

**FRESH TECHNOLOGY LLC
CERTIFICATE OF MERGER**

I. MERGING ENTITY INFORMATION

1. The name of the limited liability company is **TOGOTECHNOLOGIES, LLC** (formerly LoyaltyNow.com LLC and ToGoOrder.com, LLC).
2. The limited liability company was formed with the filing of its Articles of Organization with the **Tennessee** Secretary of State on July 5, 2011 and were amended on each of September 9, 2011, May 9, 2012, and November 22, 2013.
3. The limited liability company's registered office is 631 2nd Ave S, Ste. LL-D, Nashville, TN 37210-2092.
4. The file number issued to the limited liability company by the Tennessee Secretary of State is **662185**.
5. The Agreement and Plan of Merger and performance of its terms has been approved, adopted, certified, executed and acknowledged by the merging entity's Board of Directors and its majority unit holders as required by Tenn. Code Ann. § 48-249-702 (c) and the governing documents of the merging entity on May 5, 2020.
6. The limited liability company named above is governed by the laws of the State of Tennessee.
7. This limited liability company will not survive the merger.

II. MERGING ENTITY INFORMATION

1. The name of the limited liability company is **FT DATA, LLC**.
2. The limited liability company was formed with the filing of its the Certificate of Formation with the **Alabama** Secretary of State on September 28, 2015.
3. The limited liability company's registered office is 5361 Hwy 280 S, Ste. 106a, Birmingham, AL 35242.
4. The file number issued to the limited liability company by the Alabama Secretary of State is **346-138**.
5. The Agreement and Plan of Merger and performance of its terms has been approved, adopted, certified, executed and acknowledged by the merging entity's Manager and all of its unit holders as required by Section 10A-5A-10.06 of the Alabama Limited Liability Company Act (2017) and the governing documents of the merging entity on May 3, 2020.
6. The limited liability company named above is governed by the laws of the State of Alabama.
7. This limited liability company will not survive the merger.

III. SURVIVING ENTITY INFORMATION.

1. The name of the limited liability company is **Fresh Technology LLC** (formerly Bodnar Group Consulting, LLC).
2. The limited liability company was formed with the filing of its Certificate of Formation with the **Alabama** Secretary of State on August 30, 2002, which certificate was amended on August 10, 2017.
3. The limited liability company's registered office 200 Union Hill Drive, Ste. 100, Birmingham, AL 35209.

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RECEIVED DATE
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SECRETARY OF STATE
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4. The file number issued to the limited liability company by the Alabama Secretary of State is **684-541**.
5. The Agreement and Plan of Merger and performance of its terms has been approved, adopted, certified, executed and acknowledged by the Surviving entity's Board of Directors and the majority of its unit holders as required by Section 10A-5A-10.06 of the Alabama Limited Liability Company Act (2017) and the governing documents of the surviving entity on April 25, 2020.
6. The limited liability company named above is governed by the laws of the State of Alabama.
7. This limited liability company will survive the merger.

IV. PLAN OF MERGER.

1. A copy of the Agreement and Plan of Merger is attached hereto as **Exhibit A** and the executed copy thereof is on file at the principal place of business of the surviving entity at 200 Union Hill Drive, Ste. 100, Birmingham, AL 35209.
2. The Certificate of Formation for **Fresh Technology LLC** shall be the Certificate of Formation of the surviving entity.
3. The Operating Agreement and its amendments for Fresh Technology LLC shall be the operating agreement for the surviving entity.
4. The common ownership interest of the merging limited liability company, **TOGOTECHNOLOGIES, LLC**, shall be merged to the Class A ownership interest of the surviving entity on a 0.00309:1 basis; the common unitholders of the merging limited liability company shall become Class A unit holders of the surviving entity.
5. The ownership interest of the merging limited liability company, **FT DATA, LLC**, shall be merged to the Class A ownership interest of the surviving entity on a 0.04795:1 basis; the unitholders of the merging limited liability company shall become Class A unit holders of the surviving entity.
6. Upon completion of the Merger, the surviving entity will be named **Fresh Technology LLC**.
7. A copy of the Agreement and Plan of Merger will be furnished by the Surviving entity on request and without cost to any unitholder of a merging or surviving limited liability company.

V. EFFECTIVENESS OF FILING

The merger shall be effective upon filing with the Alabama Secretary of State.

VI. TENNESSEE SERVICE OF PROCESS

As the surviving entity, Fresh Technology LLC consents to accept service of process in the State of Tennessee in any proceeding for the enforcement of any obligation of any Tennessee limited liability company that is a constituent party to the merger, and irrevocably appoints the Tennessee Secretary of State as its agent for service of process in any such proceeding. The Tennessee Secretary of State may mail a copy of such process to Fresh Technology LLC at 631 2nd Ave S Ste LL-D, Nashville, TN 37210-2092.

Executed to be effective as of the 27 day of April, 2020.

FRESH TECHNOLOGY LLC,
An Alabama limited liability company

By: _____


Shaun Shankel, CEO and Authorized
Officer

FT DATA, LLC
An Alabama limited liability company

By: _____


Shaun Shankel, CEO and Authorized
Officer

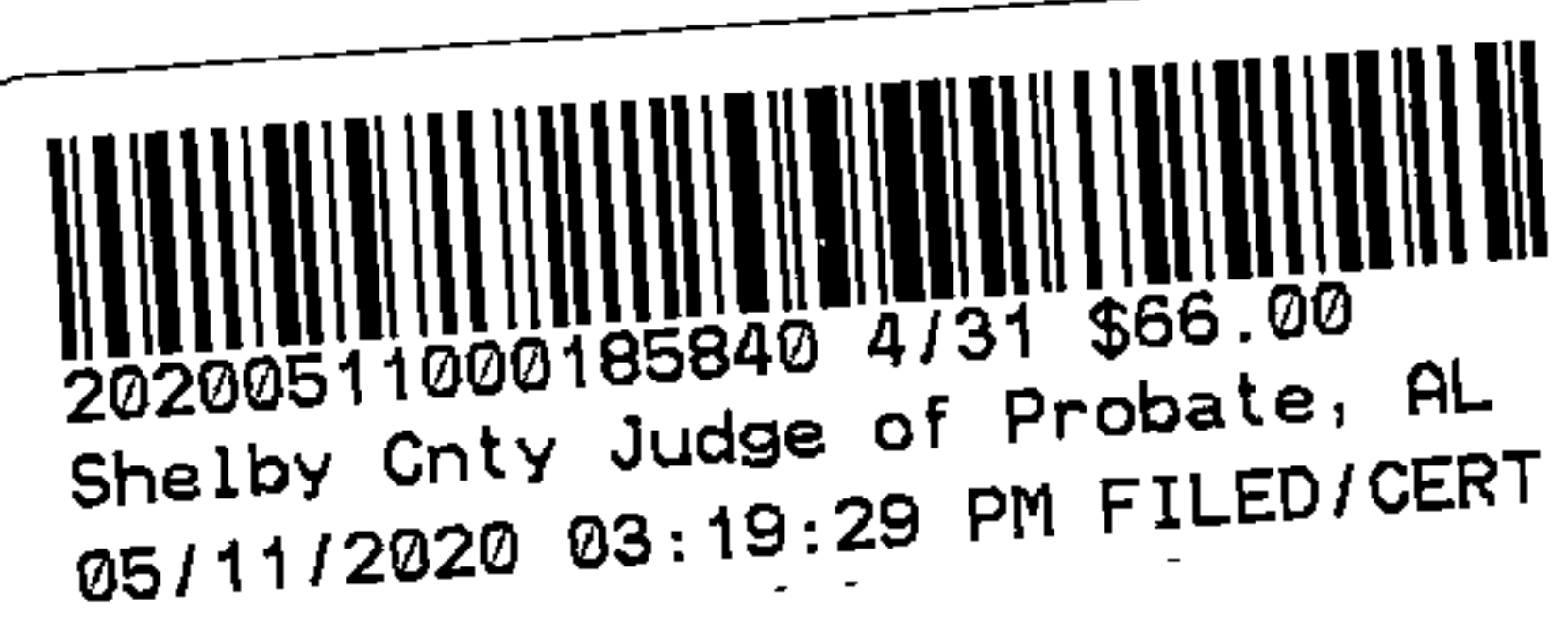
TOGOTECHNOLOGIES, LLC
A Tennessee limited liability company

By: _____


Shaun Shankel, CEO and Authorized
Officer



EXHIBIT A
AGREEMENT AND PLAN OF MERGER



AGREEMENT AND PLAN OF MERGER

by and among

ToGoTechnologies, LLC, a Tennessee
limited liability company

FT Data, LLC, an Alabama limited
liability company

And Fresh Technology LLC, an Alabama
limited liability company

Dated as of May 5, 2020

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of May 5, 2020, is by and among Fresh Technology LLC (formerly Bodnar Group Consulting, LLC), an Alabama limited liability company ("Fresh"), ToGoTechnologies, LLC (formerly LoyaltyNow.com LLC and ToGoOrder.com, LLC), a Tennessee limited liability company ("ToGo"), and FT Data, LLC, an Alabama limited liability company ("FT Data"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Exhibit A of this Agreement. Fresh, ToGo, and FT Data are referred to collectively herein as the "Parties" and each individually as a "Party."

WITNESSETH:

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the Alabama Limited Liability Company Act (the "ALLC Act") and the Tennessee Revised Limited Liability Company Act (the "LLC Act"), the Parties intend to enter into a business combination transaction pursuant to which FT Data and ToGo, will merge with and into Fresh as the surviving limited liability company (the "Merger");

WHEREAS, the respective members of Fresh, board of directors of ToGo and the manager of FT Data, as well as the members of each Party have approved this Agreement, the Merger, the

other Transaction Documents and the related transactions contemplated hereby and thereby (the "Transactions") in accordance with their constituent documents, and have determined that this Agreement, the Merger the other Transaction Documents and the Transactions are advisable to, and in the best interests of, the respective Party and its respective members; and

WHEREAS, concurrently with the execution and delivery of this Agreement, equity holders of outstanding interests of each of FT Data and ToGo, as of the date hereof, have executed and delivered a Joinder, Release and Letter of Transmittal in the form of Exhibit B attached hereto (including all exhibits attached thereto, the "Joinders/LOTs"), making each such equity holder subject to the terms set forth in the Fresh Technology LLC Amended and Restated Operating Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, and in consideration of the representations and warranties herein contained, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties, intending to become legally bound, hereby agree as follows:

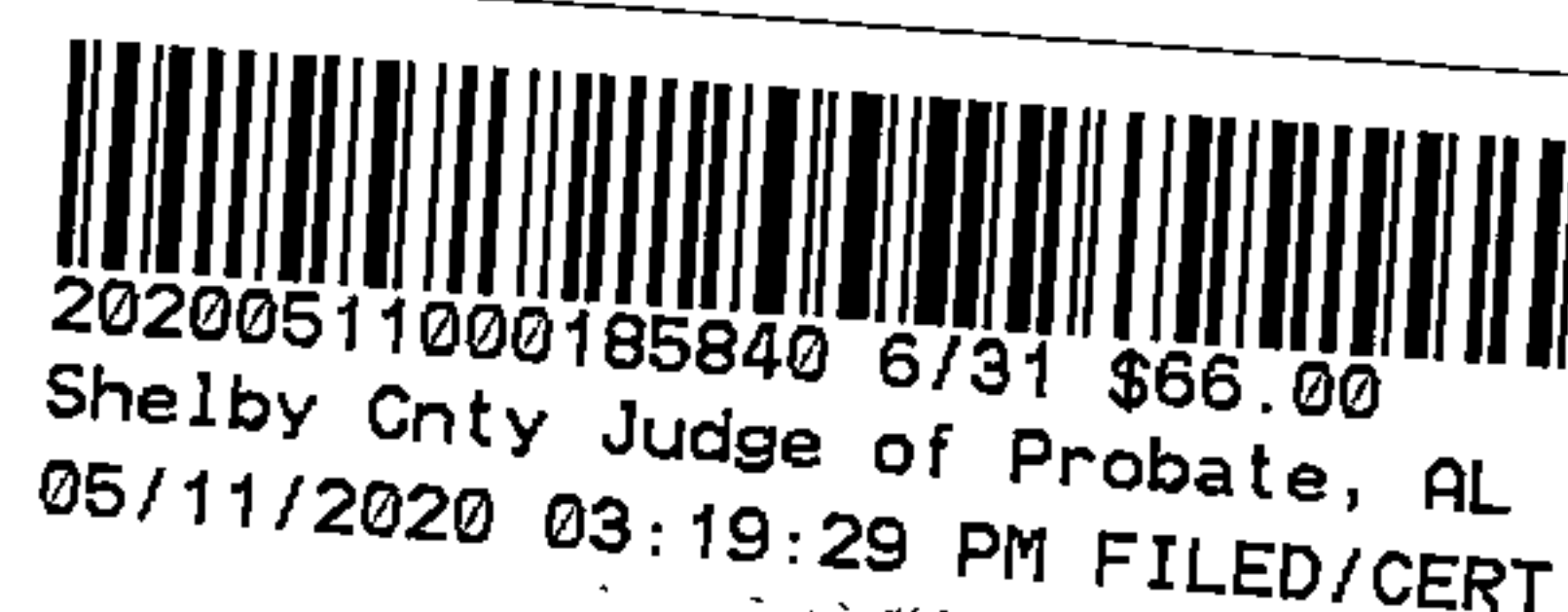
ARTICLE I.

MERGER

Section 1.1. The Merger. Upon the terms and subject to the conditions hereof, at the Effective Time (as defined below), the Parties shall consummate the Merger pursuant to which (a) FT Data shall be merged with and into Fresh, (b) ToGo shall be merged with and into Fresh, (c) the separate existence of both FT Data and ToGo shall thereupon cease, (c) Fresh shall continue as the surviving limited liability company in the Merger (the "Surviving Entity") in accordance with the ALLC Act, and (d) the corporate existence of Fresh shall continue unaffected by the Merger, with all of its rights, privileges, immunities, powers and franchises.

Section 1.2. Closing. The closing of the Merger (the "Closing") shall take place at Fresh's offices located at 631 2nd Avenue South, Suite LL-D, Nashville, TN 37210 (or remotely via the exchange of documents and signatures by electronic mail, courier, facsimile and/or hand delivery), at 10:00 a.m. Central Standard Time, on the date hereof.

Section 1.3. Effective Time of the Merger. The Merger shall become effective upon the filing of the Certificate of Merger (the "Certificate of Merger"), with the Secretary of State of the State of Alabama in accordance with the provisions of the ALLC Act, or at such other time as FT Data, ToGo and Fresh shall agree should be specified in the Certificate of Merger, which filing the parties shall cause to be made as soon as practicable on the Closing Date. When used in this Agreement, the term "Effective Time" shall mean the time at which the Certificate of Merger is accepted for filing by the Secretary of State of the State of Alabama or such time as otherwise specified in the Certificate of Merger.



Section 1.4. Effect of Merger. The Merger shall, from and after the Effective Time, have all the effects provided herein, in the Certificate of Merger, and in the applicable provisions of the LLC Act and the ALLC Act, respectively. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all of the assets, property, rights, privileges, powers, and franchises of FT Data and ToGo shall vest in Fresh, and all debts, liabilities, and duties of FT Data and ToGo shall become the debts, liabilities, and duties of Fresh.

Section 1.5. Further Actions. The Parties shall execute and deliver such certificates and other documents and take such other actions as may be reasonably necessary or appropriate in order to affect the Merger, including making such filings, recordings, or publications required under the LLC Act and the ALLC Act.

ARTICLE II.

THE SURVIVING ENTITY

Section 2.1. Articles of Organization. At the Effective Time, the Articles of Organization, as amended, of Fresh, as in effect immediately prior to the Effective Time, shall become the Articles of Organization of the Surviving Entity at such time.

Section 2.2 Operating Agreement. At the Effective Time, the Amended and Restated Operating Agreement of Fresh, as in effect immediately prior to the Effective Time, shall be the Amended and Restated Operating Agreement of the Surviving Entity until thereafter changed, amended or amended and restated in accordance with applicable Law and such Amended and Restated Operating Agreement.

Section 2.3. Directors. The directors of Fresh immediately prior to the Effective Time shall be the directors of the Surviving Entity, each to hold office in accordance with the Articles of Organization and the Amended and Restated Operating Agreement of the Surviving Entity until the earlier of his or her resignation or removal or until his or her respective successor is duly elected and qualified, in any case in the manner provided in the Articles of Organization and Amended and Restated Operating Agreement of the Surviving Entity and in accordance with applicable Law.

Section 2.4. Officers. The officers of Fresh immediately prior to the Effective Time shall be the officers of the Surviving Entity, each to hold office in accordance with the Articles of Organization and Amended and Restated Operating Agreement of the Surviving Entity until the earlier of his or her resignation or removal or until his or her respective successor is duly elected and qualified, in any case in the manner provided in the Articles of Organization and Amended and Restated Operating Agreement of the Surviving Entity and in accordance with applicable Law.

ARTICLE III.

CONVERSION OF SHARES

Section 3.1. Conversion of Interests & Allocation Schedule.

(a) Subject to the other provisions of this Agreement, as of the Effective Time, by virtue of the Merger and without any further action on the part of any Party or any of its respective managers, members, officers, directors or equity holders:

(i) issued and outstanding common membership interests of ToGo shall be converted into and become fully paid and non-assessable Class A units of Membership Interest of the Surviving Entity on a basis of 0.00309 to 1 as more fully set forth on the allocation schedule attached as Schedule 3.1(a) of the Disclosure Schedule, attached hereto as Exhibit C.

(ii) issued and outstanding membership interests of FT Data shall be converted into and become fully paid and non-assessable Class A units of Membership Interests of the Surviving Entity on a basis of 0.04795 to 1 as more fully set forth on the allocation schedule attached as Schedule 3.1 (a) of the Disclosure Schedule.

Section 3.2. No Further Rights. From and after the Effective Time, equity holders of ToGo and FT Data shall cease to have any rights as equity holders of ToGo or FT Data, respectively, except as provided herein or by applicable Law. No additional consideration shall be paid other than the exchange of such interests.

Section 3.3. Closing of ToGo and FT Data's Transfer Books. At the Effective Time, the membership interest transfer books of ToGo and FT Data shall be closed and no transfer of shares of equity interests shall be made thereafter. If after the Effective Time, certificates evidencing ownership interests in ToGo and/or FT Data (the "Certificates") are presented to the Surviving Entity, they shall be canceled and exchanged as provided in this ARTICLE III.

Section 3.4. Closing Deliveries.

(a) At or prior to the Closing, FT Data and ToGo shall have delivered or caused to be delivered to Fresh the following:

(i) written resignations of the manager, directors and officers of each of FT Data and ToGo to the extent requested by Fresh prior to the Closing Date;

(ii) a certificate from FT Data and ToGo stating that such entity is not a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Internal Revenue Code of 1986, as amended;

(iii) a certificate from the Secretary of State of Tennessee and the Secretary of State of Alabama (as applicable) as to the good standing of FT Data and ToGo (as applicable) as of a date no more than five (5) Business Days prior to the Closing Date;

(iv) a certificate, dated as of the Closing Date and executed by the Secretary or similar officer of each of FT Data and ToGo, certifying to: (A) the Articles of Organization and Operating Agreement of FT Data and ToGo (as applicable), as amended through the Closing Date; (B) the resolutions of FT Data's manager and members and ToGo's board of directors and members (as applicable) approving the Merger and the other transactions contemplated by this Agreement and the other Transaction Documents to FT Data or ToGo (as applicable) is a party ("the Merger Consent"); and (C) the incumbency of the Persons executing, on behalf of FT Data and ToGo (as applicable), this Agreement and any other Transaction Documents to which FT Data and/or ToGo is a party;

(v) Joinders/LOTs duly executed and delivered by the equity holders of any membership interest of FT Data and ToGo; and

(vi) all other documents required to be delivered by FT Data, ToGo, or any equity holder to Fresh at the Closing pursuant to this Agreement or that Fresh may reasonably request in good faith for the purposes of facilitating the consummation of the transactions contemplated by this Agreement.

(b) At or prior to the Closing, Fresh shall deliver or cause to be delivered to each of FT Data and ToGo the following:

(i) a certificate from the Secretary of the State of Alabama as to the good standing of Fresh as of a date no more than five (5) Business Days prior to the Closing Date;

(ii) a certificate, dated as of the Closing Date and executed by the Secretary or similar officer of Fresh, certifying to: (A) the Articles of Organization and Amended and Restated Operating Agreement, as amended through the Closing Date; (B) the resolutions of Fresh's members approving the Merger and the other transactions contemplated by this Agreement and the other Transaction Documents to which Fresh is a party; and (C) the incumbency of the Persons executing, on behalf of Fresh, this Agreement and any other Transaction Documents to which Fresh is a party; and

(iii) all other documents required to be delivered by Fresh to FT Data and by Fresh to ToGo at the Closing pursuant to this Agreement or that FT Data and/or ToGo may reasonably request in good faith for the purposes of facilitating the consummation of the transactions contemplated by this Agreement.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES REGARDING FT DATA

FT Data represents and warrants to each of Fresh and ToGo that the following statements are true and correct as of the date of this Agreement:

Section 4.1 Existence; Good Standing; Corporate Authority; Compliance With Law. FT Data is a limited liability company duly incorporated, validly existing and in good standing under the laws of the State of Alabama. FT Data has all requisite limited liability company power and authority to own, operate and lease its properties and carry on its business as now conducted. FT Data is not in violation of any order of any Governmental Authority to which FT Data or any of its properties or assets is subject, except where such violation would not have a material adverse effect on the business, results of operations or financial condition of FT Data (a "FT Data Material Adverse Effect"). FT Data does not have any subsidiaries or agreements of any nature to acquire any subsidiary. FT Data has obtained all licenses, permits and other authorizations and has taken all actions required by applicable Law or governmental regulations in connection with its business as now conducted, except where such failure to obtain the same would not have a FT Data Material Adverse Effect.

Section 4.2 Authorization, Validity and Effect of Agreements. FT Data has the full limited liability company power and authority to execute and deliver this Agreement and the Transaction Agreements and all other agreements and documents contemplated thereby. The consummation by FT Data of the transaction contemplated hereby and under the Transaction Agreements have been duly authorized by all requisite limited liability company action, including the required approval by the managers and members of FT Data. This Agreement constitutes, and all agreements and documents contemplated hereby, including the Transaction Documents, (when executed and delivered pursuant hereto for value received) will constitute, the valid and legally binding obligations of FT Data, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

Section 4.3 No Violation. Neither the execution and delivery by FT Data of this Agreement or any Transaction Agreement nor the consummation by FT Data of the transactions contemplated thereby in accordance with the terms set forth therein, will: (i) conflict with or result in a breach of any provisions of the Articles of Organization or Operating Agreement, each as amended; (ii) conflict with, result in a breach of any provision of or the modification or termination of, constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the assets of FT Data pursuant to any material commitment,

lease, contract, or other material agreement or instrument to which FT Data is a party; or (iii) violate any order, arbitration award, judgment, writ, injunction, decree, statute, rule or regulation applicable to FT Data, the violation of which would have a FT Data Material Adverse Effect.

Section 4.4 No Litigation. There are currently no pending, nor, to the knowledge of FT Data, any threatened, lawsuits or administrative proceedings or investigations against FT Data or to which its assets are subject.

Section 4.5 Tax Matters. FT Data has duly paid all current applicable taxes and other charges (whether or not shown on any Tax Return) due or claimed to be due from it by federal, foreign, state or local taxing authorities.

Section 4.6 No Material Adverse Changes. Since December 31, 2019, there has not been any material adverse change in the financial condition, results of operations, business, assets or liabilities (contingent or otherwise, whether due or to become due, known or unknown), of FT Data, except for changes in the ordinary course of business consistent with FT Data's past operations.

Section 4.7 LLC Records. True and correct copies of the Articles of Organization and Operating Agreement, each as amended, of FT Data, have been delivered to Fresh and ToGo.

Section 4.8 Full Disclosure. All of the information provided by FT Data and its representatives herein is true, correct, and complete in all material respects, and no representation, warranty, or statement made by FT Data in or pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty, or statement not misleading to Fresh and ToGo.

Section 4.9 Capitalization.

(a) The Disclosure Schedule sets forth a true, correct, and complete list of all the outstanding interest in FT Data, including the names of the equity holders thereof. All outstanding Equity Securities of FT Data (i) have been duly authorized and validly issued, are fully paid and nonassessable, (ii) were issued and sold in accordance with federal and applicable state securities Laws and the Organizational Documents of FT Data, and (iii) were not issued in violation of any preemptive rights or any similar rights.

(b) Other than the Equity Securities set forth on the Disclosure Schedule, (i) there are no outstanding unit appreciation rights, phantom units, performance units, or any other Equity Securities of FT Data or options, warrants, or rights exercisable or exchangeable for or convertible into any Equity Securities of FT Data, and no authorization therefor has been given, and (ii) there are no Contracts, understandings, or other arrangements by which FT Data is or may be bound to issue, redeem, purchase, or sell any Equity Securities of FT Data or securities convertible into or exchangeable for any Equity Securities of FT Data.

(c) Other than the Operating Agreement of FT Data, as amended, there are no Contracts or understandings to which FT Data is a party, by which FT Data is bound, or which

exist that (i) relate to the voting, governance, or transfer of shares of membership interest, warrants or options or that (ii) grant any Person any right of first refusal, "co-sale", "drag-along", first offer, preemptive right or other similar right in connection with the issuance or sale of the outstanding membership interest of FT Data or with respect to any future offer, sale or issuance of securities by FT Data. No current or former holder of Equity Securities of FT Data has any appraisal rights or dissenters' rights with respect to such Equity Securities other than those such rights that are granted under the ALLC Act, or have been expressly and irrevocably waived in writing by such Person.

Section 4.10 Intellectual Property. FT Data acknowledges, to its Knowledge, that all employees and service providers, past and present, have signed agreements assigning to FT Data all Intellectual Property created, acquired, adapted, modified or improved, in whole or in part, by or through the efforts of each during the course of his/her engagement by the FT Data such that the Intellectual Property is owned exclusively by FT Data and all other rights, title or interests thereto have been relinquished without limitation; furthermore, any past employees or service providers that have not signed such assignments, would not be expected to have a FT Data Material Adverse Effect.

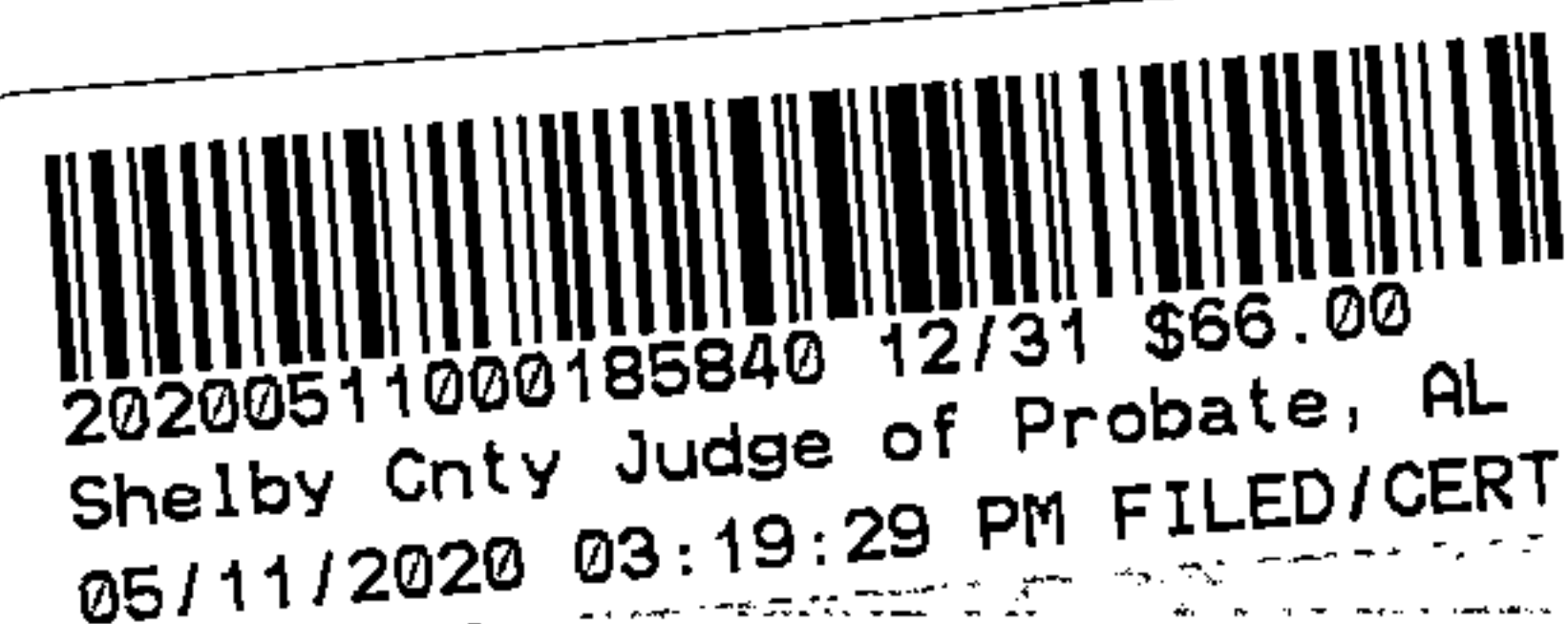
ARTICLE V.

REPRESENTATIONS AND WARRANTIES REGARDING TOGO

ToGo represents and warrants to each of Fresh and FT Data that the following statements are true and correct as of the date of this Agreement:

Section 5.1 Existence; Good Standing; Corporate Authority; Compliance With Law. ToGo is a limited liability company duly incorporated, validly existing and in good standing under the laws of the State of Tennessee. ToGo has all requisite limited liability company power and authority to own, operate and lease its properties and carry on its business as now conducted. ToGo is not in violation of any order of any Governmental Authority to which ToGo or any of its properties or assets is subject, except where such violation would not have a material adverse effect on the business, results of operations or financial condition of ToGo (a "ToGo Material Adverse Effect"). ToGo does not have any subsidiaries or agreements of any nature to acquire any subsidiary. ToGo has obtained all licenses, permits and other authorizations and has taken all actions required by applicable Law or governmental regulations in connection with its business as now conducted, except where such failure to obtain the same would not have a ToGo Material Adverse Effect.

Section 5.2 Authorization, Validity and Effect of Agreements. ToGo has the full limited liability company power and authority to execute and deliver this Agreement and the Transaction Agreements and all other agreements and documents contemplated thereby. The consummation by ToGo of the transaction contemplated hereby and under the Transaction Agreements have been



duly authorized by all requisite limited liability company action, including the required Consents by ToGo's board of directors and the members of ToGo. This Agreement constitutes, and all agreements and documents contemplated hereby, including the Transaction Documents (when executed and delivered pursuant hereto for value received) will constitute, the valid and legally binding obligations of ToGo, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

Section 5.3 No Violation. Neither the execution and delivery by ToGo of this Agreement or any Transaction Agreement nor the consummation by ToGo of the transaction contemplated thereby in accordance with the terms set forth therein, will: (i) conflict with or result in a breach of any provisions of the Articles of Organization or Operating Agreement, each as amended; (ii) conflict with, result in a breach of any provision of or the modification or termination of, constitute a default under, or result in the creation of imposition of any Lien, security interest, charge or encumbrance upon any of the assets of ToGo pursuant to any material commitment, lease, contract, or other material agreement or instrument to which ToGo is a party; or (iii) violate any order, arbitration award, judgment, writ, injunction, decree, statute, rule or regulation applicable to ToGo, the violation of which would have a ToGo Material Adverse Effect.

Section 5.4 No Litigation. There are currently no pending, nor, to the knowledge of ToGo, any threatened, lawsuits or administrative proceedings or investigations against ToGo or to which its assets are subject.

Section 5.5 Tax Matters. ToGo has duly paid all current applicable taxes and other charges (whether or not shown on any Tax Return) due or claimed to be due from it by federal, foreign, state or local taxing authorities.

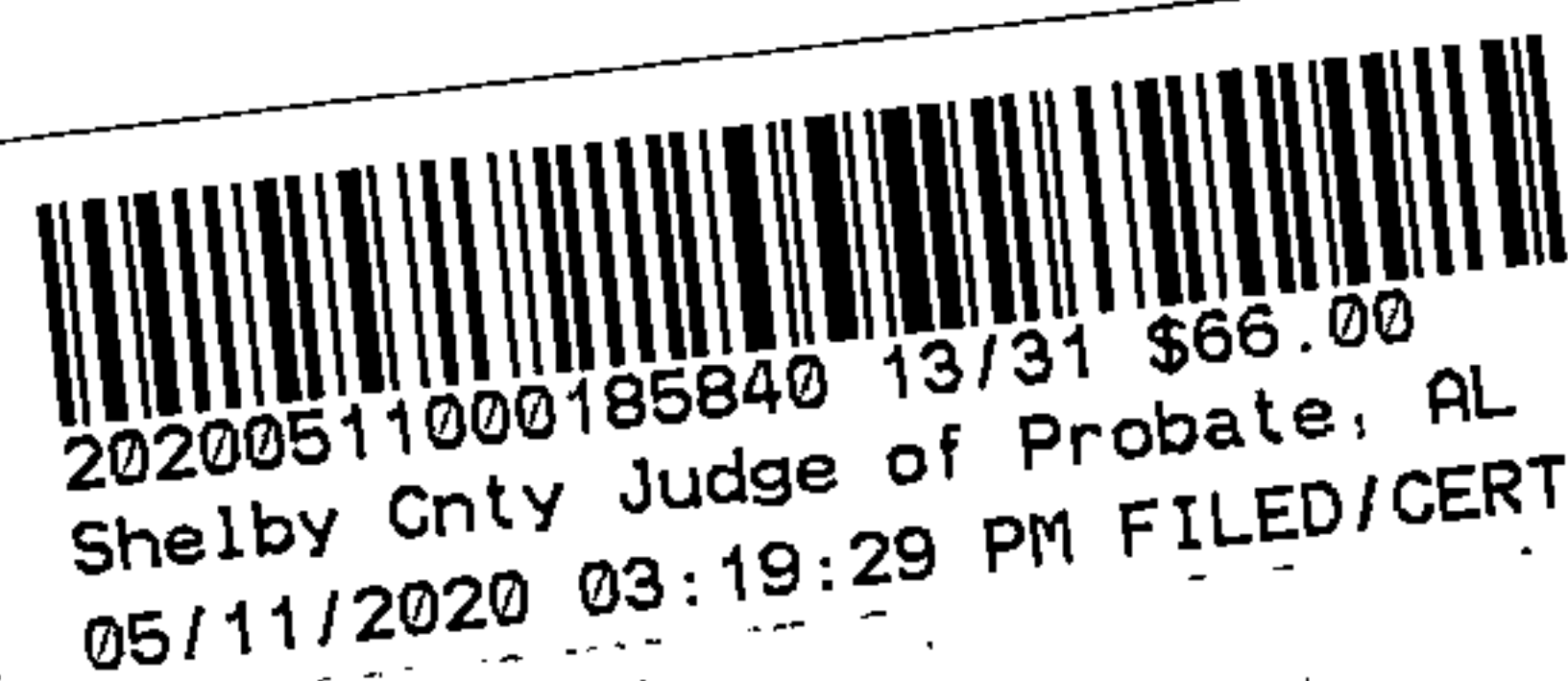
Section 5.6 No Material Adverse Changes. Since December 31, 2019, there has not been any material adverse change in the financial condition, results of operations, business, assets or liabilities (contingent or otherwise, whether due or to become due, known or unknown), of ToGo, except for changes in the ordinary course of business consistent with ToGo's past operations.

Section 5.7 LLC Records. True and correct copies of the Articles of Organization and Operating Agreement, each as amended of ToGo, have been delivered to Fresh and FT Data.

Section 5.8 Full Disclosure. All of the information provided by ToGo and its representatives herein is true, correct, and complete in all material respects, and no representation, warranty, or statement made by ToGo in or pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty, or statement not misleading to Fresh and FT Data.

Section 5.9 Capitalization.

(a) The Disclosure Schedule sets forth a true, correct, and complete list of all the outstanding interest in ToGo, including the names of the equity holders thereof. All outstanding Equity Securities of ToGo (i) have been duly authorized and validly issued, are fully paid and



nonassessable, (ii) were issued and sold in accordance with federal and applicable state securities Laws and the Organizational Documents of ToGo, and (iii) were not issued in violation of any preemptive rights or any similar rights.

(b) Other than the Equity Securities set forth on the Disclosure Schedule, (i) there are no outstanding unit appreciation rights, phantom units, performance units, or any other Equity Securities of ToGo or options, warrants, or rights exercisable or exchangeable for or convertible into any Equity Securities of ToGo, and no authorization therefor has been given, and (ii) there are no Contracts, understandings, or other arrangements by which ToGo is or may be bound to issue, redeem, purchase, or sell any Equity Securities of ToGo or securities convertible into or exchangeable for any Equity Securities of ToGo.

(c) Other than the Operating Agreement of ToGo, as amended, there are no Contracts or understandings to which ToGo is a party, by which ToGo is bound, or which exist that (i) relate to the voting, governance, or transfer of units of Membership Interest, warrants or options or that (ii) grant any Person any right of first refusal, "co-sale", "drag-along", first offer, preemptive right or other similar right in connection with the issuance or sale of the outstanding Membership Interest of ToGo or with respect to any future offer, sale or issuance of securities by ToGo. No current or former holder of Equity Securities of ToGo has any appraisal rights or dissenters' rights with respect to such Equity Securities other than those such rights that are granted under the LLC Act, or have been expressly and irrevocably waived in writing by such Person.

Section 5.10 Intellectual Property. ToGo acknowledges, to its Knowledge, that all employees and service providers, past and present, have signed agreements assigning to ToGo all Intellectual Property created, acquired, adapted, modified or improved, in whole or in part, by or through the efforts of each during the course of his/her engagement by the ToGo such that the Intellectual Property is owned exclusively by ToGo and all other rights, title or interests thereto have been relinquished without limitation; furthermore, any past employees or service providers that have not signed such assignments, would not be expected to have a ToGo Material Adverse Effect.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES REGARDING FRESH

Fresh represents and warrants to each of FT Data and ToGo that the following statements are true and correct as of the date of this Agreement. For purposes of these representations and warranties (other than those in Sections 6.2, 6.3, 6.9 and 6.11), the term the "Fresh" shall include any subsidiaries of Fresh, unless otherwise noted herein.



Section 6.1 Existence; Good Standing; Corporate Authority; Compliance With Law.

Fresh is a limited liability company duly incorporated, validly existing and in good standing under the laws of the State of Alabama. Fresh has all requisite limited liability company power and authority to own, operate and lease its properties and carry on its business as now conducted. Fresh is not in violation of any order of any Governmental Authority to which Fresh or any of its properties or assets is subject, except where such violation would not have a material adverse effect on the business, results of operations or financial condition of Fresh (a "Fresh Material Adverse Effect"). Fresh does not have any subsidiaries or agreements of any nature to acquire any subsidiary, other than those interests disclosed in Section 6.11. Fresh has obtained all licenses, permits and other authorizations and has taken all actions required by applicable Law or governmental regulations in connection with its business as now conducted, except where such failure to obtain the same would not have a Fresh Material Adverse Effect.

Section 6.2 Authorization, Validity and Effect of Agreements. Fresh has the full limited liability company power and authority to execute and deliver this Agreement and the Transaction Agreements and all other agreements and documents contemplated thereby. The consummation by Fresh of the transaction contemplated hereby and under the Transaction Agreements have been duly authorized by all requisite limited liability company action, including the required Consents by Fresh's members. This Agreement constitutes, and all agreements and documents contemplated hereby, including the Transaction Documents, (when executed and delivered pursuant hereto for value received) will constitute, the valid and legally binding obligations of Fresh, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

Section 6.3 No Violation. Neither the execution and delivery by Fresh of this Agreement or any Transaction Agreement nor the consummation by Fresh of the transaction contemplated thereby in accordance with the terms set forth therein, will: (i) conflict with or result in a breach of any provisions of the Articles of Organization or Operating Agreement, each as amended; (ii) conflict with, result in a breach of any provision of or the modification or termination of, constitute a default under, or result in the creation or imposition of any Lien, security interest, charge or encumbrance upon any of the assets of Fresh pursuant to any material commitment, lease, contract, or other material agreement or instrument to which Fresh is a party; or (iii) violate any order, arbitration award, judgment, writ, injunction, decree, statute, rule or regulation applicable to Fresh, the violation of which would have a Fresh Material Adverse Effect.

Section 6.4 No Litigation. There are currently no pending, nor, to the knowledge of Fresh, any threatened, lawsuits or administrative proceedings or investigations against Fresh or to which its assets are subject.

Section 6.5 Tax Matters. Fresh has duly paid all current applicable taxes and other charges (whether or not shown on any Tax Return) due or claimed to be due from it by federal, foreign, state or local taxing authorities.

Section 6.6 No Material Adverse Changes. Since December 31, 2019, there has not been any material adverse change in the financial condition, results of operations, business, assets or

liabilities (contingent or otherwise, whether due or to become due, known or unknown), of Fresh, except for changes in the ordinary course of business consistent with Fresh's past operations.

Section 6.7 LLC Records. True and correct copies of the Articles of Organization and Operating Agreement, each as amended, of Fresh, have been delivered to FT Data and ToGo.

Section 6.8 Full Disclosure. All of the information provided by Fresh and its representatives herein is true, correct, and complete in all material respects, and no representation, warranty, or statement made by Fresh in or pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty, or statement not misleading to FT Data and ToGo.

Section 6.9 Capitalization.

(a) The Disclosure Schedule sets forth a true, correct, and complete list of all the outstanding interest in Fresh, including the names of the equity holders thereof. All outstanding Equity Securities of Fresh (i) have been duly authorized and validly issued, are fully paid and nonassessable, (ii) were issued and sold in accordance with federal and applicable state securities Laws and the Organizational Documents of the Fresh, and (iii) were not issued in violation of any preemptive rights or any similar rights.

(b) Other than the Equity Securities set forth on the Disclosure Schedule, (i) there are no outstanding unit appreciation rights, phantom units, performance units, or any other Equity Securities of Fresh or options, warrants, or rights exercisable or exchangeable for or convertible into any Equity Securities of Fresh, and no authorization therefor has been given, and (ii) there are no Contracts, understandings, or other arrangements by which Fresh is or may be bound to issue, redeem, purchase, or sell any Equity Securities of Fresh or securities convertible into or exchangeable for any Equity Securities of Fresh.

(c) Other than the Operating Agreement of Fresh, as amended, there are no Contracts or understandings to which Fresh is a party, by which Fresh is bound, or which exist that (i) relate to the voting, governance, or transfer of shares of Membership Interest, warrants or options or that (ii) grant any Person any right of first refusal, "co-sale", "drag-along", first offer, preemptive right or other similar right in connection with the issuance or sale of the outstanding Membership Interest of Fresh or with respect to any future offer, sale or issuance of securities by Fresh. No current or former holder of Equity Securities of Fresh has any appraisal rights or dissenters' rights with respect to such Equity Securities other than those such rights that are granted under the TBCA, the ALLCA Act, or have been expressly and irrevocably waived in writing by such Person.

Section 6.10 Intellectual Property. Fresh acknowledges, to its Knowledge, that all employees and service providers, past and present, have signed agreements assigning to Fresh all Intellectual Property created, acquired, adapted, modified or improved, in whole or in part, by or

through the efforts of each during the course of his/her engagement by the Fresh such that the Intellectual Property is owned exclusively by Fresh and all other rights, title or interests thereto have been relinquished without limitation; furthermore, any past employees or service providers that have not signed such assignments, would not be expected to have a Fresh Material Adverse Effect.

Section 6.11 Subsidiaries. Fresh owns the following interests:

- (a) 22% interest in Fresh Accounting, LLC, a Tennessee limited liability company.
- (b) 100% interest in Fresh AI Investment LLC, a Tennessee limited liability company, which owns a 50% interest in Fresh AI, LLC, a Tennessee limited liability company.
- (c) 100% interest in Fresh Phood Holding, LLC, a Tennessee limited liability company, which owns 20% of Phood, Inc, a Delaware limited liability company.

ARTICLE VII.

TERMINATION

Section 7.1 Termination by Joint Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time upon the joint written consent of Fresh, FT Data and ToGo.

Section 7.2 Termination by Any of Fresh, FT Data or ToGo. This Agreement may be terminated and the Merger may be abandoned by action of any of the members of Fresh, the board of directors of ToGo or the manager of FT Data if (a) the Merger shall not have been consummated by June 1, 2020, or (b) a United States federal or state court of competent jurisdiction or United States federal or state governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable; provided, that the Party seeking to terminate this Agreement pursuant to this clause (b) shall have used all reasonable efforts to remove such injunction, order or decree.

Section 7.3 Termination by Fresh. This Agreement may be terminated, and the Merger may be abandoned at any time prior to the Effective Time, by action of the members of Fresh, if there has been a material breach by FT Data or ToGo of any representation or warranty contained in this Agreement, or (b) there has been a material breach of any of the covenants or agreements set forth in this Agreement on the part of FT Data or ToGo, which breach under (a) or (b) above is not curable or, if curable, is not cured within 30 days after written notice of such breach is given by Fresh to FT Data or ToGo.

Section 7.4 Termination by ToGo. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, by action of the board of directors of ToGo, if (a) there has been a material breach by Fresh or FT Data of any representation or warranty contained in this Agreement, or (b) there has been a material breach of any of the covenants or agreements set forth in this Agreement on the part of Fresh or FT Data, which breach under (a) or (b) above is not curable or, if curable, is not cured within 30 days after written notice of such breach is given by Fresh or FT Data.

Section 7.5 Termination by FT Data. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, by action of the manager of FT Data, if (a) there has been a material breach by Fresh or ToGo of any representation or warranty contained in this Agreement, or (b) there has been a material breach of any of the covenants or agreements set forth in this Agreement on the part of Fresh or ToGo, which breach under (a) or (b) above is not curable or, if curable, is not cured within 30 days after written notice of such breach is given by Fresh or ToGo.

Section 7.6 Effect of Termination and Abandonment. Upon termination of this Agreement pursuant to this Article, this Agreement shall be void and of no other effect.

ARTICLE VIII.

MISCELLANEOUS

Section 8.1. Parties in Interest. Nothing in this Agreement, whether express or implied, shall be construed to give any Person, other than the Parties or their respective successors and permitted assigns, any legal or equitable right, remedy, claim, or benefit under or in respect of this Agreement.

Section 8.2. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign (by contract, stock sale, operation of Law, or otherwise) either this Agreement or any of its rights, interests, or obligations hereunder without the express prior written consent of Fresh and any attempted assignment, without such consent, shall be null and void; provided, that (a) Fresh shall be permitted to assign in whole or in part its rights under this Agreement for collateral security purposes at or following the Closing and (b) this Agreement may be assigned by Fresh to any of its respective affiliates or to any Person acquiring a material portion of the assets, business or securities of Fresh whether by merger, consolidation, sale of assets or securities or otherwise.

Section 8.3. Notices. All notices and other communications required or permitted to be given by any provision of this Agreement shall be in writing and mailed (certified or registered mail, postage prepaid, return receipt requested) or sent by hand or overnight courier, or by facsimile or email transmission (with acknowledgment received), charges prepaid and addressed to the intended recipient as follows, or to such other addresses or numbers as may be specified by a Party from time to time by like notice to the other Parties:

If to Fresh, ToGo, FT Data or the Surviving Entity:

Shaun Shankel
631 Second Avenue South, Ste. LL-D
Nashville, TN 37210
Email: sshankel@freshtechology.com
Phone: (615) 479-7375

with copy to (which shall not constitute notice):

Nancy Stabell, Esq
Wood Stabell Law Group, PLLC
4535 Harding Pike Ste. 100
Nashville, TN 37205
Email: nancy.stabell@woodstabell.com
Phone: 615-356-7755

All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by facsimile or email transmission (with acknowledgment received), three (3) Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one (1) Business Day after the same are sent by a reliable overnight courier service, with acknowledgment of receipt.

Section 8.4. Amendments and Waivers. This Agreement may not be amended, supplemented, or otherwise modified (including by waiver) except in a written instrument executed by each of (i) Fresh, (ii) ToGo and (iii) FT Data. No waiver by any of the Parties of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver by any of the Parties of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the Party sought to be charged with such waiver.

Section 8.5. Exhibits and Disclosure Schedule. All Exhibits and the Disclosure Schedule attached hereto are hereby incorporated herein by reference and made a part hereof. Any matter, Contract, or information set forth on the Disclosure Schedule shall be arranged to correspond with the numbered and lettered Sections and Subsections contained in this Agreement, and the disclosures in such Disclosure Schedule shall modify, supplement, qualify or limit only the representations made in Article IV, Article V, or Article VI corresponding to such Sections and Subsections, and any other Section or Subsection to which the applicability of such disclosure is reasonably and readily apparent on the face of such disclosure.

Section 8.6. Headings. The table of contents and section headings contained in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement or affect in any way the meaning or interpretation of this Agreement.

Section 8.7. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

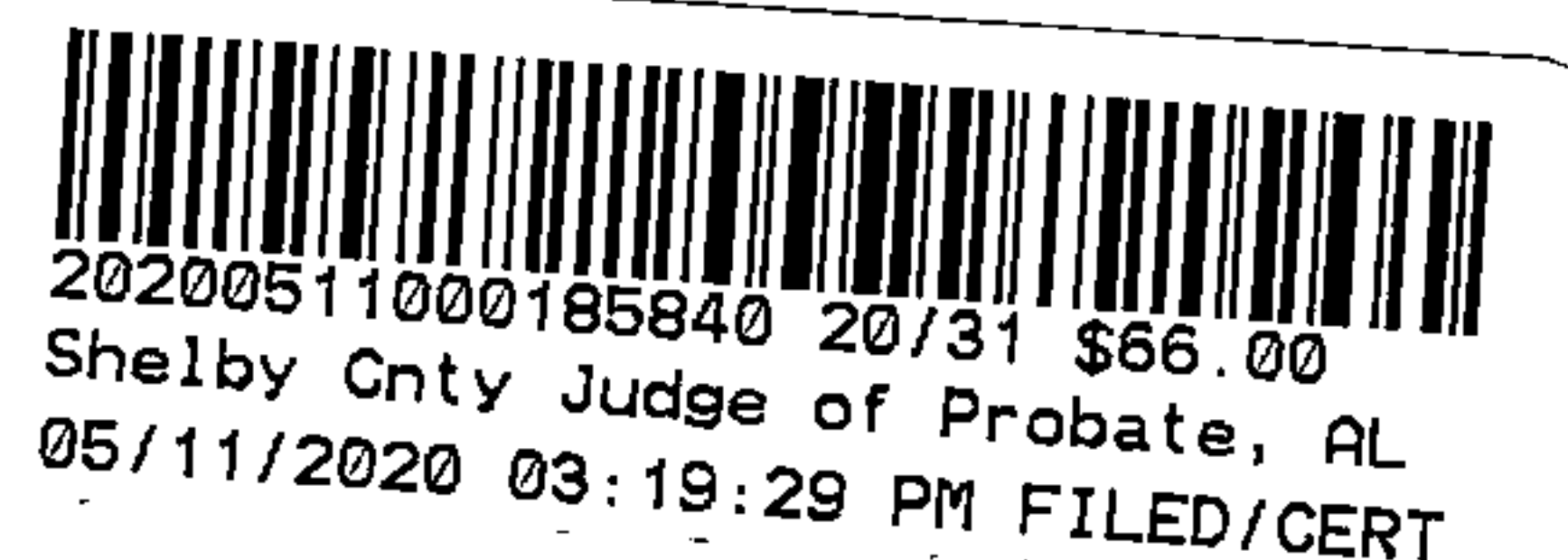
Section 8.8. Entire Agreement. This Agreement (including the Disclosure Schedule and the Exhibits hereto) and the Transaction Documents constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede any prior understandings, negotiations, agreements, discussions or representations among the Parties of any nature, whether written or oral, to the extent they relate in any way to the subject matter hereof or thereof.

Section 8.9. Severability; Specific Performance

(a) If any provision of this Agreement or the application of any such provision to any Parties or circumstance shall be declared by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Parties or circumstances other than those as to which it has been held invalid, illegal, void, or unenforceable, shall nevertheless remain in full force and effect and will in no way be affected, impaired, or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.

(b) Notwithstanding anything in this Agreement to the contrary, the Parties agree that irreparable damage could occur in the event any of the covenants in this Agreement are not performed by any Party in accordance with the terms of this Agreement or are otherwise breached and as such, each of Fresh, ToGo and/or FT Data shall be entitled to seek an injunction, specific performance, or other equitable relief to prevent breaches of the covenants set forth in this Agreement and to enforce specifically the terms and provisions of the covenants hereof, in addition to any other remedy at law or equity.

Section 8.10. Expenses. Unless otherwise provided herein, each Party agrees to pay, without right of reimbursement from the other, all costs and expenses incurred by it incident to the performance of its obligations hereunder, including, the fees and disbursements of counsel, accountants, financial advisors, experts, and consultants employed by the respective Parties in



connection with the transactions contemplated hereby, whether or not the transactions contemplated by this Agreement are consummated; provided, however, that certain fees, costs and expenses related to the transactions contemplated hereby will be paid by the Surviving Entity after Closing.

Section 8.11. Governing Law. This Agreement and all claims arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by the Laws of the State of Alabama, without regard to the conflicts of law principles that would result in the application of any Law other than the Law of the State of Alabama.

Section 8.12. Consent to Jurisdiction; Waiver of Jury Trial.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of the state courts and federal courts located in Davidson County in the State of Tennessee for the purposes of any suit, Action, or other proceeding arising out of or relating to this Agreement or any transaction contemplated hereby (and agrees not to commence any Action, suit, or proceeding relating hereto except in such courts). Each of the Parties further irrevocably agrees that service of any process, summons, notice, or document hand delivered or sent by U.S. registered mail to such Party's respective address set forth in Section 8.3 will be effective service of process for any Action, suit, or proceeding in Tennessee with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any Action, suit, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in the state courts and federal courts located in Davidson County in the State of Tennessee, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Action, suit, or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party irrevocably agrees that a final judgment in any Action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

(b) EACH OF THE PARTIES IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION DOCUMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY TRANSACTION DOCUMENT, OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE, OR ENFORCEMENT HEREOF OR THEREOF.

Section 8.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 8.14. Terms Generally. The definitions in Exhibit A shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include, includes," and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein," "hereof," and "hereunder" and words of similar import refer to this Agreement (including the Exhibits to this Agreement and the Disclosure Schedule) in its entirety and not to any part hereof unless the context shall otherwise require. Where the context requires, any reference to Fresh, FT Data or ToGo or any member of such entity shall also be deemed to refer to any successor or predecessor of such entity or to such member of entity. All references herein to Articles, Sections, Exhibits, and the Disclosure Schedule shall be deemed references to Articles and Sections of, and Exhibits and the Disclosure Schedule to, this Agreement unless the context shall otherwise require, including any amendments, modifications, or supplements thereto. Unless the context shall otherwise require, any references to any agreement or other instrument or statute or regulation are to it as amended and supplemented from time to time (and, in the case of a statute or regulation, to any successor provisions). Any reference to any federal, state, local, or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Any reference in this Agreement to a "day" or a number of "days" (without explicit reference to "Business Days") shall be interpreted as a reference to a calendar day or number of calendar days. If any action is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action may be deferred until the next Business Day.

Section 8.15. Recitals. The Recitals to this Agreement are hereby incorporated as material provisions of this Agreement as if restated in full herein.

Section 8.16. Time is of the Essence. Time is of the essence with respect to the performance of this Agreement.

Section 8.17. Public Announcements. Following the Closing, no Party will issue any press release or make any other public announcements concerning the transactions contemplated hereby or the contents of this Agreement without the prior written consent of the Board of Directors of the Surviving Entity, provided, further, however, a Party may, without any such prior consent, issue or cause publication of any such press release or public announcement to the extent otherwise required by applicable Law.

Section 8.18 Further Assurances. Each Party agrees that from time to time after the Closing Date, it will execute and deliver such further instruments as may be reasonably necessary to carry out the purposes and intents of this Agreement and the other Transaction documents.

Section 8.19 ToGo Drag-Along Provisions. The parties affirm that this Agreement complies with Section 8.3 of the ToGo Operating Agreement dated as of May 29, 2012 (as amended, the "ToGo Operating Agreement"), for purposes of the members Drag-Along Rights

described therein. Specifically, (i) no member of ToGo shall be liable for any accuracy of any representation or warranty made by any other member individually in connection with the Transaction; (ii) the liability for indemnification, if any, of a member of ToGo in connection with the Transaction, is several and not joint with any other Person, and is pro rata in proportion to the consideration paid to such member in connection with the Transaction; (iii) liability, if any, shall be limited to such member's applicable share of a negotiated aggregate indemnification amount that applies equally to all ToGo members but that in no event exceeds the consideration otherwise payable to such member in connection with the Transaction, except with respect to claims related to fraud by such member, the liability for which need not be limited as to such member; and (iv) each member of ToGo will receive the same form of consideration and aggregate consideration receivable by all holders of the common units or Class P Units (as defined in the Operating Agreement), as applicable, on the basis of the relative liquidation preferences to which the holders of each respective class of units are entitled in a "Deemed Liquidation Event" as defined in the ToGo Operating Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Fresh Technology LLC

By: 

Name: Shaun Shankel

Title: Chief Executive Officer

ToGoTechnologies, LLC

By: 

Name: Shaun Shankel

Title: Chief Executive Officer

FT Data, LLC

By: 

Name: Shaun Shankel

Title: Manager

Exhibit A

Definitions

Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Action" means any action, suit, claim, writ, mediation, arbitration, investigation, demand, inquiry, audit, litigation, or proceeding by or before any arbitrator, mediator, court, or other Governmental Authority.

"Agreement" means this Agreement and Plan of Merger, including all Exhibits and Schedules hereto (including the Disclosure Schedule), as each may be amended, modified, or supplemented from time to time in accordance with its terms.

"ALLC Act" means the Alabama Limited Liability Company Law of 2014 as found at AL Code 10A - 5A - 1.01 (2017) et seq.

"Business" means the technology services delivered to the hospitality industry throughout the United States.

"Business Day" means any day other than Saturday, Sunday, or any other day on which banking institutions in New York are not open for the transaction of normal banking business.

"Certificate of Merger" has the meaning set forth in Section 1.3.

"Certificates" has the meaning set forth in Section 3.4(b).

"Closing" has the meaning set forth in Section 1.2.

"Closing Certificate" has the meaning set forth in Section 3.2(b).

"Closing Date" means the date the Closing occurs pursuant to Section 1.2.

"Consents" means consents, orders, approvals, exemptions, waivers, authorizations, filings, registrations, and notifications.

"Contract" means any contract, obligation, plan, undertaking, arrangement, agreement, commitment, indenture, note, bond, mortgage, loan, instrument, lease, consent, license, understanding, or other binding commitment, whether written or oral.

"Damages" means all losses, claims, damages, payments, Taxes, costs, and expenses (including costs and expenses of Actions, amounts paid in connection with any assessments, judgments, or settlements relating thereto, interest and penalties recovered by a third party with respect thereto and out-of-pocket expenses and reasonable attorneys' and accountants' fees and expenses reasonably incurred in investigating potential claims or Actions, in defending

against any such Actions or in enforcing a Party's rights hereunder) but will not include any multiples of earnings type damages, consequential or punitive damages.

"Disclosure Schedule" means the disclosure schedule delivered by the Parties to each other.

"Effect" has the meaning set forth in the definition of "Material Adverse Effect" in this Exhibit A.

"Effective Time" has the meaning set forth in Section 1.3.

"Equity Securities" shall mean (a) shares of membership interest or other equity securities or interests of any Person, (b) subscriptions, calls, warrants, options, or commitments of any kind or character relating to, or entitling any Person to purchase or otherwise acquire, any membership interest or other equity securities or interests and (c) securities convertible into or exercisable or exchangeable for shares of membership interest or other equity securities or interests.

"Governmental Authority" shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Intellectual Property" shall mean all patents, patent applications, registered and unregistered trademarks, trademark applications, registered and unregistered service marks, service mark applications, tradenames, copyrights, trade secrets, domain names, mask works, information and proprietary rights and processes, similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in, to and under any of the foregoing, and any and all such cases that are owned or used by an entity in the conduct of such entity's business as now conducted and as presently proposed to be conducted.

"Knowledge" means (a) with respect to Fresh, the knowledge of Shaun Shankel, Matt Bodnar or Tim Mullen after reasonable and customary investigation in keeping with their positions with the Fresh, (b) with respect to FT Data, the knowledge of any officer or manager of FT Data after reasonable and customary investigation in keeping with their position with FT Data; and (c) with respect to ToGo, the knowledge of any officer or member of the board of directors of ToGo after reasonable and customary investigation in keeping with their position with ToGo.

"Laws" means any law (statutory, common, or otherwise), constitution, treaty, convention, statute, ordinance, code, regulation, rule, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Authorities and any judgment, decision, decree, or order of any

"Liability" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

"Lien" means any mortgage, pledge, hypothecation, preference, security agreement, easement, covenant, restriction, option, right of first offer or refusal, lien, charge, security interest, or other encumbrance of any kind or nature whatsoever (including any agreement that provides for any of the foregoing) but excluding restrictions on the offer and sale of securities under Federal and state securities Laws.

"Material Adverse Effect" means (a) with respect to the Fresh, FT Data or ToGo, as applicable,, any change, event, development, occurrence, circumstance, or effect (collectively, an "Effect") that, in the aggregate, after taking into account any insurance recoveries or recoveries from other collateral sources has had or could reasonably be expected to have a material adverse effect on the business, assets, operations, results or condition (financial or otherwise) of the Fresh, excluding any adverse Effect attributable to any Effect resulting from any of the following: (i) changes in U.S. capital or financial markets in general, (ii) compliance with the terms of, or the taking of any action required by, this Agreement, (iii) any change in applicable Laws or the interpretation thereof, (iv) any actions required to be taken under applicable Laws, (v) any change in GAAP (being the United States generally accepted accounting principles, consistently applied) or other accounting requirements or principles, (vi) the commencement, continuation, or escalation of a war, material armed hostilities or other material international or national calamity, or act of terrorism, (vii) any natural disaster or force majeure events, and (viii) any failure to meet internal or published projections, forecasts, or revenue or earnings predictions for any period, except, in each case for clauses (i) through (vii), to the extent such changes or developments referred to therein has or would be reasonably likely to have a disproportionate impact on the Company relative to other Persons operating in the industry in which the Company operates in the Ordinary Course, and (b) with respect to the applicable company, any Effect that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations, results or condition (financial or otherwise) of such company.

"Merger" has the meaning set forth in the recitals to this Agreement.

"Merger Consent" has the meaning set forth in Section 3(a)(iv).

"Ordinary Course" means, with respect to any Person, the ordinary course of business of such Person with respect to scope and frequency, consistent with prior practice.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of association or incorporation or organization or limited partnership or limited liability company, and any joint venture, limited liability company, operating or partnership agreement, and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, regulations, shareholders agreements, voting agreements, statutory books and registers, resolutions and

similar documents, instruments, or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Parties" has the meaning set forth in the preamble to this Agreement.

"Person" means any individual, partnership, limited liability partnership, corporation, limited liability company, association, joint stock company, trust, estate, joint venture, unincorporated organization, or governmental entity (or any department, agency, or political subdivision thereof).

"Surviving Entity" has the meaning set forth in Section 1.1.

"Tax" means any federal, state, local, or foreign tax, charge, duty, fee, levy, or other similar assessment, including income, gross receipts, license, payroll, employment, excise, severance, stamp, documentary, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, abandoned property, sales, use, ad valorem, transfer, recording, registration, value added, alternative or add-on minimum, estimated or other tax, imposed by any Governmental Authority or taxing authority, and including any interest, penalty or addition thereto.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Transaction Documents" means this Agreement, the Certificate of Merger, the Joinders/LOT and all other documents or certificates required to be delivered by any Party pursuant to this Agreement.



20200511000185840 28/31 \$66.00
Shelby Cnty Judge of Probate, AL
05/11/2020 03:19:29 PM FILED/CERT

EXHIBIT B
FORM OF JOINDER, RELEASE AND LETTER OF
TRANSMITTAL
On File with Fresh



20200511000185840 29/31 \$66.00
Shelby Cnty Judge of Probate, AL
05/11/2020 03:19:29 PM FILED/CERT

EXHIBIT C
DISCLOSURE SCHEDULE
On File with Fresh



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Shelby Cnty Judge of Probate, AL
05/11/2020 03:19:29 PM FILED/CERT

Alabama
Sec. Of State

Merger
002-735
Date 5/06/2020
Time 15:59
200506 30 Pg

File \$100.00
Ackn \$0.00
Exp \$0.00

Total \$100.00
07/013



20200511000185840 31/31 \$66.00
Shelby Cnty Judge of Probate, AL
05/11/2020 03:19:29 PM FILED/CERT

Secretary of State
State of Alabama

I hereby certify that this is a
true and complete copy of the
document filed in this office
on May 6, 2020

DATE May 6, 2020
[Signature] RB
Secretary of State