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**CERTIFICATE OF FORMATION**

**OF**

**ABINGDON BY THE RIVER RESIDENTIAL ASSOCIATION, INC.**

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This instrument prepared by:  
SB Dev. Corp.  
3545 Market Place  
Hoover, Al 35226

**CERTIFICATE OF FORMATION  
OF  
ABINGDON BY THE RIVER RESIDENTIAL ASSOCIATION, INC.**

The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Law as set forth in Chapters 1 and 3 of the Alabama Business and Nonprofit Entity Code, *Ala. Code* (1975) §§ 10A-1-1.01 *et seq.* (the “Corporation Law”) and the Alabama Homeowners’ Association Act, *Ala. Code* (1975) § § 35-20-1 *et seq.* (the “Homeowners’ Act”), hereby adopts the following Certificate of Formation and certifies as follows:

1. **Name.** The name of the corporation is “Abingdon by the River Residential Association, Inc.” (the “Association”).

2. **Type of Entity.** The Association is being formed as an Alabama nonprofit corporation pursuant to the terms of the Corporation Law.

3. **Duration.** The period of duration of the Association shall be perpetual.

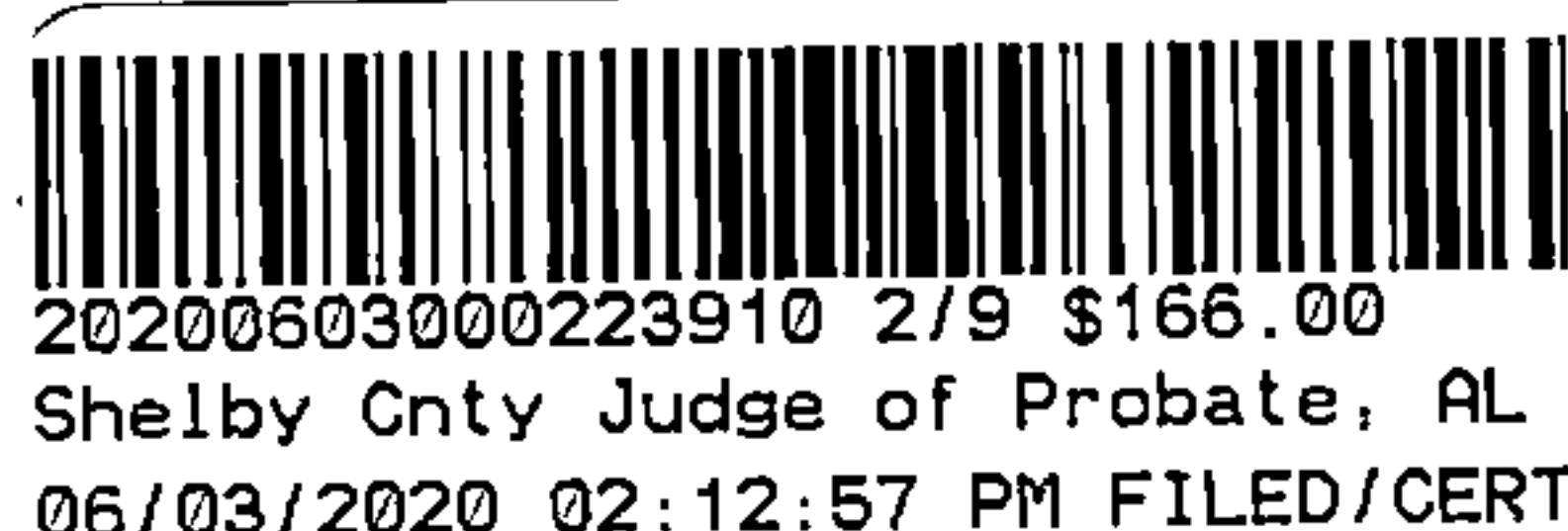
4. **Purposes and Powers.** The purposes for which the Association is organized for any lawful purpose or purposes and the powers of the Association are as follows:

(a) To provide for the efficient preservation of the appearance, value and amenities of the real property which is subject to Abingdon by the River Declaration of Covenants, Conditions and Restrictions dated as of June 2, 2020 (the “Declaration”), recorded or to be recorded in the Office of the Judge of Probate of Jefferson County and the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time. *Capitalized terms not otherwise specifically defined herein shall have the same meanings given to them in the Declaration.*

(b) To perform and carry out the acts, duties, responsibilities and conditions delegated to the Association in the Declaration, this Certificate of Formation, the Bylaws of this Association, and all amendments thereto (collectively, the “Governing Documents”), including, specifically, taking any action authorized or allowed to be taken by the Association in any of the Governing Documents.

(c) To own, lease, license, operate, purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, exchange, release and dispose of, either alone or in conjunction with others, real and personal property, tangible and intangible, of every kind, character and description.

(d) To enforce all of the terms and provisions of the Declaration and to make, establish, and enforce reasonable rules and regulations governing the administration, operation, and management of the Property.





(e) To make, levy, collect, and enforce Assessments, as provided in the Declaration, and to use and expend such assessments in the manner set forth in the Declaration.

(f) To employ personnel and contract for services, material, and labor, including contracting for the management of the Association.

(g) To purchase and maintain insurance for such coverages, with such insurance carriers, in such amounts, at such rates and with such deductibles as may be necessary for the protection of the Association, its officers, directors, and Members or as may be otherwise required in the Declaration.

(h) To enforce any of the provisions of the Declaration by legal and equitable actions as may from time to time be necessary.

(i) To enter into, make, and perform contracts of every kind for any lawful purposes without limit as to amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body politic.


(j) To carry on any other business in connection with the foregoing, to transact any or all lawful business for which corporations may be incorporated under the Corporation Law, as amended, and to have and exercise all powers necessary or convenient to effect the purposes of the Association in accordance with and subject to the terms and provisions of the Declaration.

(k) THIS ASSOCIATION DOES NOT CONTEMPLATE PECUNIARY GAIN OR PROFIT FOR THE MEMBERS THEREOF AND THE FUNDS OF THE ASSOCIATION, WHETHER RECEIVED BY GIFT OR OTHERWISE, REGARDLESS OF THE SOURCE THEREOF, SHALL BE EXCLUSIVELY USED IN THE PROMOTION OF THE BUSINESS OF THE ASSOCIATION, AS THE BOARD OF DIRECTORS MAY FROM TIME TO TIME DETERMINE.

5. **Initial Registered Office and Agent.** The location and mailing address of the initial registered office of the Association, and the name of its initial registered agent at such address, are as follows:

Jonathan Belcher  
3545 Market Street  
Hoover, Alabama 35226

6. **Nonstock and Nonprofit Status.** The Association shall have no capital stock, is not organized for profit, and does not contemplate pecuniary gain or profit to the Members. No part of the earnings of the Association shall inure to the benefit of any Member, individual, officer, or director. The Association does not contemplate the distribution of gains, profits, or dividends to the Members and is organized solely for nonprofit purposes.

  
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7. **Members and Voting Rights.**

(a) **Members.** The Members of the Association shall consist of all Owners. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. As used in this Certificate of Formation, the term "**Member**" shall mean the Owner of any Lot, as defined in the Declaration.

(b) **Voting Rights of Members.** The voting rights of the Members are set forth in the Bylaws.

8. **Directors.**

(a) **Number of Directors.** The affairs of the Association shall be managed by a Board of Directors (each member of which is hereinafter sometimes referred to individually as a "**Director**" and collectively as the "**Directors**" or "**Board of Directors**"). The number of Directors constituting the initial Board of Directors shall be three (3); thereafter, the number of Directors constituting the Board of Directors shall be as provided in the Bylaws. The names and addresses of each person who is to serve as an initial Director of the Association until their successors are elected and qualified or until such Directors are removed as provided in **Paragraph 8(b)** of this Certificate of Formation are as follows:

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
Dwight Sandlin	3545 Market Street Birmingham, AL 35226
Jonathan Belcher	3545 Market Street Birmingham, AL 35226
Scott Rohrer	3545 Market Street Birmingham, AL 35226

(b) **Election and Removal of Directors.** The members of the Board shall be elected and may be removed in accordance with the terms and provisions of the Bylaws.

(c) **Powers.** Except as may be otherwise provided to the contrary in the Declaration, this Certificate of Formation, or the Bylaws of the Association, all powers of the Association shall be exercised by or under authority of, and the business and affairs of the Association shall be managed under the direction of the Board of Directors.

(d) **Conflicts of Interest.** No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association, or entity in which one or more of its Directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest. Any Director of the Association or any corporation, firm, association, or entity of which any Director of the Association is a director or officer or is financially interested may be a party



to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that such relationship or interest in such contract or transaction shall be disclosed or known to the Board of Directors at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction and, if such fact shall be disclosed or known, any Director so related or interested may be counted in determining a quorum at such meeting and may vote on such matter or action with the same force and effect as if he were not so related or interested. Any director of the Association may vote on any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

9. **Incorporator.** The name and address of the incorporator is as follows:

Richard A. Johnson II  
3545 Market Place  
Hoover, AL 35226

10. **Distribution of Assets upon Dissolution.**

(a) Upon dissolution of the Association, after provision for creditors and payment of all costs and expenses of such dissolution, unless otherwise agreed to the contrary in the plan of distribution, all remaining assets shall of the Association be distributed among the Members of the Association, as tenants in common, with each Member's share of the assets to be determined in accordance with their respective voting rights, as set forth in the Bylaws.

(b) Dissolution of the Association shall be accomplished as set forth in the Act.

11. **Power of President and Vice Presidents to Execute Documents.** The President and each Vice President of the Association shall each have authority to execute all instruments, documents, and contracts on behalf of the Association.

12. **Indemnification of Officers, Directors, Employees and Agents.** In amplification and not in limitation of the provisions of applicable law:

(a) Pursuant to § 10A-20-16.01 *et seq.* and § 6-5-336 of the *Ala. Code*, 1975, as amended, all non-compensated directors, officers and other volunteers of the Association shall be immune from suit and shall not be subject to civil liability arising from the conduct of the affairs of the Association 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 Association shall indemnify, defend and hold harmless 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 Association), by reason of the fact that such Person is or was a director, officer, employee or agent of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such claim, action, suit or proceeding,



unless such Person acted intentionally or willfully against the best interests of the Association. 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 Association.

(c) The Association 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 Association to procure a judgment in its favor by reason of the fact that such Person is or was a director, officer, employee or agent of the Association against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interest of the Association, 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 such Person's duty to the Association 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 Paragraphs 12(b) and 12(c) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of such Person is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Paragraphs 12(b) and 12(c) above. Such determination shall be made (i) by the Board of Directors of the Association 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 (ii) if a majority of disinterested directors so directs, by independent legal counsel.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding upon receipt of an undertaking by or on behalf of the Person to repay such amount if and to the extent that it shall ultimately be determined that such Person is not entitled to be indemnified by the Association as authorized in this Paragraph 12. Such undertaking shall be an unlimited, unsecured general obligation of such Person and shall be accepted without reference to such Person's ability to make repayment.

(f) The indemnification authorized by this Paragraph 12 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 this Certificate of Formation, the Bylaws, agreement, vote of disinterested Directors or otherwise, both as to action in such Person's 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 of the Association (including any Person designated by the Board of Directors to serve as a committee member on an any committee established by the Board of Directors) and shall inure to the benefit of the heirs, executors and administrators of such Person. No amendment, modification, or repeal of this Paragraph 12 shall

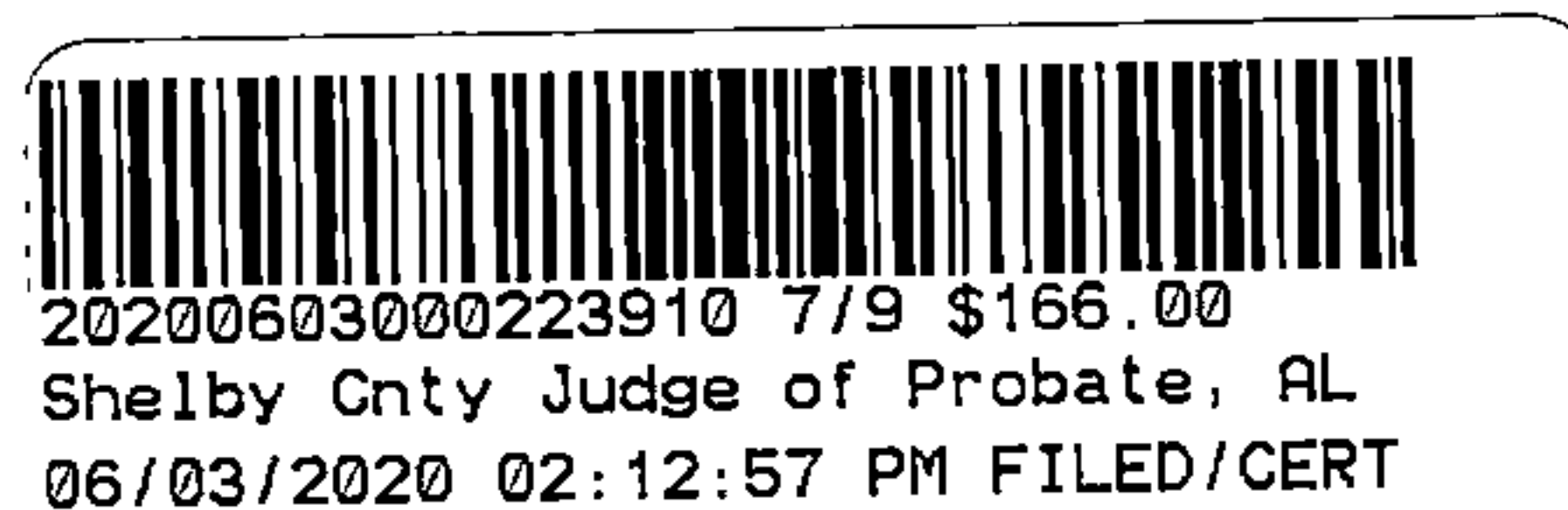
diminish the right to indemnification with respect to any claim, cause, or matter in any then pending or subsequent proceeding that is based in any material respect on any alleged action or failure to act prior to such amendment, modification or repeal.

(g) The Association shall purchase and maintain insurance on behalf of any Person who is or was a Director, officer, employee or agent of the Association (including any Person designated by the Board of Directors to serve as a committee member on any committee established by the Board of Directors) or is or was serving at the request of the Association as a Director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such Person and incurred by such Person in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify such Person against such liability under the provisions of this Paragraph 12.

13. **Amendment**. This Certificate of Formation may be amended at any time from time to time by the affirmative vote of all of the following: (a) a majority of the members of the Board of Directors, (b) a majority of the Members of the Association who are entitled to vote who are voting, either in person or by proxy, either (i) at a duly convened meeting of the Members held pursuant to the terms and provisions of the Bylaws or (ii) in a ballot vote held pursuant to the provisions of Section 2.09 of the Bylaws and (c) Developer, to the extent such amendment to this Certificate of Formation is proposed prior to the Turnover Date.

14. **Incorporation by Reference**. All of the terms, provisions, definitions, covenants, and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants, and conditions set forth in this Certificate of Formation and the Declaration, then the provisions of the Declaration shall at all times control.

*[The remainder of this page has been intentionally left blank]*





IN WITNESS WHEREOF, the undersigned sole incorporator has hereunto subscribed his name to this Certificate of Formation as of the 14 day of MAY, 2020.

Richard A. Johnson II

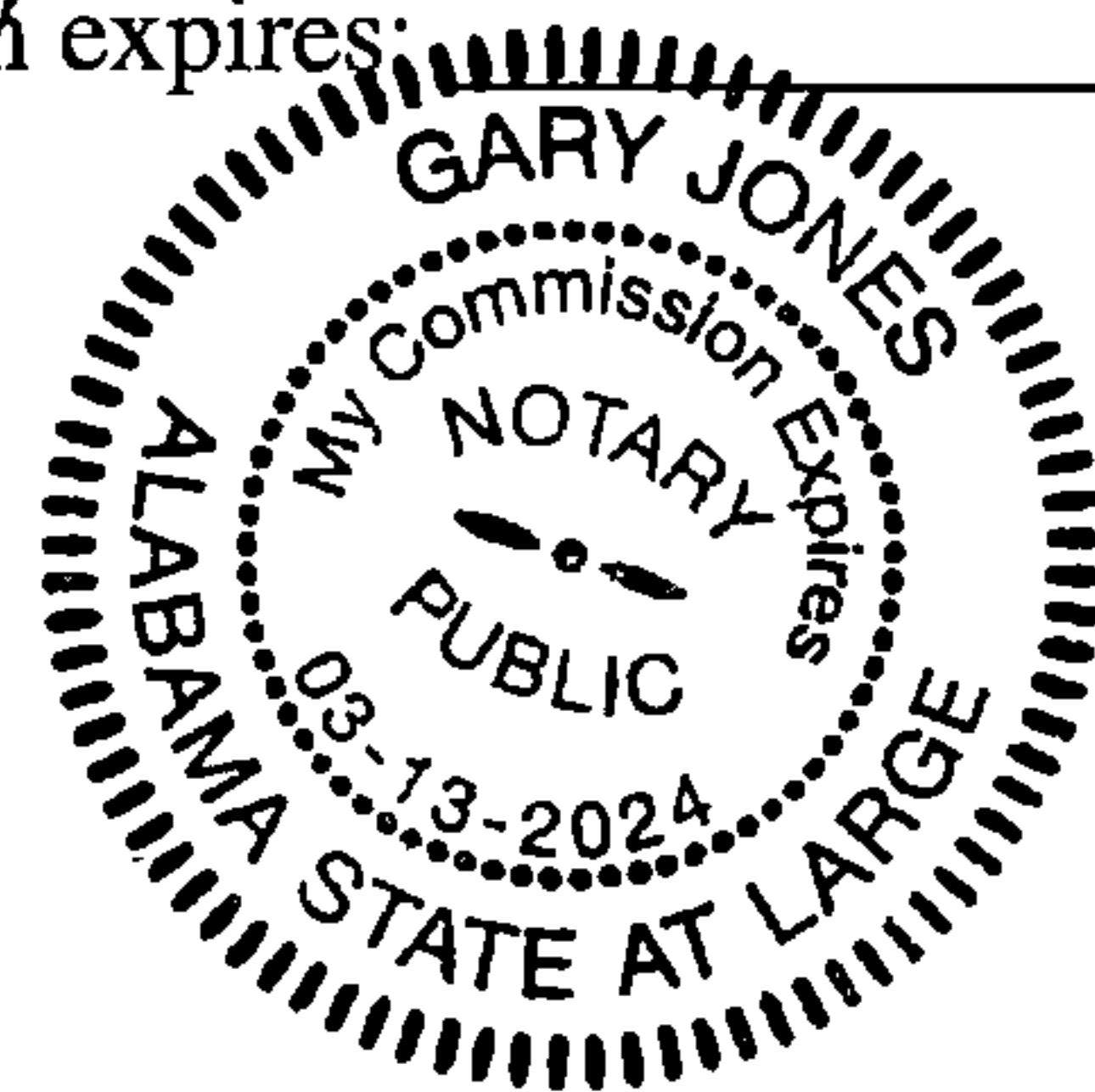
Richard A. Johnson II

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Richard A. Johnson II, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, executed the same voluntarily on the date the same bears date.

Given under my hand and seal this 14 day of MAY, 2020.

[Signature]  
Notary Public  
My commission expires: \_\_\_\_\_



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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:

**Abingdon by the River Residential Association, Inc.**

This name reservation is for the exclusive use of Richard Johnson II, 3545 Market Street, Birmingham, AL 35226 for a period of one year beginning April 24, 2020 and expiring April 24, 2021



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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.**

April 24, 2020

Date

*J. H. Merrill*

John H. Merrill

Secretary of State