

CERTIFICATE OF FORMATION

OF

**THE PACE FOUNDATION
(a nonprofit corporation)**



20171222000457470 1/9 \$159.00
Shelby Cnty Judge of Probate, AL
12/22/2017 01:08:26 PM FILED/CERT

For the purpose of forming a nonprofit corporation under the Alabama Business and Nonprofit Entity Code and any act amendatory thereof, supplementary thereto or substituted therefor (hereinafter referred to as the “Act”), the undersigned organizer does hereby sign, verify and adopt this Certificate, and, upon the filing for record of this Certificate in the Office of the Judge of Probate of Shelby County, Alabama, the existence of a nonprofit corporation (hereinafter referred to as the “Foundation”), under the name set forth in Article I hereof, shall commence.

ARTICLE I.

NAME

1.1 The name of the Foundation shall be the “Pace Foundation.”

ARTICLE II.

ENTITY TYPE

2.1 The Foundation shall be a nonprofit corporation.

ARTICLE III.

PURPOSES AND POWERS

3.1 Subject to the limitations set out in paragraph 3.2 below, the purposes for which the Foundation is organized are:

(a) The Foundation is organized exclusively 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 “Code”).

(b) In connection with the foregoing activities, to solicit, accept, receive, manage and disburse contributions of property, including real property, and income therefrom, and to apply for, accept and expend grants in accordance with their requirements.

(c) To engage in any other charitable or educational activities, or any lawful act or activity for which a corporation may be organized under the Act, provided that such act or activity is one permitted by an organization exempt under Section 501(c)(3) of the Code and the regulations promulgated thereunder (the "Regulations").

3.2 The Foundation shall be subject to the following restrictions and limitations, notwithstanding any other provisions of this Certificate:

(a) The Foundation shall not carry on any activities not permitted to be carried on by an organization exempt under Section 501(c)(3) of the Code and the Regulations, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Code and the Regulations as the same now exist or as they may be hereafter amended from time to time.

(b) No substantial part of the activities of the Foundation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no activities of the Foundation shall be participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

(c) No part of the net earnings of the Foundation shall inure to the benefit of any private person, director, or officer of the Foundation, or any other private individual (except that reasonable compensation may be paid for services rendered to or for the Foundation affecting one or more of its purposes).

(d) If the Foundation should be classified as a private foundation within the meaning of Section 509 of the Code, the officers of the Foundation shall:

1. Distribute all income of the Foundation at such times and in such manner as not to subject the Foundation to tax under § 4942 of the Code.

2. Refrain from causing the Foundation to engage in any act of self dealing as defined in § 4941(d) of the Code.



20171222000457470 2/9 \$159.00
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3. Refrain from retaining any excess business holdings as defined in § 4943(c) of the Code in a manner that would subject the Foundation to tax under § 4943(a) of the Code.

4. Refrain from making any investments in such manner as to subject the Foundation to tax under § 4944 of the Code.

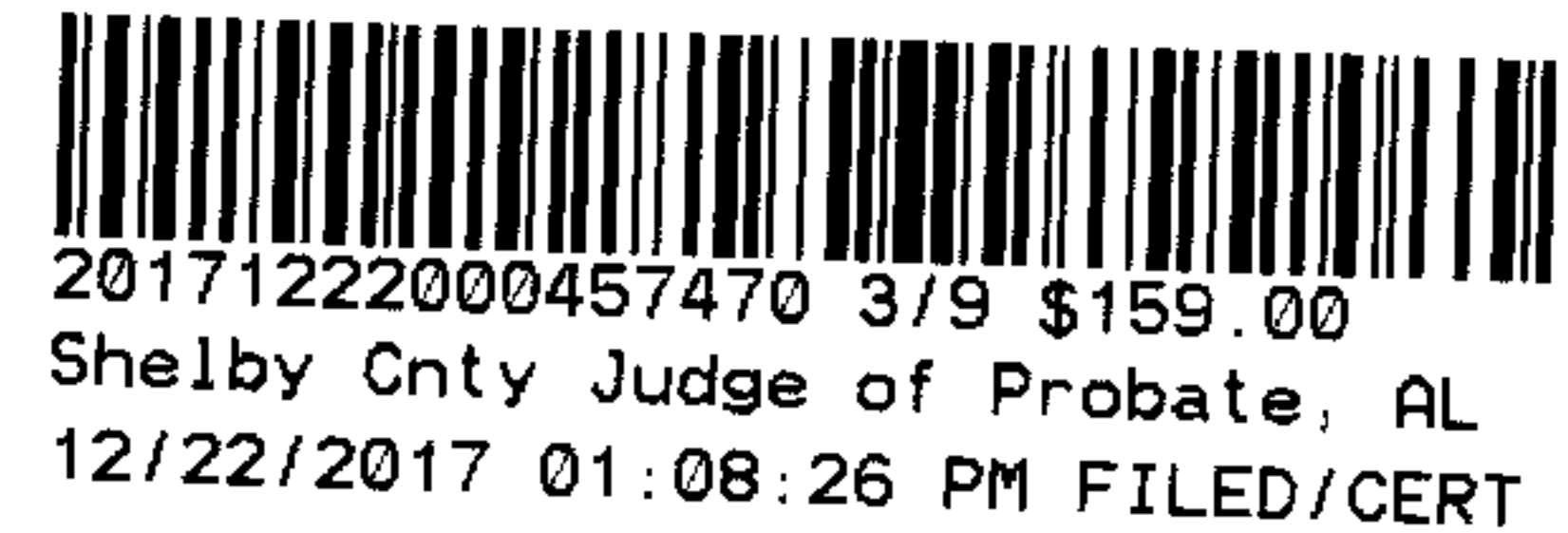
5. Refrain from making any taxable expenditures as defined in § 4945(d) of the Code.

3.3 Upon the liquidation or dissolution of the Foundation, whether voluntary or involuntary, no private person, director, or officer shall be entitled to any distribution or division of its remaining property or its proceeds, and the balance of all money and other property received by the Foundation from any source, after the payment of all debts and obligations of the Foundation, shall be used and distributed exclusively for purposes within those set forth in paragraph 3.1 of this Certificate (as limited by the provisions of paragraph 3.2 of this Certificate) and within the intendment of Section 501(c)(3) of the Code and the Regulations as the same now exist or as they may be hereafter amended from time to time.

ARTICLE IV.

PERIOD OF DURATION

4.1 The duration of the Foundation shall be perpetual.



ARTICLE V.

REGISTERED OFFICE AND REGISTERED AGENT

5.1 The address and location of the initial registered office of the Foundation shall be 201 Cahaba Valley Parkway, Pelham, Alabama 35124. In the future, the registered office may be located at any other place within the State of Alabama as the Board of Directors may designate from time to time. The registered office may be but need not be the same as its principal place of business.

5.2 The initial registered agent shall be Pace Runners, Inc.

ARTICLE VI.

ORGANIZER

6.1 The name and address of the organizer is:

NAME

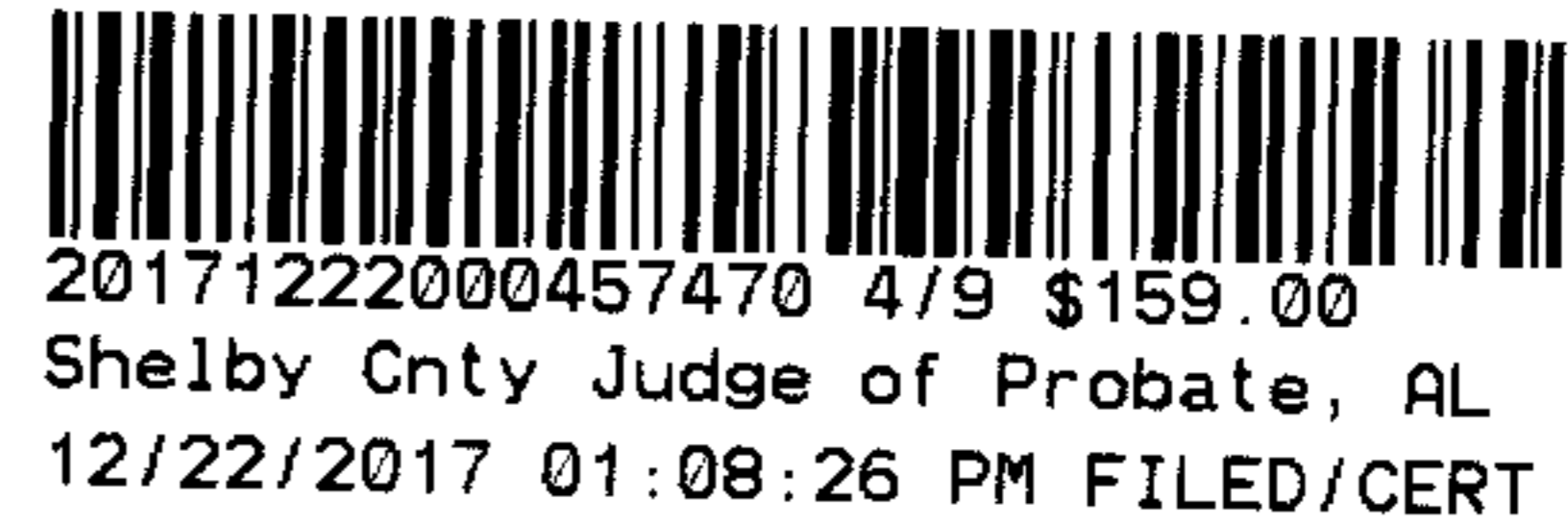
James M. Pool

ADDRESS

1901 Sixth Avenue North, Suite 2400
Birmingham, Alabama 35203

ARTICLE VII.

MEMBERS



7.1 The Foundation shall have no members or shareholders and shall not issue any shares of stock or certificates or any other evidence of membership; provided, however, that if at any time there are no directors of the Board of Directors, or if the Board of Directors has been unable to obtain a quorum during the immediately preceding twelve (12) month period, any remaining director(s), or if there are no directors, then the then current registered agent of the Foundation, shall, at such time and for the following purposes only, constitute the sole member of the Foundation and shall have the power (a) to remove any directors of the Board of Directors who have not attended a meeting of the Board of Directors during the immediately preceding twelve (12) month period, and (b) if there are no directors on the Board of Directors (even if such situation exists as the result of the registered agent's removal of directors), to appoint a director to the Board of Directors, which director shall then, pursuant to Section 10A-3-2.10 of the Act, appoint other directors to the Board of Directors as needed to conform with the Act, this Certificate, and the Bylaws of the Foundation.

ARTICLE VIII.

INTERNAL AFFAIRS

The following provisions for the regulation of the business and for the conduct of the affairs of the Foundation and the directors thereof are hereby adopted:

8.1 The initial bylaws of the Foundation shall be adopted by the Board of Directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the Board of Directors, except to the extent otherwise provided in the bylaws, which power may be exercised in the manner and to the extent provided in the bylaws. The bylaws may contain any provisions for the regulation and conduct of the affairs of the Foundation and the directors not inconsistent with the Act or this Certificate.

8.2 All corporate powers and duties imposed on the Board of Directors by the Act, this Certificate, or the bylaws of the Foundation, and the business and affairs of the Foundation (the

“Powers and Duties”), shall be exercised by or under the authority of, and managed under the direction of, the Board of Directors; provided, however, that pursuant to Section 10A-3-2.08 of the Act, the Board of Directors may confer any Powers and Duties on such other person or persons as the Board of Directors determines in its sole discretion to be in the best interests of the Foundation. Directors shall be elected in the manner provided in the bylaws. The number of directors of the Foundation shall be fixed from time to time by the bylaws, or, in the absence of such a bylaw provision, the number of directors shall be three (3). The number of directors may be increased or decreased from time to time by amendment to the bylaws or in the manner provided for therein, provided that the Board of Directors shall consist of not less than three (3) directors, and that no decrease shall have the effect of shortening the term of any incumbent director. The term of each director in office shall be fixed from time to time by the bylaws, or in the absence of such a bylaw provision, the term of each director shall be one (1) year and until his or her successor shall have been elected and qualified.

8.3 Any contract or other transaction that is fair and reasonable to the Foundation and is in furtherance of the Foundation’s exempt purpose, between the Foundation and one or more of its directors, or between the Foundation and any corporation, partnership or other entity of which one or more of its directors are shareholders, directors, officers, partners, members or employees, or in which they are financially interested, shall be valid for all purposes, notwithstanding the presence of the director or directors at the meeting of the Board of Directors of the Foundation or any committee thereof that acts upon, or in reference to, the contract or transaction, if either the fact of such interest shall be disclosed or known to the Board of Directors or such committee, as the case may be, and the Board of Directors or such committee shall, nevertheless, authorize or ratify the contract or transaction. The interested director or directors shall not be counted in determining whether a quorum is present and shall not be entitled to vote on such authorization or ratification. This paragraph shall not be construed to invalidate any contract or other transaction that would otherwise be valid under the common and statutory law applicable to it. Each and every person who may become a director of the Foundation is hereby relieved from any liability that might otherwise arise by reason of his or her contracting with the Foundation for the benefit of himself or herself or any corporation, partnership or other entity in which he or she may be in any way interested.

8.4 In amplification and not in limitation of the provisions of applicable law:

(a) Pursuant to Sections 10A-20-16.01 *et seq.*, and 6-5-336 CODE OF ALABAMA, 1975, as amended, and the Volunteer Protection Act of 1997, 42 U.S.C. § 14501 *et seq.*, as amended, all non-compensated directors, trustees, members of governing bodies, officers and other eligible volunteers of the Foundation shall be immune from suit and shall not be subject to civil liability arising from the conduct of the affairs of the Foundation except when the act or omission of such person that gives rise to the cause of action amounts to willful or wanton misconduct or fraud or gross negligence.

(b) The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including

appeals (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 as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such claim, action, suit or proceeding, unless he or she acted intentionally or willfully against the best interests of the Foundation. The termination of any claim, 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 acted intentionally or willfully in a manner that was opposed to the best interests of the Foundation.

(c) The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Foundation to procure a judgment in its favor 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 as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she 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 and except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for intentional or willful 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 circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(d) Any indemnification under subsections (b) and (c) (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 subsections (b) and (c). Such determination shall be made (1) by the Board of Directors by a majority vote of the directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if a majority of disinterested directors so directs, by independent legal counsel in a written opinion.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such claim, action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such

amount if and to the extent that it shall ultimately be determined that he or she is not entitled to be indemnified by the Foundation as authorized in this Section. Such undertaking shall be an unlimited, unsecured general obligation of the officer of the Foundation and shall be accepted without reference to his ability to make repayment.

(f) The indemnification authorized by this Section shall not be deemed exclusive of and shall be in addition to any other rights to which those indemnified may be entitled under any statute, rule of law, provision of certificate of formation, bylaws, agreement, 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. No amendment, modification, or repeal of this Section shall diminish the right to indemnification with respect to any claim, cause, or matter in any then pending or subsequent proceeding that is based in any material respect on any alleged action or failure to act prior to such amendment, modification or repeal.

(g) The Foundation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her 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 him or her against such liability under the provisions of this Section.

8.5 The Foundation reserves the right from time to time to amend, alter or repeal each and every provision contained in this Certificate, or to add one or more additional provisions, upon a vote of a majority of the directors in office.

ARTICLE IX.

INITIAL BOARD OF DIRECTORS

9.1 The number of directors constituting the initial Board of Directors shall be three (3).

9.2 The names and addresses of the persons who are to serve as directors until the first annual meeting of directors or until their successors are elected and qualify are:



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DIRECTOR

ADDRESS

Matthew Lawrence

201 Cahaba Valley Parkway
Pelham, AL 35124

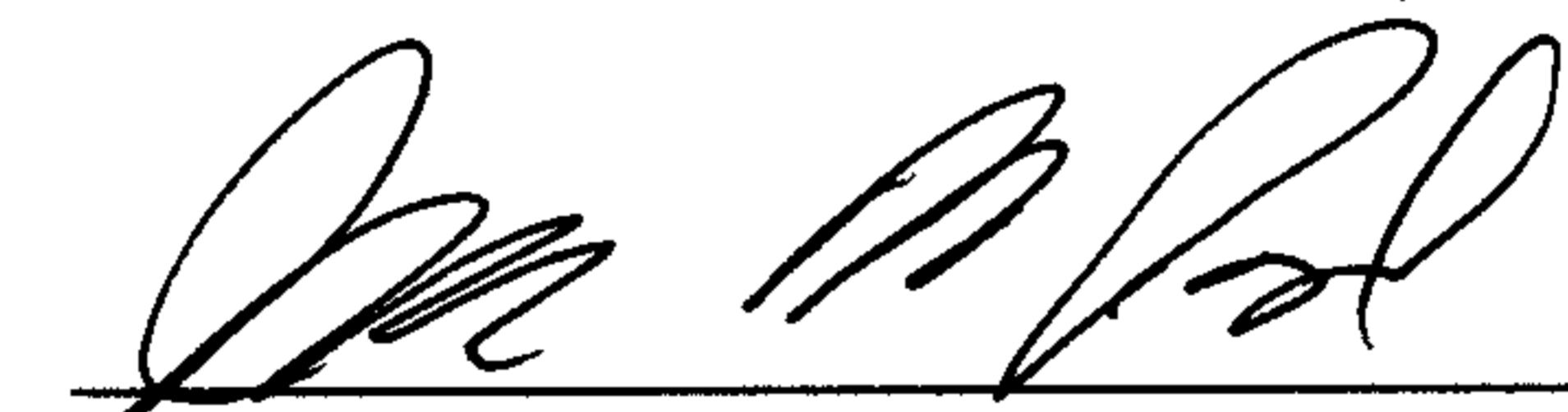
Allen Crook

201 Cahaba Valley Parkway
Pelham, AL 35124


William Lawrence

201 Cahaba Valley Parkway
Pelham, AL 35124

IN TESTIMONY WHEREOF, witness the hand and seal of the undersigned organizer on this the 21st day of December, 2017.



James M. Pool, Organizer


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This instrument prepared by:

James M. Pool
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203

John H. Merrill
Secretary of State

P.O. Box 5616
Montgomery, AL 36103-5616

STATE OF ALABAMA

I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

Pace Foundation

This name reservation is for the exclusive use of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, Birmingham, AL 35203 for a period of one year beginning December 15, 2017 and expiring December 15, 2018



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In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.

December 15, 2017

Date

John H. Merrill

Secretary of State