of money or other property (other than a *de minimis* amount) by the Company to a retiring or continuing Member as consideration for an Interest; or

(C) The liquidation of the Company within the meaning of Regulation Section 1.704-1 (b)(2)(ii)(g).

(ii) The adjustment shall be based on the fair market value of Company property (taking Section 7701(g) of the Code into account) on the date of adjustment, and shall reflect the manner in which the unrealized income, gain, loss, or deduction inherent in the property (that has not previously been reflected in Capital Accounts) would be allocated among the Members if there were a taxable disposition of the property for fair market value on that date.

- (c) If any Company asset has a book value that differs from the adjusted tax basis of that asset, then the Capital Accounts shall be adjusted in accordance with Regulation Section 1.704-1 (b)(2)(iv)(g) for allocations of depreciation, depletion, amortization, and gain or loss computed for book purposes rather than tax purposes, with respect to such asset.
- (d) If there is any basis adjustment pursuant to an election under Section 754 of the Code, then Capital Accounts shall be adjusted to the extent required by the Regulations.
- (e) The principles governing the adjustments of Capital Accounts are intended to satisfy the capital account maintenance requirements of Regulation Section 1.704-1 (b)(2)(iv) and shall be construed consistently therewith.

F. Additional Provisions on Capital and Obligations of Members

- (1) No Member gives up any of his rights to be repaid his Capital Contributions in favor of any other Member.
- (2) No Member shall be paid interest on his Capital Account.
- (3) No Member shall have the right to demand and receive any distribution from the Company in any form other than cash, regardless of the nature of his contribution.
- (4) No Member shall have the right to demand and receive property of the Company in return of his Capital Contributions until the termination of the Company.
- (5) The liability of any Member for the losses, debts, liabilities, and obligations of the Company shall be limited to paying: his capital contributions when due under the Agreement, his share of any undistributed assets of the Company; and (only to the extent required by the Act) any amounts previously distributed to him from the Company.

6. ALLOCATIONS AND DISTRIBUTIONS

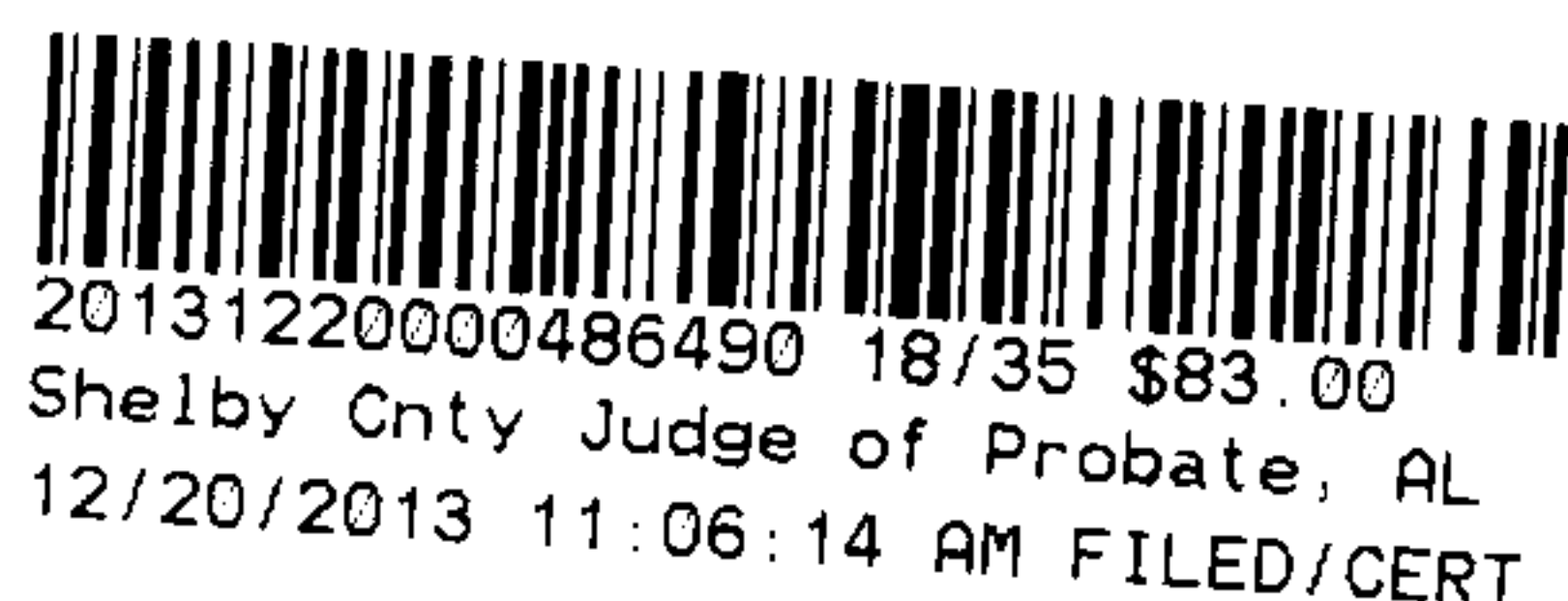
A. Net Income, Net Loss, and Credits

Subject to Section 6E through J, Net Income, Net Loss, and tax credits shall be allocated among the Members in proportion to their respective Interests.

B. Gain from Sale

Subject to Section 6E through J, Gain from Sale shall be allocated among the Members in the following order of priority:

- (1) To the Members who have negative Capital Accounts immediately preceding the transaction giving rise to the Gain, in proportion to their negative Capital Accounts, until all negative Capital Accounts have been increased to zero;
- (2) The balance, if any, to the Members in proportion to their respective Interests.



C. Loss from Sale

Subject to Sections 6F, H, I, and J, Loss from Sale shall be allocated among the Members in the following order of priority:

- (1) To the Members who have positive Capital Accounts immediately preceding the transaction giving rise to the Loss, in proportion to their positive Capital Accounts, until each Member's Capital Account is reduced to zero; and
- (2) The balance, if any, to the Members in proportion to their respective Interests.

D. Mid-Year Transfers

In case of an Interest that has been transferred during the Taxable Year unless otherwise agreed by the parties:

- (1) All Net Income and Loss, Gain from Sale, and Loss from Sale allocable to the Interest shall be allocated between the transferor and the transferee in the ratio of the number of days in the year before and after the effective date without regard to the dates during the year on which income was earned, losses incurred, or Net Cash from Operations was distributed.
- (2) Notwithstanding anything to the contrary in this Agreement except Subsection (1), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during a taxable year of the Company, there shall be allocated to any Member with a share of that Member Nonrecourse Debt Minimum Gain items of income and gain in accordance with the requirements of Regulations Section 1.704-2 (i)(4).

F. Allocations to Reflect Book Value/Tax Disparity

In accordance with Section 704 (C) of the Code and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of its agreed upon fair market value at the time of contribution. In addition, if Company property is revalued and Capital Accounts are adjusted, then subsequent allocations of income, gain, loss, and deduction for tax purposes with respect to the revalued property adjusted tax basis and book value in the same manner as under Section 704 (C) of the Code and Regulations.

G. Qualified Income Offset

If a Member unexpectedly receives an adjustment, allocation, or distribution described in Regulation Sections 1.704-1 (b)(2)(ii)(d)(4), (5) or (6) that creates or increases a Modified Negative Capital Account, then items of income or gain (consisting

of a pro rata portion of each item of Company income, including gross income and gain for such year) shall be allocated to that Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Modified Negative Capital Account created or increased by the adjustments, allocations, or distributions as quickly as possible. For purposes of this Subsection G, in determining whether a Member has a Modified Negative Capital Account, there shall be taken into account those adjustments, allocations, and distributions that, as of the end of the year, are reasonably expected to be made.

H. Member Nonrecourse Deductions

Any Member Nonrecourse Deductions shall be specifically allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which the Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2 (i)(1).

I. Company Nonrecourse Deductions

Company Nonrecourse Deductions shall be specifically allocated among the Members in accordance with their Interests.

J. Economic Consistency Special Allocations

The Members intend that the tax allocation provisions of Section 6 shall result in final Capital Account balances of the Members that permit liquidating distributions made in accordance with final Capital Account balances under Section 14 C(2) to be made in a manner identical to the order of priorities set forth in Section 7B for distributing Net Proceeds from Sale. The tax allocation provisions of Section 6 shall be applied (and amended) by the Members if and to the extent necessary to produce that result even if those amendments require the amendment of prior tax returns of the Company to do so.

7. DISTRIBUTIONS

A. Net Cash from Operations and Net Proceeds from Financing

Net Cash from Operations and Net Proceeds from Financing shall be distributed among the Members in proportion to their respective Interests at such times as the Members shall determine.

B. Net Proceeds from Sale

Net Proceeds from Sale shall be distributed at such times as the Members may determine proportionately among the Members in accordance with their Interests.

C. Mid-Year Transfers

In the case of any Interest that has been transferred during the Taxable Year, unless otherwise agreed by the parties:

- (1) Net Cash from Operations shall be distributed to the holder of the Interest on the date of distribution.
- (2) Net Proceeds from Sale or Financing allocable to the Interest shall be distributed to the holder of the Interest on the date of distribution.

8. MANAGEMENT

A. Managers

(1) The Company's business shall be managed by not less than one (1) nor more than two (2) Managers. The initial Manager shall be Tom R. McDougal, Jr. A Manager may be removed and replaced by Members owning a majority of Interests with or without cause, provided, however, that the initial Manager may be removed without cause except by Members owning at least seventy percent (70%) of the Interests.

(2) Subject to the restrictions in Section B below, the Managers shall have the exclusive right to manage the business of the Company and to make all decisions regarding the business of the Company. If a Manager is also a Member of the Company, then such Member-Manager shall be allocated the same percentage voting rights in management decision making as he holds in Membership Interest in the Company. The Managers may delegate prescribed functions to any employee, agent, or consultant.

(3) Subject to the restrictions in Section B below, the Managers are granted the right, power, and authority to do in the name of, and on behalf of, the Company all things that, in his sole judgement, are necessary, proper or desirable to carry out the purposes of the Company, including, but not limited to the right, power and authority:

(a) To own, acquire by lease or purchase, develop, maintain, improve, grant options with respect to sell, convey, finance, assign, mortgage, or lease real estate and/or personal property and to cause to have constructed improvements upon any real estate necessary, convenient, or incidental to the accomplishment of the purpose of the Company.

(b) To execute any and all agreements, contracts, documents, certifications, and instruments necessary or convenient in connection with the development, management, maintenance, and operation of any properties in which the Company has an interest, including without limitation, necessary easements to public or quasi-public bodies or public utilities;

(c) To borrow money and issue evidence of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the repayment by deed of trust, mortgage, security interest, pledge, or other lien or encumbrance on Company properties or any other assets of the Company.

(d) To prepay in whole or part, negotiate, refinance, recast, increase, renew, modify or, extend any secured or other



indebtedness affecting Company properties and in connection therewith to execute any extensions, renewals or modifications of any evidences of indebtedness secured by deeds of trust, mortgages, security interests, pledges, or other encumbrances covering such properties;

(e) To enter any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of

the Company, so long as those activities and contracts may be lawfully carried on or performed by a limited liability company under applicable laws and regulations; and

(f) To lend money to the Company and not as an additional capital contribution to the Company; provided that the terms of any such loan, including the interest rate, shall be at least as favorable to the Company as those that could have been obtained from a lending institution.

(4) In addition to the foregoing rights, powers, and authority, the Managers are specifically authorized to develop the Project or Projects; to obtain a Development Loan or other financing for development of one or more Projects on such terms as they deem advisable; to execute any documents, notes, deeds of trust, other security documents, and any other agreements related to the financing; and to take all other necessary and appropriate actions to consummate the development, financing and operation of one or more Projects.

(5) All actions taken by the Managers on behalf of the Company from the date of its organization to the date of this Agreement are ratified and confirmed.

B. Major Decisions

(1) Notwithstanding Section 8A (2) and 8A (3), the exercise of the following powers "Major Decisions" shall be subject to the prior written consent of Members owning more than seventy percent (70%) of the Interests:

(a) Selling or contracting to sell (including the method of sale) or otherwise disposing of an entire Project or Projects.

(b) Approval of the terms of the Development Loan.

(c) Causing or permitting the asset or credit of the Company to be subjected to any mortgage, deed of trust, or other security interest and refinancing any such indebtedness.

(d) Borrowing on an unsecured basis.

(e) Borrowing on a secured basis.

(f) Agreements with Affiliates.

(g) Material tax matters.

(h) Acquiring additional property.

(i) Admitting additional Members.

(j) Making a material expenditure of Company funds.

C. Execution of Documents

(1) Any instrument may be executed and delivered on behalf of the Company by the Managers, including any deed, deed of trust, mortgage, note or other evidence of indebtedness, lease agreement, security agreement, financing statement, contract of sale, or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company, at any time held in its name, or any receipt or compromise or settlement agreement with respect to the accounts receivable and claims of the Company; and no other signature shall be required for any such instrument to be valid, binding, and enforceable against the Company in accordance with its terms. All persons may rely thereon and shall be exonerated from any and all liability if they deal with the Managers on the basis of documents approved and executed on behalf of the Company jointly by the Managers.

(2) Any person dealing with the Company or its Managers or Members may rely upon the certificate signed by the Managers as to:

- (a) the identity of the Members or Managers;
- (b) acts by the Members or Managers;
- (c) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

D. Compensation and Reimbursement of Members and Managers

(1) No Member or Manager shall receive any compensation for services rendered to the Company in his capacity as a Manager or Member; but if the Company shall employ any Member or Manager or an affiliate thereof, that person or entity so employed shall be entitled to the agreed upon compensation.

(2) The Members and Managers shall be entitled to charge to the Company, or be reimbursed by the Company for all expenses incurred by them in connection with Company business.

9. AUTHORITY OF THE MEMBERS AND MANAGERS AND THEIR AFFILIATES TO DEAL WITH THE COMPANY

Each Member and any Manager, in its discretion, may transact business with or engage any person, firm, or corporation in which any Member or Manager or any affiliate of a Member or Manager may have an interest, for the performance of any and all services or purchases of goods or other property which may at any time be necessary, proper, convenient, or advisable in carrying on the business and affairs of the Company or disposing of some or all of its assets; provided, however, that the compensation or price therefor shall not exceed that prevailing in arm's length transactions by others rendering similar services on comparable transactions as an on-going activity in the same geographical area as the Project.

10. AUTHORITY OF THE MEMBERS AND THE MANAGERS TO ENGAGE IN OTHER BUSINESS

Any Member or Manager may engage in and/or possess an interest in any other business of any nature and description, independently or with others, provided, with the exception of LEADERSHIP UNDERGROUND, that it does not compete with the Company. Each Member and Manager shall be obligated to present any particular investment opportunity to the Company where such opportunity is of a character, which if presented to the Company, could be taken by the Company.

11. INDEMINIFICATION AND EXCULPATION OF MEMBERS AND MANAGERS

A. Exculpation

The Members and Managers shall not be liable to the Company or to any Member for or as result of any act, omission, or error in judgement that was taken, omitted, or made by the Member or Manager in accordance with the standards established by Section 10-12-19 through 10-12-27 of the Act. In any proceeding brought or in the right of the Company or brought by or on behalf of Members of the Company, a Member or Manager shall have no liability for damages other than for willful misconduct or a knowing violation of the criminal law.

B. Indemnification

The Members and Managers shall be indemnified and held harmless by the Company from any liability resulting from any act performed by or omission made by them on behalf of the Company, except for acts or omission of gross negligence or willful misconduct, to the fullest extent that a director or officer of a stock corporation may be indemnified and held harmless under Division E of Articles 8, *Alabama Code* S10-2B-8.50 through 10-2B-8.58, as amended.

12. ACCOUNTS, BOOKS, RECORDS, ACCOUNTING, REPORTS, AND TAX MATTERS

A. Bank Accounts.

Company funds shall be deposited in the name, and for the sole benefit, of the Company in such bank or savings and loan accounts of the Company as may be designated by the Manager. The Manager shall arrange for the appropriate conduct of those accounts and shall make disbursements solely for the business of the Company or for distributions to the Members in accordance with the Agreement.

B. Maintenance of Books.



The Managers shall maintain and keep at the specified office of the Company described in Section 3B complete and accurate books of account, in which shall be entered fully and accurately each and every transaction of the Company, and the records required to be maintained by the Company pursuant to the Act. Each Member shall at all reasonable times have access thereto and the right to inspect and copy either directly or through a person designated by it.

C. Method of accounting and Fiscal Year.

The method of accounting on which the books shall be maintained and the Managers shall determine the fiscal year and tax years of the Company.

D. Annual Reports

The Managers shall send to all Members an annual report, containing a balance sheet, income statement, and statement of change in financial position and all information necessary for each Member to prepare its federal income tax return.

E. Release of Information.

Any person or organization that has custody of any Company financial records or information is hereby authorized to disclose and release such records or information to the Members. Any Member shall have a right of private audit of the books and records of the Company at the expense of the Member desiring it at reasonable times after due notice.

F. Section 754 Election.

The Managers may make on behalf of the Company the election permitted by Section 754 of the Code with respect to adjustments to basis of Company property.

G. Tax Returns.

The Managers shall cause to be prepared and timely filed each year the Federal, State, and local tax returns of the Company.

H. IRS Proceedings.

Promptly upon receipt, the Managers shall give notice to the Members of the proposed audit or adjustments of any Company tax returns.

I. Selection of Accountant.



The independent accountant for the Company shall be selected by the Managers.

J. Tax Matters Member.

Tom R. McDougal, Jr. is designated as the "tax matters Member" for purposes of the Code.

13. ASSIGNABILITY OF COMPANY INTEREST.

A. Limitations.

Except as provided in Section 13E, no Member may withdraw or resign from the Company, nor may any Member make a Disposition of all or part of his interest without the prior written consent of all the Members.

B. Additional Provision on Transfer of Interests

(1) No Disposition may be made if the Disposition of the Interest sought to be dispensed of, when added to the total of all other Interests sold or exchanged within the period of twelve (12) consecutive months prior thereto, would, in the opinion of the counsel for the Company, result in the Company being considered to have been terminated within the meaning of Section 708 of the Code unless, in the opinion of counsel for the Company, that termination will not have a substantial adverse effect upon the remaining Members.

(2) If, during the term of the Company, there is a deed of trust or other security agreement in effect by which the Company is bound which provides or permits the holder of the indebtedness secured thereby to accelerate the indebtedness in the event of sale, transfer, or other conveyance of an Interest or more than a specified Interest, then without the consent of all the Members (i) no Member will be entitled to dispose of any portion of his Interest if, as a result of that Disposition, the holder of the indebtedness would be entitled to accelerate the indebtedness, and (ii) where acceleration of the indebtedness may happen upon the conveyance of more than a specified Interest, no Member will be entitled to convey more than his proportionate share of the total Interest that may be conveyed without causing such acceleration. For example, if the indebtedness would be subject to being accelerated if 50% or more of the total Interests were to be sold, transferred or otherwise conveyed and a Member owned 25% of the total Interests, that Member would not be entitled to convey more than one-half of his Interests (or 12.5%) without the consent of all the Members and compliance with the other provisions of this Section.

(3) No Disposition by a Member may be made except pursuant to registration under the applicable securities laws or the opinion of



counsel for the Company, prepared at the selling Member's expense, that a Disposition may be affected without registration. The restriction on resale shall be fully set forth in any certificate representing the ownership of an Interest that may be used by the Company and shall also fully set forth in any transfer records of the Company maintained with respect to any such certificates.

(4) No Disposition may be made to a minor or incompetent person except by will, intestate succession, or gift under the Uniform Transfers to Minors Act or pursuant to the terms of an inter vivos trust.

C. Substituted Members.

(1) Unless named in this Agreement or admitted as provided in subsection (2), no person shall be considered a Member; and the Company, each Member, and any other person having business with the Company need deal only with Members named and so admitted. They shall not be required to deal with any other person by reason of any Disposition by a Member or by reason of death, incompetency, Bankruptcy or dissolution of a Member, except as otherwise provided in this Agreement. In the absence of substitution of a Member for an assigning, deceased, bankrupt, incompetent, or dissolved Member, any payment to a Member, or to his successors, executors, personal representatives, or administrators, shall acquit the Company of all liability to any other person who may be interested in such payment by reason of an assignment by the Member or by reason of death, Bankruptcy, incompetency, or dissolution.

(2) An assignee may become a substituted Member in place of his assignor or predecessor in interest only if all of the following conditions are satisfied:

- (a) The requirements of Sections 13A and 13B, unless excused under 13E, have been met.
- (b) The instrument of assignment sets forth the intention of the assignor that the assignee shall become a substituted Member in place of the assignor with respect to the assignor's Interest.
- (c) The assignor and the assignee shall execute and deliver such other instruments as the Managers may require including written acceptance by the assignee of the terms of the Agreement and the power of attorney in the form described in Section 18.
- (d) The written consent of all of the other Members to the substitution shall have been obtained, which may be granted or withheld in the absolute discretion of each Member.
- (e) The assignee shall have paid all reasonable fees and costs incurred by the Company in connection with a substitution as a Member, as determined by the Member.



D. Pledge or Encumbrance of Interests.

No Member may pledge or encumber all or any part of his Interest, in any manner, whether voluntarily or involuntarily, by operation of law or otherwise, without consent of all the Members owning at least Sixty Percent (60%) of Interests.

E. Excluded Transfers.

(1) The restrictions of Section 13A and 13B shall not apply to the transfer or assignment by a Member of all or any part of its Interest to another Member or the Company.

(2) The restrictions of Sections 13A and 13B shall not apply to any transfer or assignment of the Interest of a bankrupt, deceased, dissolved, or incompetent Member to his Successor in Interest, but shall apply to such Successor in Interest to the same extent that, under the circumstances of any particular transfer, sale, assignment, gift, bequest, or other disposition, such provision would have applied to the bankrupt, deceased, dissolved or incompetent Member.

(3) The restrictions of Sections 13A, 13B(1), 13B(2), 13B(3) and 13B(4) shall not apply to the transfer or assignment (in trust or otherwise) by a Member, whether on death or inter vivos, of all or any part of its Interest to or for the benefit of himself, his spouse, or any of his natural or adopted descendants or the spouse of any such descendants except that a transfer described in this subsection may be deferred or restricted as required by any applicable federal or state securities and/or tax laws.

14. DISSOLUTION AND TERMINATION

A. Events Causing Dissolution and Winding-Up

The Company shall be dissolved and wound up upon the first to occur of one of the following events:

(1) Consent in writing of the Members owning seventy percent (70%) or more of the Interests.

(2) The liquidation, dissolution, death, adjudication of incompetency, or Bankruptcy of a Member or the occurrence of any other event causing the dissolution of the Company under the laws of the Act, unless the Company or the business of the Company is continued pursuant to Section 14B. Notice of death, adjudication of incompetency, liquidation, dissolution, or Bankruptcy of a Member ("Dissolution Event") shall be given to each of the other Members by the Successor in Interest to the deceased, incompetent liquidated, dissolved, or Bankrupt Member within sixty (60) days after the date of death, adjudication of incompetency, liquidation, dissolution, or Bankruptcy.

(3) The sale or other disposition of all of the Project.

(4) The expiration of the term specified in Section 1B.

B. Election to Continue Company



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(1) (a) Notwithstanding Section 14A, the events set forth in Sections 14A(2) shall not result in the dissolution, winding up, and termination of the Company if, within ninety (90) days after the occurrence of one of those Dissolution events, the remaining Members elect by unanimous written consent to continue the Company.

(b) If an election to continue the Company is made by the Members under Section 14B (1)(a), then the Company shall continue as a limited liability company pursuant to the Act under this Agreement until the end of the term for which it is formed or until a subsequent event causing dissolution under the Act, in which event an election shall again occur as to whether to continue the Company.

(2) Notwithstanding anything in Section 14A to the contrary, if the unanimous written consent of the remaining Members required is not obtained pursuant to Section 14B (1), then, on a vote of the remaining Members owning more than fifty percent (50%) of the Interests (excluding the Interests of any Member with respect to whom a Dissolution Event has occurred, the Company shall not be terminated but shall be reconstituted on the terms and conditions of this Agreement. The Members that do not vote to reconstitute the Company shall be deemed to continue as members in the reconstituted company. If the remaining Members vote to reconstitute the Company, the reconstitution of the Company may be accomplished through a merger of the Company with and into another limited liability company (the Members of which shall include all remaining Members) pursuant to *Alabama Code, §10-12-54 et seq.* or by such other reasonable steps as the remaining Members who vote to reconstitute the Company may direct. Any merger of the Company into another limited liability company following dissolution of the Company shall be approved by remaining Members holding more than fifty percent (50%) of the outstanding Interests.

(3) If an election is made to continue the Company and its business or reconstitute the Company, any Member as to which the event described in Section 14A (2) occurred shall cease to be a Member, and the former Member or its Successor in Interest shall hold its Interest with the same rights as the Member possessed before the event, except any right to manage and control the Company's business affairs.

(a) In the event of the death, adjudication of incompetency, liquidation, dissolution, or Bankruptcy of a Member, if an election is made to continue the Company and its business or reconstitute the Company, the Company or the reconstituted Company, as the case may be, shall have the option to purchase the former Member's Interest at a price equal to the fair market value of that Member's Interest determined as set forth below. The option shall be exercised by written notice to the former Member's Successor in Interest

given within thirty (30) days after the value has been determined as set forth below, with closing to be within ten (10) days after the giving of notice of exercise. The former Member's Successor in Interest shall have a put option to sell the former Member's Interest to the Company or reconstituted Company at a price equal to fair market value of that Member's Interest as determined below. The put option shall be exercised by written notice to the Company or reconstituted company given within thirty (30) days after the value has been determined as set forth below, with closing to be held within ten (10) days after the giving of notice of exercise.

(b) If the Company or reconstituted company and the former Member's Successor in Interest do not agree upon the purchase price within thirty (30) days after notice of the Dissolution Event from the Successor in Interest, then within then (10) days thereafter they shall designate an appraiser. If they are unable within such ten (10) day period to agree on an appraiser, then either shall as promptly as possible thereafter request the President of the local area chapter of the American Institute of Real Estate Appraisers or its successor, if any, to appoint such appraiser. If the President of that organization or its successor fails to make such appointment within ten (10) days after request is made upon him, either the former Member's Successor in Interest, the Company, or the reconstituted company may apply to the Chief Judge of the Circuit Court for Shelby County, Alabama to make such appointment as promptly as possible.

The appraiser, no matter by whom designated, shall be member in good standing, with the "MAI" designation of the American Institute of Real Estate Appraisers with at least ten (10) years of experience as a real estate appraiser and shall not be an Affiliate of any Member. The appraiser shall thereupon as promptly as possible appraise and determine the fair market value of the Project as of the date of the Dissolution Event. For the purpose of making the appraisal, the appraiser shall be given access and may review all books and records and information available to the Company or the reconstituted company. The appraiser shall prepare and submit his written appraisal to the Company or the reconstituted company and to the former Member's Successor in Interest. The value of the former Member's Interest shall be its proportionate share of the amount by which the appraised value of the Project exceeds Company liabilities or reconstituted company liabilities with no value assigned to goodwill of the Company or the reconstituted company, and with no discount for lack of marketability or minority interest of the Interest. The value so determined shall be the purchase price. The cost of the appraisal shall be an expense of the Company or the reconstituted company.



C. Failure to Continue Company

(1) If the Members do not elect to continue the Company, its business, or reconstitute the Company under Section 14B, then the Managers or other person selected by Members owning seventy percent (70%) of the Interests, shall wind up the affairs of the Company. It may sell or otherwise liquidate the Company assets in a bona fide sale or sales to outsiders at such prices and upon such terms as it may determine. During the period of winding up of the Company, the party responsible therefor may exercise all powers granted to the Managers under this Agreement, and may adopt such plan, method, or procedure as may be reasonable to effectuate an orderly winding up.

(2) After paying or providing for the payment of all Company debts, the proceeds of the sale shall be distributed pursuant to Section 7B and the balance to the Members in accordance with their Capital Accounts after adjustments thereof to reflect allocations or distributions under Section 6 and 7. If the liquidating party determines that an immediate sale would be financially inadvisable, it may defer sale of the Company assets for a reasonable time, or distribute the assets in kind. If any assets are distributed in kind, then they shall be distributed by appraisal, and shall be deemed to have been sold at fair market value for the purposes of the allocations under Section 6. Unless the Members otherwise agree, there shall be distributed to the Members, as tenants-in-common, undivided interests in the assets equal to the distributions to which they are entitled hereunder.

(3) If the Company is "liquidated" within the meaning of Regulation Section 1.704-1 (b)(2)(ii)(G), then the liquidating distribution shall be made by the later of (i) the end of the Company taxable year in which liquidation occurs, or (ii) ninety (90) days after the date of liquidation.

(4) The Company shall terminate when all assets of the Company have been sold and/or distributed and all affairs of the Company have been wound up.

15. AMENDMENTS

A. General Amendments

Except as provided in Section 15A, this Agreement may be amended by the Members in writing with the approval of Members holding at least Sixty Percent (60%) of the Interests.

B. Changes Affecting Members

Notwithstanding anything to the contrary in Section 15A, any amendment to this Agreement that would adversely affect the federal income tax treatment to be afforded a Member, adversely affect the liabilities of a Member, modify any consent and approval rights reserved by the Members or change the method of allocation of tax items, or the distribution of funds available for distribution,

as provided in Sections 6, 7, and 14, shall require the approval of the Member affected; provided, however, that the Manager is authorized to modify Section 6, without the consent of the Members, if, upon advice of counsel for the Company, the modification is necessary to cause the allocations under Section 6 to have substantial economic effect or to be in accordance with the Members' interests under Section 704 if the Code and the most recently proposed or final Regulations thereunder, so long as the modification does not, by its terms, alter the limited liability of the Members and provided that the modification is not likely to have material effect on the amounts distributable to the Member pursuant to this Agreement.

16. MISCELLANEOUS PROVISIONS

A. Governing Law

This Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of Alabama.

B. Captions

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

C. Construction

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

D. Survival of Representations and Warranties

All representations and warranties herein shall survive until the termination of the Company, except to the extent that a representation or warranty expressly provides otherwise.

E. Severability

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Agreement.

F. Successors

Subject to the limits on transferability contained herein, each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the respective parties hereto.

G. Execution and Counterparts

This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed an original and all of



which together shall constitute one agreement. In addition, this Agreement and any amendments may be executed through the use of counterpart signature pages. The signature of any party on any counterpart agreement or counterpart signature page shall be deemed to be a signature to, and may be appended to, one document.

H. Entire Agreement

This Operating Agreement embodies the entire agreement and understanding between the Members with respect to the subject matter hereof, and supersedes all prior agreements and understandings between such Members relating to the subject matter hereof.

I. Third Party Beneficiary

No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

17. NOTICES

A. Addresses

Each Member shall keep the other Member informed of his current address. The Members shall have access to the addresses furnished by the Members on file at the Company office.

B. Communications

Any notice, payment, demand, consent, approval or communication required or permitted to be given by this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an officer of the party to whom it is directed or if it is sent by registered or certified mail, postage and charged prepaid, addressed to the address contained in all the records of the Company.

C. Effective Date

Any notice hereunder is deemed to be given on the date which it was delivered personally or deposited in a regularly maintained receptacle for the deposit of United States mail, addressed as set forth above. Any Member may change the address of that party for purposes of this Agreement by giving the other Members notice of such change in the manner set forth above.

18. MANAGERS AS ATTORNEY-IN-FACT

A. Appointment of Managers as Attorney-In-Fact

Each Member irrevocably constitutes and appoints, with full power of substitution, the Managers, acting jointly as his true and lawful attorney-in-fact with full power and authority in his name, place and stead to execute, certify, acknowledge, deliver, swear to file, and record at the appropriate public offices such documents as may



be necessary or appropriate to carry out the provisions of this Agreement, including but not limited to:

(1) All certificates and other instruments (including counterparts of this Agreement), and any amendment thereof, which the Managers deem appropriate to form, qualify or continue the Company as a limited liability company;

(2) Any other instrument or document which may be required to be filed by the Company under the laws of any state or which the Manager deems advisable to file;

(3) Any instrument or document, including amendments to this Agreement, which may be required to effect the continuation of the Company or reconstitution (through merger or otherwise) of the Company following dissolution (including, but not limited to, a plan of merger, articles of merger, articles of organization of any successor company, and an operating agreement for such successor company containing substantially the same terms and conditions set forth herein), the admission of a substituted Member or an additional or successor Manager, or the dissolution and termination of the Company (provided the continuation, reconstitution, admission or dissolution and termination are in accordance with this Agreement), or to reflect any reductions in the amount of capital if Members.

B. Irrevocable Appointments

The appointment by each Member of the Managers as his joint attorney-in-fact is irrevocable and shall be deemed to be power coupled with an interest and shall survive the Bankruptcy, dissolution, disability, or incompetence of any person giving such power and the transfer or assignment of all or any part of the Interest if such person; provided, however, that in the event of the transfer by a Member of all or any part of his Interest, this power of attorney of a transferor Member shall survive such transfer only until such time, if any, as the transferee shall have been admitted to the Company as a substituted Member and all required documents and instruments shall have been duly executed, filed, and recorded to effect such substitution.



Members:

Notary Public
My Commission Expires: 03-06-2017

