
ABINGDON BY THE RIVER
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

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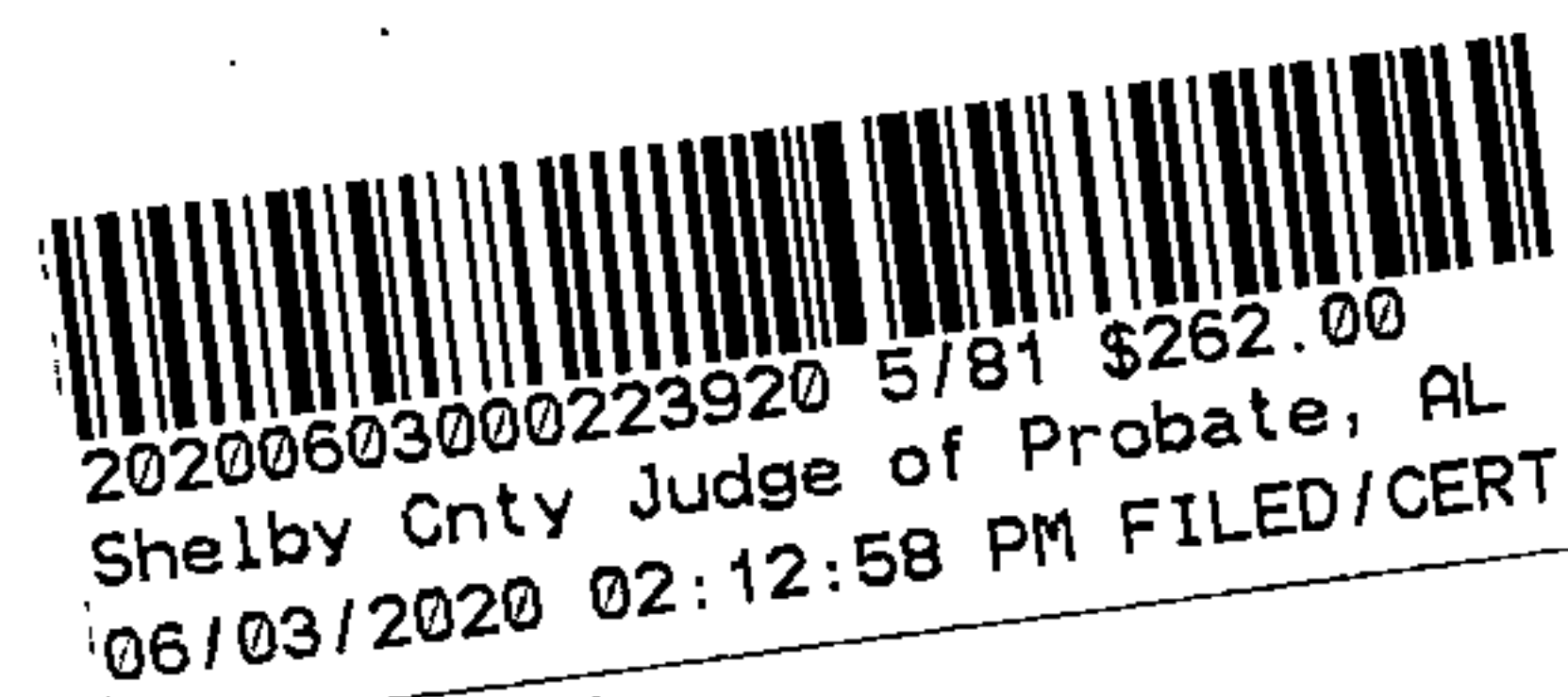
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EXHIBITS:

Exhibit A	Legal Description of Property
Exhibit B	Rules and Regulations
Exhibit C-1	Illustration of Owner Gravity Sewer Line Connection to County Gravity Sewer Main
Exhibit C-2	Illustration of Owner LPS Sewer Line Connection to County Low Pressure Sewer Main



ABINGDON BY THE RIVER
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS ABINGDON BY THE RIVER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 3 day of June, 2020 by **FLEMMING PARTNERS, LLC**, an Alabama limited liability company.

RECITALS:

Developer is the fee simple owner of the Property, as hereinafter defined.

Developer desires to own, develop, improve, lease and sell the Property for single-family residential housing purposes, subject to certain age restrictions restricting the occupancy of all Dwellings, as hereinafter defined, to persons 55 years of age or older as authorized and allowed by the Act, as hereinafter defined, and those certain easements, covenants, conditions, restrictions, requirements and obligations set forth herein in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration and maintenance of the Property and any Additional Property, as hereinafter defined, which may be added to this Declaration.

NOW, THEREFORE, in order to enhance and protect the value, amenities, attractions and desirability of the Lots, as hereinafter defined, and in furtherance of a general plan for the development, protection, maintenance, use, and sale of the Property, Developer does hereby declare that all of that certain real property situated in Jefferson County and Shelby County, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described in **Exhibit A** attached hereto and any of the Additional Property (but only to the extent that Developer submits any Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

ARTICLE I
DEFINITIONS

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.01 **ABINGDON BY THE RIVER**. The term "Abingdon by the River" shall mean and refer to the master planned, single-family residential use development which includes the Property and any Additional Property added to this Declaration.

1.02 ABINGDON BY THE RIVER COMMUNITY FACILITIES. The term "Abingdon by the River Community Facilities" shall mean and refer to that certain clubhouse facility, pool, garden area, maintenance or tool shed, and parking area adjacent thereto constructed or to be constructed within the Property for use by all Owners, Occupants and their respective Guests, subject to the provisions of Sections 3.05 and 4.06 below and such rules, regulations and requirements which the Association may adopt from time to time regarding the use of the same.

1.03 ACT. The term "Act" shall mean and refer to The Fair Housing Act (42 U.S.C. 3601-3619), and all amendments thereto, including, specifically, the Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109 Stat, 787), as the same may be amended from time to time.

1.04 ADDITIONAL PROPERTY. The term "Additional Property" shall mean and refer to any real property and any improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer or the Association may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below.

1.05 AFFILIATE. The term "Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term "control" (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise. For the purposes of this Declaration, Flemming Partners, LLC, an Alabama limited liability company, shall be deemed an Affiliate of Developer.

1.06 AMENITY FEE. The term "Amenity Fee" shall have the meaning given to such term in the Club Facilities Agreement.

1.07 ANNUAL AMENITY ASSESSMENT. The term "Annual Amenity Assessment" shall have the meaning given to such term in the Club Facilities Agreement.

1.08 ARC. The term or letters "ARC" shall mean the architectural review committee for the Association to be appointed pursuant to Article V hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.09 ARCHITECTURAL STANDARDS. The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of establishing policies, guidelines, and minimum requirements with respect to the design, architectural style and elements, construction, location, landscaping and other matters relating to the construction of any Improvements on a Lot. In addition, the term "Architectural Standards" shall also mean and include procedures adopted from time to time by the ARC for reviewing and approving all Dwellings, landscaping and any other Improvements which may be made to any Lot.

1.10 ASSESSMENT. The term "Assessment" shall mean, collectively, the Annual Assessments (as defined in Section 8.03(a) below), Special Assessments (as defined in Section 8.04 below), and Individual Assessments (as defined in Section 8.05 below).

1.11 ASSOCIATION. The term "Association" shall mean Abingdon by the River Residential Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

1.12 ASSOCIATION-MAINTAINED SEWER LINES. The term "Association-Maintained Sewer Lines" means, collectively, the Owner LPS Equipment on each LPS Lot and the Owner Gravity Sewer Line on each GSL Lot.

1.13 BOARD. The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Certificate of Formation and Bylaws.

1.14 BYLAWS. The term "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

1.15 CERTIFICATE OF FORMATION. The term "Certificate of Formation" shall mean and refer to the Certificate of Formation of the Association, as the same may be amended from time to time.

1.16 CITY. The term "City" shall mean and refer to the City of Hoover, Alabama, an Alabama municipal corporation.

1.17 CLUB FACILITIES AGREEMENT. The term "Club Facilities Agreement" shall mean and refer to that certain Club Facilities Agreement dated as June 3, 2020 between Developer and the Lake Wilborn Residential Association, Inc., an Alabama nonprofit corporation, which has been recorded contemporaneously herewith, as the same may be amended from time to time.

1.18 COMMON AREAS. The term "Common Areas" shall mean and refer to all real or personal property now or hereafter owned or maintained by the Association for the common use and enjoyment of the Owners and Occupants and shall include (regardless of whether legal title has been conveyed to the Association) (a) the Abingdon by the River Community Facilities, (b) all parks within the Property reflected on any Subdivision Plat, (c) all walkways, lighting and other improvements within any parks within the Property which are not located within (i) the property lines of any Lot or (ii) any rights-of-way of any public roadways, (d) all walls, fences, gates, entrances and entrance features, landscaping and landscaped or other areas and other improvements situated within the rights-of-way of any public roadways within the Property or immediately adjacent to any public roadways, including all medians within any roadways, whether the same are located within the boundaries of the Property or on or within the rights-of-way of any public roadways which may provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot (unless an easement for the same has been reserved or granted to (and accepted in writing by) Developer or the Association or is reflected on a Subdivision Plat executed by Developer or the Association) or which are maintained by any Governmental Authority), (e) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances including sanitary sewer pumping stations, which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers or Governmental Authority), (f) any mail kiosks within the Property (whether owned by the Association or by the United States Postal Service) and (g) any other areas or property designated as Common Areas by Developer (regardless of whether the same are owned by the Association).

1.19 COMMON EXPENSES. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.03(c) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.20 COMMUNITY FACILITIES AMENITY FEE. The term "Community Facilities Amenity Fee" shall have the meaning given to such term in Section 4.06 below.

1.21 COUNTY GRAVITY SEWER MAIN. The term "County Gravity Sewer Main" shall mean and refer to the gravity sewer main lines owned and maintained by the Jefferson County, Alabama Environmental Services Department and its successors and assigns situated within the rights-of-way of the roadways or easements within the Property.

1.22 COUNTY LOW PRESSURE SEWER MAIN. The term "County Low Pressure Sewer Main" shall mean and refer to the low pressure sewer main lines owned and maintained by the Jefferson County, Alabama Environmental Services Department and its successors and assigns situated within the rights-of-way of the roadways or easements within the Property.

1.23 DECLARATION. The term "Declaration" shall mean and refer to this Abingdon by the River Residential Declaration of Covenants, Conditions and Restrictions, together with all amendments thereto.

1.24 DEVELOPER. The term "Developer" shall mean Flemming Partners, LLC an Alabama limited liability company, and its successors and assigns.

1.25 DWELLING. The term "Dwelling", with an initial capital letter, shall mean and refer to any home or residence constructed for use as a single-family detached residential housing unit within any portion of the Property.

1.26 GOVERNMENTAL AUTHORITY. The term "Governmental Authority" shall mean and refer to any and all City, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any improvements thereto.

1.27 GSL LOT. The term "GSL Lot" shall mean and refer to any Lot which is connected to the County Gravity Sewer Main through an Owner Gravity Sewer Line.

1.28 GUESTS. The term "Guests" shall mean and refer to any natural persons entering onto any portion of the Property at the request or invitation of any Owner or Occupant. Guests shall include, without limitation, any and all family members and all agents, employees, servants, licensees, invitees and independent contractors of any Owners or Occupants. All actions or omissions of any Guests of an Owner or Occupant are and shall be deemed the actions and omissions of the Owner of such Lot.

1.29 IMPROVEMENT. The term "Improvement", with an initial capital letter, shall mean and refer to any Dwelling, structure or device constructed, erected or placed upon any Lot which in any way affects, alters or causes a change in the exterior appearance of any Lot or any Dwelling situated thereon. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, treehouses, playhouses, swing sets, trees, shrubbery, landscaping, fences, screening, walls, signs, flags, flag poles, water fountains, walls, signs, lighting systems, screen enclosures, statuary, tree houses, swing sets, landscaping, landscaping devices, paving, and any other artificial or man-made changes or alterations to the natural condition of any Lot and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Lot or Dwelling. "Improvements" shall also mean any exterior alterations or additions to any existing Dwelling or other structure situated on a Lot and any grading, excavation or fill on any Lot.



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1.30 LIVING SPACE. The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of any of the following areas of a Dwelling which are not heated and cooled by heating, ventilating and air conditioning equipment: "bonus" rooms in garages or attics, garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements. Following initial approval by the ARC of the minimum and maximum Living Space for any Dwelling, none of the foregoing described areas which are not heated and cooled by heating, ventilating and air conditioning equipment shall be enclosed or otherwise improved to create Living Space out of such areas unless (a) the same is approved by the ARC and (b) any additional Living Space created out of such areas will not result in the Dwelling exceeding the maximum Living Space limitations established for such Lot unless the same has been specifically approved in writing by the ARC.

1.31 LOT. The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any Subdivision Plat for any portion of the Property, each lot indicated thereon (other than any lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration.

1.32 LPS LOT. The term "LPS Lot" shall mean and refer to any Lot designated on any subdivision plats for the Property which, pursuant to any such subdivision plat, must be connected to the County Low Pressure Sewer Main through the use of Owner LPS Equipment.


1.33 MORTGAGE. The term "Mortgage", with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or any interest therein and which has been duly and properly recorded in the Probate Office.

1.34 MORTGAGEE. The term "Mortgagee", with an initial capital letter, shall mean and refer to the holder of any Mortgage.

1.35 OCCUPANT. The term "Occupant" shall mean and refer to any natural person who occupies, resides or lives in a Dwelling, whether such natural person constitutes the Owner of such Dwelling (or the Lot the same is situated) or the Guests or tenants of an Owner or Occupant who occupy, reside or live in any Dwelling. All actions or omissions of any Occupant are and shall be deemed the actions and omissions of the Owner of such Lot.

1.36 OWNER. The term "Owner", with an initial capital letter, shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

1.37 OWNER GRAVITY SEWER LINE. The term "Owner Gravity Sewer Line" shall mean and refer to the gravity sewer lateral line which the Owner of each GSL Lot will be required to construct and install on such Owner's GSL Lot which line will begin at a point outside of the Dwelling on such Owner's GSL Lot and run along and under such Owner's GSL Lot and connect to the County Low Pressure Sewer Main. Attached hereto as Exhibit C-1 and incorporated herein by reference is a drawing illustrating the Owner Gravity Sewer Line and its connection to the County Low Pressure Sewer Main. The Owner Gravity Sewer Line shall be owned by the Owner of each GSL Lot.


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1.38 OWNER LPS EQUIPMENT. The term "Owner LPS Equipment" shall mean and refer to the following which the Owner of each LPS Lot shall be required to install on such Owner's LPS Lot: a grinder pump, basin (reservoir), control panel, two valve boxes, a gravity sewer line from a point outside the Dwelling on such Owner's LPS Lot which is connected directly to the grinder pump and basin (reservoir), and a pressure sewer lateral line which connects the basin (reservoir) to a valve box within the sewer easement granted to Jefferson County, Alabama and its successors and assigns directly adjacent to the County Low-Pressure Sewer Main. Attached hereto as **Exhibit C-2** is a drawing illustrating the Owner LPS Equipment and its connection to the County Low-Pressure Sewer Main. The term Owner LPS Equipment shall not include the electrical wiring which shall connect the circuit breaker box inside a Dwelling on an LPS Lot to the outside control panel for the Owner LPS Equipment or for electricity which will provide electrical service to the Owner LPS Equipment ("Electrical Connections"). All of the Owner LPS Equipment and the Electrical Connections shall be owned by the Owner of each LPS Lot.

1.39 PERSON. The term "Person" with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

1.40 PROBATE OFFICE. The term "Probate Office" shall mean and refer to the Office of the Judge of Probate of Jefferson County, Alabama (the "Jefferson Probate Office") and/or the Office of the Judge of Probate of Shelby County, Alabama (the "Shelby Probate Office"), as applicable, and any successor thereto which serves as the official public registry for the public recording of real estate documents in Jefferson and Shelby Counties, Alabama.

1.41 PROPERTY. The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County and Shelby County, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to Section 2.02 hereof.

1.42 PURCHASER. The term "Purchaser" shall mean the first third party purchaser of any Lot who is not Developer or any Affiliate of Developer.

1.43 RULES AND REGULATIONS. The term "Rules and Regulations" shall mean and refer to the Abingdon by the River Rules and Regulations, as the same may be amended from time to time by the Board of Directors pursuant to the terms and provisions of Section 6.13 below. The initial Rules and Regulations are attached hereto as **Exhibit B** and are incorporated herein by reference.

1.44 SEWER MAINTENANCE EXPENSES. The term "Sewer Maintenance Expenses" shall mean and refer to all costs and expenses incurred by the Association to repair and replace the Association-Maintained Sewer Lines, including, without limitation, all costs and expenses charged by the Sewer Service Company and any other Persons engaged by the Association to monitor, inspect, repair and replace the Association-Maintained Sewer Lines, together with reserves established by the Association for future alterations, improvements, repairs, and replacements of any of the Association-Maintained Sewer Lines.

1.45 SEWER SERVICE COMPANY. The term "Sewer Service Company" shall mean and refer to the Person who is engaged from time to time by the Association to install, monitor, inspect, repair, and replace the Association-Maintained Sewer Lines.

1.46 SUBDIVISION PLAT. The term "Subdivision Plat" shall mean and refer to any subdivision plat for any portion of the Property and any Additional Property, if any, which may be added to the terms and provisions of this Declaration pursuant to Section 2.02 below which has been recorded in the Probate Office, together with any and all amendments thereto.

1.47 TURNOVER DATE. The term "Turnover Date" shall mean the later of (a) five (5) years from the date hereof or (b) the first to occur of the following: (i) the date on which Developer and any of its respective Affiliates cease to own any portion of Abingdon by the River or (ii) the date on which Developer elects, in its sole and absolute discretion, to relinquish (1) all rights to appoint and remove members of the Board pursuant to Section 4.02 below and (2) all voting rights in the Association reserved to Developer pursuant to Section 4.03(a) below.

ARTICLE II

PROPERTY SUBJECT TO THE DECLARATION

2.01 GENERAL DECLARATION. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and all Owners and Occupants of the Property and any Lots thereof. Furthermore, this Declaration shall apply only to the Property (and all Additional Property added to the terms and provisions hereof pursuant to the provisions of Section 2.02 below), but this Declaration shall not apply to any other real property owned by Developer or any Affiliates thereof unless the same is subjected specifically by written instrument to this Declaration.

2.02 ADDITIONAL PROPERTY. Subject to the remaining terms and provisions of this Section 2.02, Developer reserves the right, in its sole and absolute discretion, at any time and from time to time prior to the Turnover Date, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by the Association or any Owner, Occupant or Mortgagee of any Lot but must be consented to by the then owner of such Additional Property) and shall (a) refer to this Declaration and the recording information in the Probate Office for this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots within the Additional Property which are added and submitted to this Declaration so that there shall continue to be one vote in the Association per Lot within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, consents to the transfer and conveyance to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, then Declaration

may be amended solely by Developer in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of the Association or any Owner, Occupant or Mortgagee be obtained. From and after the Turnover Date, the Association, by the majority vote of the Board, may add Additional Property to the terms and provisions of this Declaration, without the consent or approval of any Owner, Occupant or Mortgagee, by a written instrument executed by the owner of the Additional Property being added to this Declaration and an officer of the Association.

2.03 RIGHT TO MODIFY RESTRICTIONS WITH RESPECT TO LOTS OWNED BY DEVELOPER. With respect to any Lot owned by Developer may, by deed, contract or other instrument filed for record in the Probate Office, modify the provisions of this Declaration as the same apply to any such Lot.

2.04 MUTUALITY OF BENEFIT AND OBLIGATION. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of each Lot within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.05 DEVELOPMENT OF PROPERTY. At any time prior to the Turnover Date, Developer shall have the right (without any requirement that the other party consent to or approve of the same), but not the obligation, to make improvements and changes to all Lots or Common Areas owned by Developer, including, without limitation, (a) changing the location of the boundaries of any Lots or Common Areas owned by Developer, (b) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (c) the installation and maintenance of any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Property, (d) converting and changing any Lots or Common Areas or any portions thereof owned by Developer into streets, roadways, paths, Common Areas or other uses and (e) exercise of the rights reserved in Sections 2.07 and 8.10 hereof removing or exempting any portion of the Property and any Lots from the terms and provisions of this Declaration. The exercise by Developer of any of the rights set forth in this Section 2.05 may be exercised solely by Developer without any requirement that the consent or approval of the Association or any Owners, Occupants or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer and its Affiliates may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer and its Affiliates, each in their sole and absolute discretion, elect to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.02 above.

2.06 SUBDIVISION. Developer and its Affiliates reserve the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more Subdivision Plats setting forth such information as Developer or any of its Affiliates may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds and drainage basins. Any such Subdivision Plats and any amendments thereto shall be binding on the portions of the Property indicated thereon as if such Subdivision Plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer and its Affiliates pursuant to this Section 2.06 may be exercised by Developer or its Affiliates without any requirement that the consent or approval of the other party, the Association or any Owners, Occupants or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots and other portions of the Property owned by Developer or its Affiliates, and (b) amend from time to time and at any time

Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property.

2.07 REMOVAL OF PROPERTY FROM DECLARATION. Notwithstanding anything provided in this Declaration to the contrary, at any time on or prior to the occurrence of the Turnover Date, Developer reserves the right, in its sole and absolute discretion, without the consent or approval of any Owner (other than the Owner of that portion of the Property being removed from the Declaration), Occupant, Mortgagee or the Association, to amend this Declaration in order to remove and exclude any real property from the definition of the Property and the terms and provisions of this Declaration. The rights reserved by Developer pursuant to this Section 2.07 shall include, without limitation, the right to amend from time to time and at any time Exhibit A to this Declaration to reflect the removal of any real property from the definition of Property, without being required to obtain the consent or approval of any Owner, Mortgagee or the Association.

ARTICLE III

EASEMENTS

3.01 RESERVATION AND GRANT OF GENERAL ACCESS AND MAINTENANCE EASEMENT. Developer does hereby establish and reserve for itself, its successors and assigns, and the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purposes of providing ingress to and egress from each Lot for (a) inspecting each Lot and any improvements thereon in order to determine compliance with the provisions of this Declaration and (b) the performance of the respective duties of Developer and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Dwelling on a Lot, the foregoing easement shall not be deemed to allow or grant any rights to Developer or the Association to enter into any Dwelling.

3.02 RESERVATION AND GRANT OF EASEMENT FOR UTILITIES. Developer does hereby establish and reserve for itself, its successors and assigns, and does hereby grant to the Association, its successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Lots and Common Areas, which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television, telecommunication or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property or other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property. The easements established, reserved and granted herein shall include the right of Developer, the Association, and their respective successors and assigns, to cut and remove trees, undergrowth shrubbery and other vegetation, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.02 to the contrary, (i) the utilization of any of the easements and rights established, reserved or granted pursuant to this Section 3.02 shall not be deemed to allow the exercise of any of the foregoing easement rights inside of any Dwellings situated on any Lot, (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.02 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility

service during the exercise of any rights established, reserved and granted herein and (iii) the establishment, reservation and grant of easements pursuant to this Section 3.02 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.02.

3.03 RESERVATION AND GRANT OF EASEMENTS WITH RESPECT TO COMMON AREAS.

(a) Developer does hereby establish and reserve for itself, and its successors and assigns, and does hereby grant to the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Improvements in and to any Lots and any improvements to the Common Areas, (ii) installing, maintaining, repairing and replacing any other improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) Developer does hereby establish and reserve for itself, and its successors and assigns, and does hereby grant to each other, the Association, and their respective successors and assigns, the permanent right to change, modify and realign the boundaries of any of the Common Areas, including the removal of the designation of Common Areas from any portion of the Property and the right to convey such redesignated Common Areas to any Owners or third parties. Developer does hereby establish and reserve for itself and its successors and assigns, and does hereby grant to the Association and their respective successors and assigns, (i) a permanent and perpetual non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all improvements thereon for such purposes as Developer deems appropriate, (ii) the right to grant to third parties rights to use the Common Areas and (iii) the right to grant to third parties, other real property, and the owners of such real property, rights to use any of the Common Areas. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.04 GRANT OF EASEMENTS WITH RESPECT TO COMMON AREAS.

(a) Subject to the rights reserved herein by Developer and the remaining terms and provisions of this Declaration, Developer does hereby grant to each Owner, Occupant and Guest the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas, in common with Developer and its successors and assigns and any other Persons having any rights or interests therein. Subject to the terms and provisions of Sections 3.04(b), 3.04(c) and 3.05 below, the easement and rights granted pursuant to this Section 3.04(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot. The easement and rights granted pursuant to this Section 3.04(a) may not be severed, transferred, assigned, or otherwise alienated by any Owner or Occupant separate or apart from a Lot.

(b) Notwithstanding anything provided in this Declaration to the contrary, Developer does hereby establish and reserve for itself and its successors and assigns the permanent, perpetual and non-exclusive right and easement to use and enjoy all of the Common Areas in common with all Owners, Occupants and Guests and any other Persons having any rights or interests therein. Furthermore, Developer reserves the right and privilege to grant to other Persons the right to use and enjoy any of the Common Areas on such terms and conditions as Developer may, in its sole and absolute discretion, determine to be applicable or appropriate.

(c) The rights, privileges and easements granted to all Owners, Occupants and Guests pursuant to this Section 3.04 to use and enjoy the Common Areas shall be subject to the following limitations and restrictions: (i) the use and enjoyment of the Common Areas shall be subject to the terms and provisions of Section 3.05 below and any and all Rules and Regulations adopted from time to time by the Association and (ii) may be suspended or permanently revoked by either Developer or the Association with respect to any Owner or Occupant who (1) individually or as a result of the acts or omissions of the Guests or Occupants of any Owner's Lot or Dwelling violates any of the rules and regulations applicable to the use and enjoyment of the Common Areas or (2) fails to timely pay all Assessments (and any other charges) due and payable by such Owner or Occupant to the Association pursuant to the terms and provisions of this Declaration.

(d) Notwithstanding anything provided herein to the contrary, Developer reserves the right, in its sole and absolute discretion, to transfer and convey any or all of the Common Areas to the Association, in which event, upon the assumption by the Association of all of the obligations of Developer hereunder, Developer shall thereafter be released from any further obligation or liability under this Declaration with respect to such Common Areas.

3.05 RIGHTS AND RESTRICTIONS REGARDING USE OF ABINGDON BY THE RIVER COMMUNITY FACILITIES.

(a) Notwithstanding anything provided in this Declaration to the contrary, access to and the use of the Abingdon by the River Community Facilities (i) shall be subject to any and all rules and regulations established from time to time by the Association, (ii) may be limited by the Association to only the Occupants, (iii) may limit, restrict or prohibit any Guests, (iv) may be limited or restricted by the Association as to the frequency of use by Guests of any Occupant and/or the number of Guests which any Occupant may allow to use the Abingdon by the River Community Facilities, (v) may be suspended or permanently revoked by the Association as to Owner, Occupant or Guest who (1) individually or as a result of the acts or omissions of the Guests of any Owner or Occupant violates any of the rules and regulations applicable to the use and enjoyment of the Abingdon by the River Community Facilities or (2) fails to timely pay any charges or fees due and payable by such Owner or Occupant to the Association and (vi) shall be subject to any fees which may be charged from time to time by the Association for the use of the Abingdon by the River Community Facilities by Guests of any Owner or Occupant.

(b) Notwithstanding anything provided to the contrary in this Section 3.05, any Person who damages or destroys any portion of the Abingdon by the River Community Facilities or any of its furniture, furnishings or appurtenances shall be obligated to pay to the Association on demand all costs and expenses paid or incurred by the Association to repair or restore any damage to the Abingdon by the River Community Facilities or any of the furniture, furnishings or appurtenances thereto.

(c) Subject to the provisions of Sections 3.05(a) and 3.05(b) above, the easements and rights granted pursuant to this Section 3.04 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to a Lot. The easements granted pursuant to this Section 3.05 may not be severed, transferred, assigned, or otherwise alienated by any Owner or Occupant separate or apart from a Lot.

3.06 RESERVATION AND GRANT OF EASEMENTS FOR SIGNS, WALKS, TRAILS, WALLS, AND FENCES.

(a) Developer does hereby establish and reserve for itself, and its successors and assigns, and does hereby grant to the Association, and its successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot and any public roadway which is

directly adjacent to and abuts such Lot for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs and related improvements; provided, however, that Developer and the Association shall **not** have any obligation to construct any of the foregoing improvements.

(b) Developer does hereby establish and reserve for itself, and its successors and assigns, and does hereby grant to the Association, and its successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Lot which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm and landscaping around the perimeter boundary of the Property; provided, however, that (i) Developer and the Association shall **not** have any obligation to construct any such perimeter wall, fence, mound or berm or landscaping and (ii) to the extent Developer or the Association desires to exercise the easement rights reserved or granted in this Section 3.06(b), then Developer and the Association shall each have the further right, at any time and from time to time, to alter, change, modify, terminate and remove any improvements constructed by Developer or the Association on any portion of the Property pursuant to this Section 3.05(b).

3.07 RESERVATION AND GRANT OF ENVIRONMENTAL EASEMENT. Developer does hereby establish and reserve for itself, and its successors and assigns, and does hereby grant to the Association, the ARC and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established, reserved and granted herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any watershed, soil erosion, storm water discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the Association or the ARC of the rights reserved or granted in this Section 3.07 shall not unreasonably interfere with the use or occupancy of any Dwelling.

3.08 NO IMPLIED EASEMENTS. No easements for light, air or view are created in favor of any Lot or any Dwelling situated on any Lot and no such easements shall be implied from any of the terms and provisions of this Declaration.

ARTICLE IV **ASSOCIATION**

4.01 MEMBERSHIP. The Owner of each Lot shall be a member of the Association. For purposes of determining membership in the Association, only one (1) membership in the Association shall be allowed per each Lot, regardless of the number of Dwellings situated on any Lot. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot within the Property owned by Developer, (b) in the event any Lot is owned by more than one (1) person, then the Owner of such Lot shall, by written notice to the Board, designate only one (1) representative to serve as a member of the Association, which representative shall exercise all voting rights attributable to the Lot owned by such Owner and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of

fee title to any Lot (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership in, or the rights and benefits of, the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Certificate of Formation, and the Bylaws.

4.02 BOARD. The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the Turnover Date, the number of members of the Board shall increase to five (5) and the Owners shall have the exclusive right to appoint and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot, vests in Developer the sole and absolute authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

4.03 VOTING RIGHTS.

(a) **Notwithstanding anything provided to the contrary in this Declaration, the Certificate of Formation or the Bylaws, Developer shall, subject to the remaining terms and provisions of this Section 4.03(a), have the sole and exclusive right to exercise all voting rights in the Association until the Turnover Date;** provided, however, that (i) any Special Assessments must be approved by the Owners in accordance with the terms and provisions of Section 8.04 below and (ii) certain amendments to this Declaration are subject to the terms and provisions of Sections 10.02 and 10.04 below. Each Owner, by acceptance of a deed to any Lot, shall be deemed to have irrevocably and unconditionally agreed to the foregoing terms and provisions of this Declaration and shall further be deemed to waive any and all voting rights in the Association prior to the Turnover Date other than as specifically set forth in Sections 8.04, 10.02 and 10.04 hereof.

(b) With respect to those two (2) matters described in Section 4.03(a) above which must be approved or voted on by the Owners prior to the occurrence of the Turnover Date and at all times following the Turnover Date, the Owner of each Lot who is "in good standing", as defined in the Bylaws, shall be entitled to one (1) vote in any matter submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot owned and, to the extent any Lot contains more than one Dwelling, then such Lot shall be entitled to only one (1) vote regardless of the number of Dwellings situated on such Lot. Such voting rights shall continue to apply to each Lot upon the addition of any of the Additional Property to this Declaration. Only those Owners who hold legal title to a Lot shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.03, at all times prior to and after the Turnover Date, Developer shall be deemed the Owner of, and entitled to, all voting rights attributable to any Lots owned by either of them.

(c) Each Owner, by acceptance of a deed to a Lot, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.05 above or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted.

(d) Notwithstanding anything provided herein to the contrary, the Association shall have the right to suspend any Owner's voting rights or privileges in the Association pursuant to the terms and provisions of this Section 4.03(d). To the extent any Owner is not "in good standing", as defined in the Bylaws, then the voting rights of such Owner shall be suspended and shall not be counted or included in determining whether a quorum is present or whether the applicable number of votes have been cast in any vote of the Owners, as more particularly described and provided in the Bylaws.

4.04 DUTIES AND POWERS OF ASSOCIATION.

(a) In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The powers and authority granted herein and in the Certificate of Formation and Bylaws of the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners. Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property.

(b) In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be Affiliates of Developer, such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association shall be part of the Common Expenses. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically reserved to the Board or the officers of the Association by this Declaration, the Certificate of Formation or the Bylaws. Such manager may be any Person and may be bonded in such manner as the Board may require, with the cost of such bond to be part of the Common Expenses. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal, accounting and other professional services as are necessary or desirable in connection with the administration and operation of the Property and the Association or the enforcement of this Declaration, the Certificate of Formation and the Bylaws of the Association.

4.05 MEETINGS OF MEMBERS OF ASSOCIATION. Annual and special meetings of the Owners (*i.e.*, members of the Association) shall be held in accordance with the terms and provisions of the Bylaws.

4.06 ABINGDON BY THE RIVER COMMUNITY FACILITIES.

(a) The Association, acting through the Board, shall have the right, at its option, to elect to provide the Abingdon by the River Community Facilities, in which event the following terms and provisions shall be applicable to all Owners and the Association:



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(i) At the closing of the purchase by the first Purchaser of any Lot, such first Purchaser and each subsequent Owner of such Lot thereafter shall be obligated to pay to the Association a fee (individually, an “Community Facilities Amenity Fee” and collectively, the “Community Facilities Amenity Fees”) in such amounts as may be determined (and changed) from time to time by the Board, which Community Facilities Amenity Fees shall be utilized by the Association in accordance with the remaining terms and provisions of this Section 4.06(a). The Community Facilities Amenity Fee charged by the Association to the first Purchaser of a Lot may be greater than or less than the fee charged to any subsequent Owners of such Lot. The amount of the Community Facilities Amenity Fee shall be determined (and shall be subject to change from time to time) by the Board, in its sole and absolute discretion;

(ii) Subject to the provisions of Section 4.06(a)(iv) below, all Community Facilities Amenity Fees collected by the Association shall be utilized by the Association to pay for (1) the costs of constructing, installing, obtaining and providing the Abingdon by the River Community Facilities which the Association determines, in its sole and absolute discretion, to construct, install, obtain or provide for the benefit of the Owners, (2) any other costs and expenses incurred by the Association in connection with the operation, use, maintenance, repair, upkeep and replacement of any Abingdon by the River Community Facilities and (3) any of the other uses or purposes specified or authorized in this Section 4.06(a);

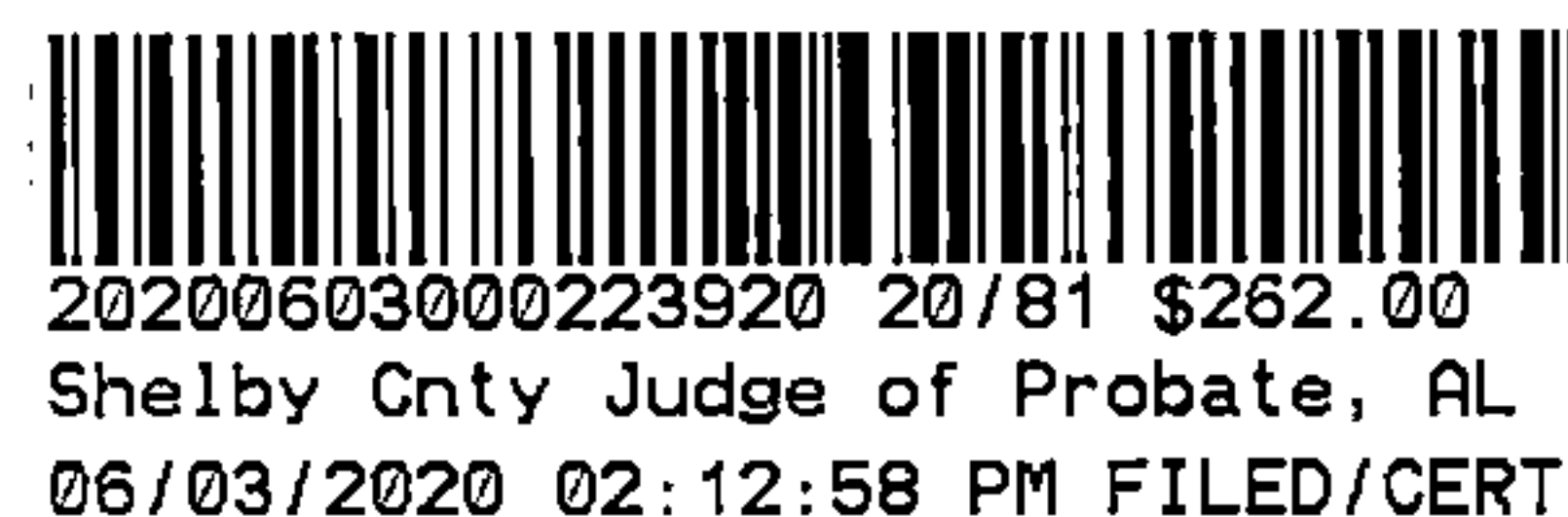
(iii) The Association, acting through the Board, shall determine both the time(s) at which any Abingdon by the River Community Facilities will be constructed and what types of Abingdon by the River Community Facilities will be constructed. Developer and the Association do not make any representations or warranties concerning what the Abingdon by the River Community Facilities will consist of or when any Abingdon by the River Community Facilities will be constructed or completed by the Association. All decisions concerning whether the Association will undertake the construction or installation of any Abingdon by the River Community Facilities, the determination and collection of Community Facilities Amenity Fees, what the Abingdon by the River Community Facilities will consist of and when construction of any of the Abingdon by the River Community Facilities will be commenced or completed, will be made by the Board;

(iv) All Community Facilities Amenity Fees collected by the Association shall be retained by the Association in a separate account, separate and apart from the other funds of the Association. The Community Facilities Amenity Fees paid to the Association shall be utilized solely for the following purposes and in the order set forth below:

(1) First to pay in full all costs to construct, install, obtain, and provide Abingdon by the River Community Facilities;

(2) Second, to extent Annual Assessments are insufficient to pay the same, to pay the costs to own, operate, use, maintain, repair, upkeep and replace the Abingdon by the River Community Facilities;

(3) Third, to establish reserves for future Abingdon by the River Community Facilities or for the alteration, improvement, operation, use, maintenance, repair, upkeep, and replacement of the Abingdon by the River Community Facilities;



(4) Fourth, the Board may, in its sole discretion, elect to use the Community Facilities Amenity Fees to pay any Common Expenses incurred by the Association from time to time; and

(5) Fifth, the Board may, in its sole discretion, elect to apply any portion of the Community Facilities Amenity Fees then held by the Association as a credit against any subsequent years' Annual Assessments due and payable by any Owners;

(v) The costs and expenses of operating, maintaining and repairing any of the Abingdon by the River Community Facilities shall constitute Common Expenses which shall be paid by the Owners through the payment of Annual Assessments in the manner provided in Section 8.03 below; and

(vi) The Association may engage Developer or any of its Affiliates to construct the Abingdon by the River Community Facilities, in which event the Community Facilities Amenity Fees shall be paid to the party constructing any of the Abingdon by the River Community Facilities (which payment may include any costs incurred by any such parties in constructing the Abingdon by the River Community Facilities which have not been previously reimbursed to any such parties) to construct, install, and furnish the Abingdon by the River Community Facilities.

(b) The Community Facilities Amenity Fees shall constitute Individual Assessments which, if not timely paid to the Association by any Owner, shall be enforceable by the Association in the manner set forth in Article VIII below.

(c) The Association may elect to suspend the collection of Community Facilities Amenity Fees at any time and may exempt any Lots or Dwellings from the payment of Community Facilities Amenity Fees at any time.

(d) The Board, shall have the right, from time to time, to adopt as part of the Rules and Regulations, additional rules and regulations for the use of any of the Abingdon by the River Community Facilities, including, without limitation: authorizing third parties who are not Owners to utilize any of the Abingdon by the River Community Facilities on such terms as the Board may, in its sole and absolute discretion, determine; adopting limitations or restrictions on the number of (and frequency of use by) Guests of Owners who may use the Abingdon by the River Community Facilities; limiting the use of certain of the Abingdon by the River Community Facilities only to the Occupants and immediate family members of any Owners; establishing hours and days that the Abingdon by the River Community Facilities will be open and available for use; requiring an Owner to be responsible for any damages to the Abingdon by the River Community Facilities caused by such Owner or such Owner's Occupants or any of their respective Guests; suspending or revoking the privileges of any Occupant or the Guests of any Occupant to use any of the Abingdon by the River Community Facilities pursuant to the provisions of Article XII below; and such other rules and regulations which the Board may from time to time adopt, including, without limitation, adopting rules and regulations for use of the Abingdon by the River Community Facilities for private parties sponsored by an Owner and establishing fees and charges for such private parties.

(e) The obligations of all Owners to pay Community Facilities Amenity Fees and any other fees, costs and expenses described in Sections 4.06(a) and 4.06(b) above shall be mandatory as to all Owners and no Owner shall have the right or option to not pay any such fees or expenses even if such Owner does not utilize all or any of the Abingdon by the River Community Facilities.

4.07 INTERESTED TRANSACTIONS. The Association may obtain materials or services from Developer or its Affiliates in connection with the management of the Association as herein contemplated; provided that the compensation for such materials or services is, in the opinion of the Board, comparable with the compensation of any non-affiliated third party providing similar materials or services which can be reasonably made available to the Association.

4.08 INDEMNIFICATION. The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding, including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) harmless from and against any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) may be entitled, including anything provided to the contrary in the Certificate of Formation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

4.09 TURNOVER.

(a) On or prior to the occurrence of the Turnover Date, all Common Areas, if any, owned by either Developer or its Affiliates shall be transferred and conveyed to the Association by quitclaim deed. Developer or its Affiliates may, each in their sole and absolute discretion, elect to transfer and convey to the Association by quitclaim deed any other real property owned by any of them at any time on or prior to the occurrence of the Turnover Date. Notwithstanding the foregoing, Developer or its Affiliates shall, at such party's sole cost and expense, cause any real property conveyed to the Association to be conveyed free and clear of all liens and encumbrances other than taxes for the then current year and all subsequent years thereafter, the terms and provisions of this Declaration and all other easements, restrictions, rights-of-way, reservations and other matters of record and such other terms, covenants and agreements as may be required by the party making such conveyance (which may include, by way of illustration, but not limitation, the reservation of easements and other rights as to such real property conveyed by such party to the Association). The Association, by execution of this Declaration, agrees to accept conveyances by quitclaim deeds of any and all real property which may be conveyed to it by Developer or its Affiliates and, if requested by Developer or any of its Affiliates, from any builders or developers of any portion of the Property and all such real property shall thereafter constitute and be deemed

to be part of the Common Areas. In addition, on or before the Turnover Date, Developer and its Affiliates shall transfer and assign to the Association, and the Association shall accept and assume, all of such party's rights and obligations under any and all agreements entered into by Developer or its Affiliates on behalf of the Association or which benefit the Association. **Developer and its Affiliates do not make, and have not made, any representations or warranties, either express or implied, as to the physical condition of any real or personal property which may be conveyed by Developer or its Affiliates to the Association and the Association shall accept any such real or personal property in its then "AS IS" condition, "WITH ALL FAULTS".**

(b) Following the election of the Board by the Members after the Turnover Date in accordance with the terms of the Bylaws, Developer shall deliver to the newly elected Board the information required by *Ala. Code* (1975) Section 35-20-10.

ARTICLE V

ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

5.01 **COMMITTEE COMPOSITION.** The ARC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below. The persons designated to serve on the ARC may, but shall not be required to be, Owners or Occupants. The regular term of office for each member of the ARC shall be three (3) years, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.02 below.

5.02 **APPOINTMENT AND REMOVAL OF ARC MEMBERS.**

(a) **DEVELOPER RESERVES THE RIGHT AT ALL TIMES PRIOR TO THE OCCURRENCE OF THE TURNOVER DATE TO APPOINT AND REMOVE ALL MEMBERS OF THE ARC.** Any person appointed as a member of the ARC by Developer may be removed, with or without cause, at any time by Developer. In the event of the death or resignation of a member of the ARC who has been appointed by Developer, then the Developer shall appoint a substitute member of the ARC to fill such vacancy.

(b) Developer reserves the right, at any time prior to the occurrence of the Turnover Date, to elect, in a written notice given to the Association, to no longer retain the exclusive rights to appoint and remove members of the ARC as set forth in Section 5.02(a). Following the giving of such written notice by Developer to the Association, the Board shall, at all times thereafter, have the right to appoint and remove all persons who will serve on the ARC. Any person appointed as a member of the ARC by the Board may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC who has been appointed by the Board, then the Board shall appoint a substitute member of the ARC to fill such vacancy. Any person appointed by the Board to serve on the ARC shall be deemed an agent of the Association. The terms and provisions of this Section 5.02(b) shall not be effective until such time as Developer elects, in its sole and absolute discretion, to relinquish the right to appoint and remove members of the ARC, which election must be evidenced by a written notice provided by Developer to the Association in accordance with the terms and provisions of this Section 5.02(b).

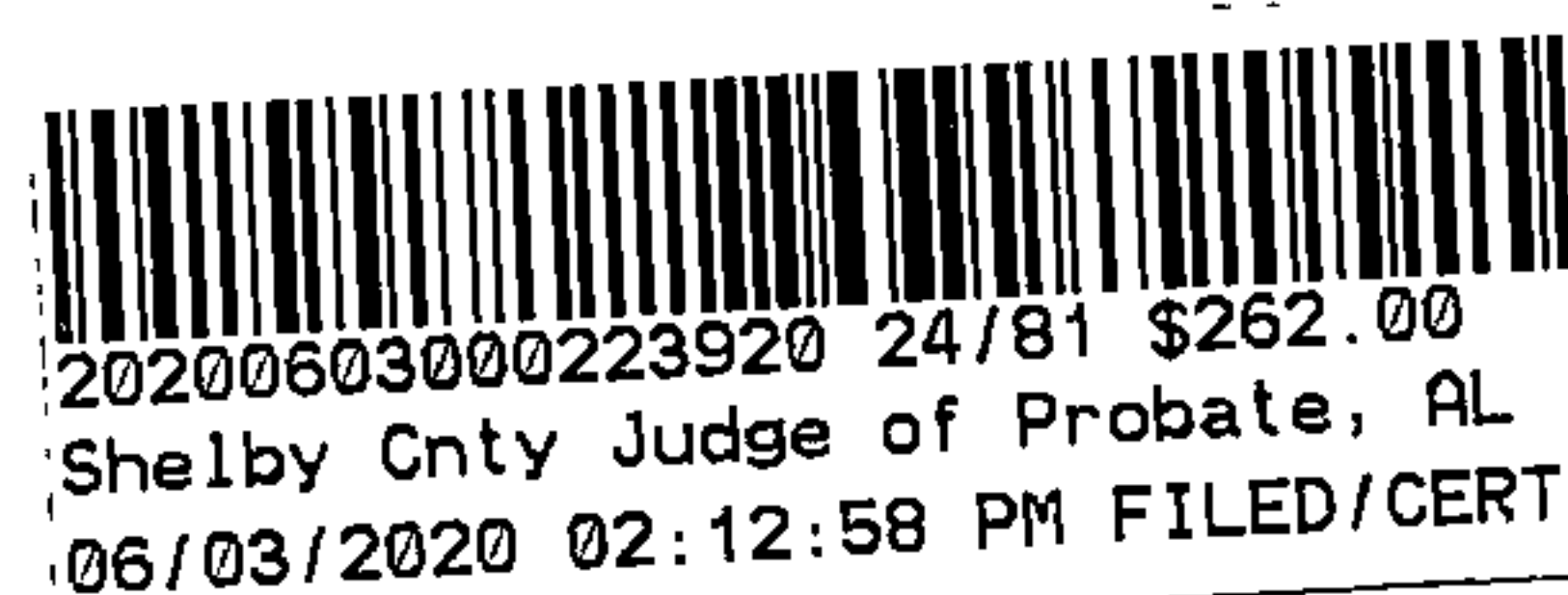
5.03 **PROCEDURE AND MEETINGS.** The ARC shall elect a chairman and he or her, or in his or her absence, any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman of the ARC and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the total number of members of the ARC shall

constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

5.04 ARCHITECTURAL STANDARDS. The ARC is hereby authorized to promulgate and amend and modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and any other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards and any and all amendments thereto adopted from time to time by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

5.05 APPROVAL OF PLANS AND SPECIFICATIONS.

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OTHER THAN BY DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, PLAY EQUIPMENT, AWNINGS, WEATHER VANES, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST OR SERVANT'S QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION TO AN EXISTING DWELLING, GARAGE OR OTHER STRUCTURE ON A LOT BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE), UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. NO INTERIOR PORTIONS OR AREAS WITHIN A DWELLING OR OTHER STRUCTURES LOCATED ON A LOT WHICH DO**



NOT CONSTITUTE LIVING SPACE MAY BE CONVERTED INTO LIVING SPACE UNLESS THE ARC, IN ITS SOLE AND ABSOLUTE DISCRETION, APPROVES THE SAME.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications for, and the construction of, all Dwellings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Dwelling or other Improvements on any Lot, the Owner thereof shall submit to the ARC two (2) copies of the plans and specifications and related data for all such Improvements, which shall include the following:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives, and walkways and their relation to the boundaries of any Lot;

(ii) A foundation plan, floor plan, landscape plan, and exterior elevations of the Dwellings as they will actually appear after all back-filling and landscaping is done from finished-ground up;

(iii) A specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the ARC is unfamiliar;

(iv) The name and address of the Owner's contractor who will construct any Dwelling or other Improvements on the Lot; and

(v) The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to such address as may be established by the ARC from time to time.

(c) The ARC may, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for Abingdon by the River. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the second copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within any Dwellings situated on such Owner's Lot without the necessity or requirement that

the approval or consent of the ARC be obtained so long as (i) such improvements and alterations do not affect the exterior appearance of such Dwelling and (ii) the Living Space within such Dwelling is not increased.

(d) The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot and the compliance with all of the terms, conditions and provisions of this Declaration and interest, if any, earned on said deposit shall belong to and remain the property of the Association. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her Occupants and their respective Guests. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her Occupants and their respective Guests fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her Occupants and their respective Guests; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's builder, to execute a storm water discharge and soil erosion indemnity in favor of the ARC, the Association and Developer.

(e) In the event the ARC fails to approve in writing any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, then the plans and specifications so submitted to the ARC will be deemed to have been disapproved.

(f) Any revisions, modifications or changes in any plans and specifications previously approved by the ARC must be approved by the ARC in the same manner specified above.

(g) If construction of the Dwelling or any Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footings and otherwise commencing framing and other related construction work) within one (1) year of approval by the ARC of the plans and specifications for such Dwelling or other Improvements, then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all plans and specifications for any Dwelling or other Improvements to the ARC for approval in the same manner specified above.

(h) **Each Owner acknowledges and agrees that the City will not issue building permits for any Improvements on a Lot until such time as the ARC has approved the plans and specifications for such Improvements.**

5.06 LANDSCAPING APPROVAL. In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance

of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner (other than by Developer) on any Lot unless and until landscaping plans therefore have been submitted to and approved by the ARC. Notwithstanding the foregoing, an Owner may periodically remove, change, plant, and replant annual flowers in beds on such Owner's Lot designated for annual flowers (as shown on the landscaping plans approved by the ARC).

5.07 CONSTRUCTION WITHOUT APPROVAL. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.12 below.

5.08 INSPECTION. The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

5.09 SUBSURFACE CONDITIONS. The Property is located in an area which includes underground mines, tunnels, sinkholes, and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot shall not be construed in any respect as a representation or warranty by the ARC, Developer or any of Developer's Affiliates to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvements thereon. Each Owner, for such Owner and all Occupants of any Improvements situated on the Lot owned by such Owner, does hereby irrevocably and unconditionally waive and release Developer, its Affiliates, the ARC, the Association and each respective agent, employee, representative, shareholder, member, manager, partner, officer, director, or the holder of any ownership or financial interest in any of the foregoing entities or committees, and their respective successor and assigns, of and from any and all damage, loss, action, cause of action, liability, cost, expense or prejudice suffered, claimed, paid or incurred by any Owner or Occupant of such Owner's Lot or any Dwellings or other Improvements constructed thereon on account of the use of fill dirt or the possibility that underground mines, tunnels, sink holes and other subsurface conditions which may result in sinkholes or other types of ground subsidence exist on, upon or under any of the Lots.

5.10 LIMITATION OF LIABILITY. Notwithstanding anything provided herein to the contrary, (a) neither Developer, its Affiliates, the ARC, the Association, nor any agent, employee, representative, member, shareholder, member, manager, partner, officer or director of any of the foregoing entities or committees shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot, does hereby irrevocably and unconditionally waive and release Developer, its Affiliates, the ARC, the Association and each agent, employee, representative, member, shareholder, member, manager, partner, officer and director of any of the foregoing entities or committees from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to any Owner, Occupant or the respective Guests of

any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective Guests of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or any Improvements situated thereon.

5.11 COMMENCEMENT AND COMPLETION OF CONSTRUCTION. As provided in Section 11.03 below, each Owner must commence and complete construction of a Dwelling on such Owner's Lot within the time periods set forth in Section 11.03 below. Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction (unless an extension is granted in writing by the ARC), such completion to be evidenced by a final certificate of occupancy issued by the appropriate Governmental Authorities.

5.12 ENFORCEMENT AND REMEDIES. In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective Guests of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to remedy or extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or Occupant or their respective Guests to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Sections 8.01 and 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.12 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies contained in this Declaration.

5.13 COMPLIANCE CERTIFICATION. The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Dwelling or other Improvements to a Lot has been constructed in accordance with the provisions of this Declaration.

ARTICLE VI

USE AND PROPERTY RESTRICTIONS

6.01 USE RESTRICTIONS. Subject to the provisions of Section 6.02 below, each Lot shall be used for detached single-family residential purposes only; provided, however, that any portion of the Property may be used and developed for other types of residential dwelling purposes as may be determined Developer, including, without limitation, model homes, sales offices or for any Common Areas. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this

covenant so long as (a) the lease is for not less than the entire Dwelling, (b) the lease is for a term of at least six (6) months and (c) the Occupants of such Dwelling comply with the requirements of Section 6.02 below and all other provisions of this Declaration.

6.02 RESTRICTIONS ON AGES OF OCCUPANTS.

(a) Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that all Dwellings situated on any of the Lots are intended and shall be operated for occupancy by persons who are 55 years of age or older, although younger persons are not restricted from occupying a Lot along with a person 55 years of age or older so long as such co-occupancy is in compliance with all of the terms and provisions of this Section 6.02. Furthermore, certain exceptions may be made to the provisions of this Section 6.02 in accordance with the terms and provisions of Section 6.02(d) below. The provisions of this Section 6.02 are intended to be consistent with, and are set forth in order to comply with, the Act regarding discrimination based on familial status. Notwithstanding anything provided herein to the contrary, the Association shall have the right, in its sole and absolute discretion, to amend this Section 6.02 without the consent or approval of any Owners, Occupants or Mortgagees to the extent necessary to comply with the Act, any rules and regulations adopted by any Governmental Authority with respect thereto and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this Section 6.02.

(b) Except as otherwise may be permitted pursuant to Section 6.02(d) below, each Occupied Unit, as herein defined, must be "occupied by at least one person 55 years of age or older", as herein defined. As used herein, the term "Occupied Unit" means (i) any Dwelling that is actually occupied by one or more persons; or (ii) a temporarily vacant Dwelling if the primary Occupant has resided in the Dwelling during the past year and intends to return to residing in such Dwelling on a periodic basis. For the purposes hereof, the term "occupied by at least one person 55 years of age or older" means that (1) at least one Occupant of the Dwelling is 55 years of age or older or (2) if the Dwelling is temporarily vacant, at least one of the Occupants immediately prior to the date on which the Dwelling was temporarily vacated was 55 years of age or older.

(c) Nothing contained in this Section 6.02 is intended to restrict the ownership of or transfer of title to any Lot; provided, however, that no Owner may occupy the Dwelling on any Lot unless the requirements of this Section 6.02 are satisfied. Furthermore, no Owner shall permit the occupancy of any Dwelling on such Owner's Lot in violation of the requirements of this Section 6.02. Each Owner shall be responsible for (i) including a statement that the Dwelling on such Owner's Lot is intended and shall be operated for occupancy by persons 55 years of age or older in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Lot, which agreements or contracts shall be in writing and signed by the tenant or purchaser of such Owner's Lot and (ii) clearly disclosing the restrictions of this Section 6.02 to any prospective tenant, purchaser or other potential Occupant of the Dwelling on such Owner's Lot. Every lease of a Dwelling shall provide that failure to comply with the requirements and restrictions of this Section 6.02 shall constitute a default under the applicable lease. If required by the Association, each Owner will provide to the Association executed copies of all leases of such Owner's Dwelling which must contain all disclosures and requirements of this Section 6.02. Furthermore, each Owner acknowledges and agrees that any failure to comply with the terms and provisions of this Section 6.02 shall constitute a default by such Owner and a breach by such Owner of such Owner's obligations under this Declaration which will allow the Association to take any and all legal action necessary or required in order to enforce such Owner's compliance with all of the terms and provisions of this Section 6.02.


(d) Any Owner may make a written request to the Association for an exception to the requirements of this Section 6.02 with respect to the Dwelling situated on such Owner's Lot. The

Association may, in its sole and absolute discretion (but without obligation to do so), grant exceptions or exemptions to the requirements of this Section 6.02 so long as the requirements for any exception or exemption from the Act will continue to be met following the granting of such exceptions or exemptions. The Association shall be the sole and exclusive judge as to whether an exception or exemption should be granted.

(e) In the event of any change in occupancy of any Dwelling as a result of a transfer of title, the execution of a new lease or sublease, a birth or death, change in marital status, vacancy, change in location of residence or otherwise, the Owner of such Lot shall immediately notify the Association in writing and provide to the Association the names and addresses of all current Occupants of such Owner's Dwelling and such other information as the Association may reasonably require to verify the age of each Occupant of the Dwelling situated on such Owner's Lot. In the event any Owner fails to notify the Association of any such change in occupancy of any Dwelling or fails to provide to the Association any and all required information within ten (10) days after a change in occupancy occurs, such action or inaction shall be deemed to be a default by the Owner of such Dwelling, in which event the Association shall have the right to take any and all action authorized herein or by law in order to enforce the terms and provisions of this Section 6.02.

(f) In order to verify that each Dwelling is satisfying the requirements of this Section 6.02, the Association shall maintain age records on all Occupants of any of the Dwellings situated on any of the Lots. In connection therewith, each Owner and Occupant shall be obligated and required to provide to the Association any and all information requested by the Association concerning the age of each Occupant of any Dwelling, including, without limitation, verifiable information and documentation concerning the ages of all Occupants through any one or more of the following (as may be required by the Association and copies of which may be made and maintained by the Association): (i) driver's licenses, (ii) birth certificates, (iii) passports, (iv) immigration cards, (v) military identification, (vi) any other state, local, national or international official document containing a birth date of comparable reliability or (vii) a certification in a lease, application, purchase/sales contract affidavit or other document signed by any Occupant of a Dwelling who is at least 19 years of age or older certifying under oath that at least one Occupant in the Dwelling is at least 55 years of age or older. Each Owner covenants and agrees to provide, and to cause all Occupants of the Dwelling of such Owner to provide, to the Association any and all information as may be required from time to time concerning the ages of all Occupants within a Dwelling. In the event any Owner or Occupant fails to provide to the Association any and all required information within ten (10) days after a change in occupancy occurs, such action or inaction shall be deemed to be a default by the Owner of such Dwelling, in which event the Association shall have the right to take any and all action authorized herein or by law in order to enforce the terms and provisions of this Section 6.02.

(g) The Association shall have the right, power and authority to enforce the terms and provisions of this Section 6.02 by exercising all rights and remedies available to the Association at law or in equity, and the Association shall be entitled to take any and all action which it deems necessary or appropriate to monitor compliance and otherwise enforce the terms and provisions of this Section 6.02 in order to preserve the eligibility of the Property for exemption from the Act. Such actions may include, without limitation, exercising any and all of the rights set forth in this Section 6.02 and taking any other action necessary to evict the Occupants of any Lot who are not in compliance with the requirements and restrictions of this Section 6.02. **EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF SUCH OWNER'S LOT AS NECESSARY TO ENFORCE COMPLIANCE WITH THE TERMS AND PROVISIONS OF THIS SECTION 6.02.**


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(h) Each Owner, by acceptance of a deed to any Lot, agrees to indemnify, defend and hold the Association harmless from and against any and all claims, losses, damages, actions, cause of action, liabilities and expenses, including reasonable attorneys' fees and expenses and expenses of other associated professionals which may be suffered, paid or incurred by the Association as a result of the failure of any Owner to comply with all of the terms and provisions of this Section 6.02 or in any and all actions taken by the Association to enforce the terms and provisions of this Section 6.02 with respect to any Occupants of any of the Lots or Dwellings of such Owner.

6.03 UNDERGROUND UTILITIES. All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer (to the extent available), cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground.

6.04 BUILDING SETBACKS.

(a) Minimum building setback lines for all Dwellings shall be established either (i) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development within the Property) or (ii) in the deed from Developer to the Owner of such Lot.

(b) No Dwelling shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.04(a) above. All eaves, steps, stoops, porches, terraces, decks, and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.04.

6.05 APPLICATION OF ARCHITECTURAL STANDARDS. The Architectural Standards establish various requirements for the development, use and construction of a Dwelling and other Improvements on any Lot. The Architectural Standards are binding on all Lots and include, without limitation, requirements regarding Dwelling size, approved building materials and landscaping requirements for each Lot and Dwelling to be constructed thereon. Each Owner of a Lot shall be bound by and shall observe all requirements established by the Architectural Standards in the development, use and construction of any Dwellings or other Improvements on such Owner's Lot.

6.06 HEIGHT LIMITATIONS. The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot. No Dwelling shall exceed two (2) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway. Towers, decks, and outside porches shall be subject to the foregoing height limitations. Chimneys and roof finials are not subject to the foregoing height limitations.

6.07 MINIMUM AND MAXIMUM LIVING SPACE. Minimum and maximum Living Space requirements for all Dwellings shall be established either (a) on the Subdivision Plat for the subdivision of which such Lot is included (which may vary for each phase of development for the Property), (b) in the separate restrictive covenants, if any, for any portion of the Property, (c) in the deed from Developer to the Owner of such Lot or (d) in any other document, instrument or agreement executed by Developer and recorded in the Probate Office.

6.08 SOIL EROSION AND DRAINAGE. Each Owner shall provide and maintain on his or her Lot adequate soil erosion measures and drainage facilities to accommodate any storm water runoff resulting from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also insure that his or her Lot and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all storm water drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any

Governmental Authority. Each Owner shall, in connection with the construction of any Dwelling or other Improvements on such Owner's Lot, be solely responsible for providing adequate storm water drainage improvements and facilities on such Owner's Lot which shall be sufficient to adequately channel any storm water which may either cross or come upon such Owner's Lot from adjoining Lots or Common Areas or which may originate and drain from such Owner's Lot and any Improvements thereto onto adjoining Lots and Common Areas. **Each Owner, by acceptance of a deed to his or her Lot, shall and does hereby indemnify, defend and agree to hold Developer, its Affiliates, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and expenses, and any and all other amounts suffered, paid or incurred by Developer, its Affiliates, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants or the Guests of such Owner or Occupant) of any of the terms and provisions of this Section 6.08.**

6.09 ABOVE OR BELOW GROUND TANKS AND WELLS. No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or within any of the Common Areas. No private water wells may be drilled or maintained, and no septic tanks or similar sewage facilities may be installed or maintained on any Lot without the prior written consent of the ARC. To the extent available, each Lot shall utilize public sewage systems for the discharge of sewage from such Lot.

6.10 CONSTRUCTION OF IMPROVEMENTS.

(a) During the construction of any Improvements (including a Dwelling) on any Lot, (i) such Lot shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside Abingdon by the River at least weekly. Used construction materials may be burned on-site only in accordance with the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot or any other portion of Abingdon by the River. No Owner shall allow dirt, mud, gravel, or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot prior to such vehicles traveling on any roadways within or adjacent to the Property.

(b) During the initial construction of any Dwelling on a Lot, up to two (2) signs, in size and color to be approved by the ARC, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot and Dwelling for sale or containing information identifying the builder of such Dwelling. No other signage, banners, flags, or advertising posters shall be allowed on any portion of the Property; provided, however, that the foregoing shall not be applicable to Developer or its Affiliates during the initial construction and sale of Dwellings. No signage shall be attached, nailed, or otherwise adhered to any tree or other plant life.

(c) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas, (ii) utilize, to the greatest extent possible, off-street parking only, (iii) enter the Lot on which such Improvements are being constructed only from the driveway (or proposed driveway) for

such Lot, and (iv) not damage trees or other vegetation on such Lot which, pursuant to the Rules and Regulations, are to be preserved. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property; provided, however, that the foregoing shall not be applicable to Developer or its Affiliates during the initial construction of Dwellings. Upon completion of construction of any Dwelling or other Improvements to a Lot, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot and such Lot shall be kept and maintained in a clean and uncluttered condition. All builders, contractors, subcontractors, laborers, suppliers, materialmen and other professionals involved in the construction of any Dwellings or other Improvements on a Lot shall be required to abide by and comply with all construction standards, guidelines and requirements adopted from time to time by the ARC as part of the Architectural Standards.

(d) All Dwellings and any other Improvements shall be constructed in compliance with this Declaration, the Rules and Regulations, the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot, including, without limitation, sewer impact fees and building permit and impact fees. Each Owner shall also be responsible for strict compliance with this Declaration, the Rules and Regulations, the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements of all applicable Governmental Authorities, both during and after completion of construction of any Improvements on such Owner's Lot.

6.11 SEWER SERVICE FOR ALL LOTS.

(a) Sanitary sewer service for all Lots will be provided by either an Owner Gravity Sewer Line or Owner LPS Equipment. All LPS Lots must utilize Owner LPS Equipment which must be connected to the County Low-Pressure Sewer Main in accordance with the terms and provisions of Section 6.11(b) below. The Owner LPS Equipment, once installed on an LPS Lot, will be owned by the Owner of such LPS Lot and will be maintained by the Association (or its designated Sewer Service Company) subject to the remaining terms and provisions of this Section 6.11. All GSL Lots must utilize an Owner Gravity Sewer Line which must be connected to the County Gravity Sewer Main in accordance with the terms and provisions of Section 6.11(c) below. The Owner Gravity Sewer Line, once installed on a GSL Lot, will be owned by the Owner of such GSL Lot and will be maintained by the Association (or its designated Sewer Service Company) subject to the remaining terms and provisions of this Section 6.11.

(b) At the time of construction of a Dwelling on an LPS Lot, the Owner of such LPS Lot shall, at the sole cost and expense of such Owner (or such Owner's contractor or builder), construct and install on such Owner's LPS Lot the Owner LPS Equipment and the Electrical Connections in accordance with the remaining terms and provisions of this Section 6.11(b). The Association's designated Sewer Service Company shall designate the types, manufacturer, size, and methods of installation of the Owner LPS Equipment and the Electrical Connections on each LPS Lot and such designated Sewer Service Company shall be the sole Person who shall install the Owner LPS Equipment on each LPS Lot. The Owner LPS Equipment shall be installed in accordance with all requirements of all applicable Governmental Authorities, including those of Jefferson County, Alabama and its successors and assigns. Each Owner (or such Owner's contractor or builder) shall contract directly with the Association's designated Sewer Service Company for the installation of all Owner LPS Equipment on such Owner's LPS Lot and each Owner (or such Owner's builder or contractor) shall be solely responsible for the payment of all such installation costs. Neither Developer nor the Association shall have any obligation to install any Owner LPS Equipment. Each Owner of an LPS Lot (or such Owner's builder or contractor) shall also be solely responsible, at such

Owner's sole cost and expense, for (i) constructing, installing, maintaining, repairing, and replacing from time to time (1) the Electrical Connections for the operation of the Owner LPS Equipment on such Owner's LPS Lot and (2) all sanitary sewer lines and other equipment located within the Dwelling on such Owner's LPS Lot, including any such lines and equipment constructed or installed within the exterior walls of such Dwelling and (ii) providing at all times electrical service for the operation of the Owner LPS Equipment situated on such Owner's LPS Lot. Each Owner of an LPS Lot acknowledges and agrees that neither the Association, the Association's designated Sewer Service Company nor Developer shall have any obligation or liability of any nature to provide electrical service to the Owner's LPS Lot or to the Owner LPS Equipment situated on such Owner's LPS Lot, and each Owner of any LPS Lot, for such Owner and all Occupants of such Owner's LPS Lot, does hereby unconditionally waive, release and forever discharge the Association, its designated Sewer Service Company, Developer and the third-party engineer (the "Engineer") which has specified the minimum standards and requirements for the Owner LPS Equipment following consultation and approval of the same by the designated Sewer Service Company, from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, suffered, paid or incurred by such Owner and any Occupants of such Owner arising out of or on account of (x) defects in the installation or any malfunction of any Electrical Connections providing electrical current to the Owner LPS Equipment situated on such Owner's LPS Lot or (y) loss of electrical service for the operation of the Owner LPS Equipment on such Owner's LPS Lot.

(c) At the time of construction of a Dwelling on a GSL Lot, the Owner of such GSL Lot (or such Owner's builder or contractor) shall, at the sole cost and expense of such Owner, construct and install on such Owner's GSL Lot the Owner Gravity Sewer Line in accordance with the remaining terms and provisions of this Section 6.11(c). The Owner Gravity Sewer Line shall be installed in accordance with all requirements of all applicable Governmental Authorities, including those of Jefferson County, Alabama (and its successors and assigns). Each Owner of a GSL Lot shall also be solely responsible, at such Owner's sole cost and expense, for constructing, installing, maintaining, repairing, and replacing from time to time all sanitary sewer lines and other equipment located within the Dwelling on such Owner's GLS Lot, including any such lines and equipment constructed or installed within the exterior walls of such Dwelling.

(d) Subject to the terms and provisions of this Section 6.11(d) and Sections 6.11(g), 6.11(h), Section 6.11(i) and 6.11(j) below, the Association shall be responsible for the routine maintenance, repair, upkeep and replacement of the Association-Maintained Sewer Lines once installed on each Lot; provided, however, that the Association shall have the right, in its sole and absolute discretion, to contract with a Sewer Service Company selected by the Association to perform all Association obligations relating to the Association-Maintained Sewer Lines. To the extent the Association enters into any such contract with a Sewer Service Company, then the Association shall provide written notice to all Owners and, following the giving of such notice, the Sewer Service Company shall assume and perform all obligations of the Association relating to the Association-Maintained Sewer Lines and the Association shall have no further obligations to maintain, repair or replace any of the Association-Maintained Sewer Lines.

(e) All Sewer Maintenance Expenses shall constitute part of the Common Expenses which will be paid by all Owners as part of the Annual Assessments. The Sewer Maintenance Expenses are subject to change from time to time and at any time as reasonably determined by the Board, without any prior consent or approval of, or notice to, any Owners or Occupants.

(f) Developer does hereby reserve for itself, its successors and assigns, and does hereby grant to each the Association, the Sewer Service Company and their respective successors and assigns, a permanent, perpetual and non-exclusive easement over, across, through, under and upon all of the Lots for the purposes of inspecting, repairing and replacing from time to time the Association-Maintained Sewer Lines situated on each Lot. The easement established, reserved and granted herein shall

include the right to cut and remove trees, undergrowth, grass, shrubbery or other Improvements of any nature situated on any Lot, to grade, excavate or fill and otherwise take any and all action reasonably necessary to provide economical and safe maintenance, repair, and replacement of any portions of the Association-Maintained Sewer Lines situated on any Lot. Neither the Association nor the Sewer Service Company designated by the Association shall be obligated or required to repair or replace any trees, undergrowth, grass, shrubbery or other Improvements, including fences, of any nature damaged or destroyed as a result of the exercise of the foregoing easement rights.

(g) Each Owner, for such Owner and all Occupants of the Lot of such Owner, covenants and agrees to promptly report to the Association (or its designated Sewer Service Company) any malfunction of, or possible repairs which may be necessary to, any of the Association-Maintained Sewer Lines situated on such Owner's Lot.

(h) Notwithstanding anything provided to the contrary in this Section 6.11, to the extent any Association-Maintained Sewer Lines are damaged or destroyed by, or are in need of repair or replacement as result of, any of the following (collectively, the "Owner Causes/Casualty"):

(i) Any act or omission of any Owner or Occupant or any contractors or service providers of such Owner or any Occupant (including, without limitation, any landscaping and lawn service companies engaged by the Owner or Occupant of any Lot), as determined in the sole and absolute discretion of the Association's designated Sewer Service Company;

(ii) The failure of any Owner or Occupant to strictly comply with all rules and regulations established by the Association or the Sewer Service Company regarding the operation or use of the Association-Maintained Sewer Lines on such Owner's Lot, as determined in the sole and absolute discretion of the Association's designated Sewer Service Company; or

(iii) Any fire, casualty, weather conditions, or acts of God,

then, in any of the foregoing events, all costs and expenses paid or incurred by the Association (or its designated Sewer Service Company) in repairing or replacing the Association-Maintained Sewer Lines situated on such Owner's Lot shall be charged directly to the Owner of such Lot by the Association as an Individual Assessment, which Individual Assessment, together with interest and other costs and expenses paid or incurred by the Association as provided in Sections 8.05 and 8.07 below, shall be subject to the lien and enforcement rights set forth in this Declaration. Each Owner acknowledges and agrees that such Owner is responsible for obtaining and maintaining in full force and effect at all times fire and casualty insurance coverage for such Owner's Lot and all Improvements thereto which should also include insurance coverage for damages to the Owner LPS Equipment or the Owner Gravity Sewer Line, as applicable, situated on such Owner's Lot.

(i) Each Owner, for such Owner and any Occupants of such Owner's Lot, covenants and agrees to abide by and otherwise comply with any and all rules and regulations established from time to time by the Association, the Sewer Service Company, Jefferson County, Alabama (and its successors and assigns) and all other Governmental Authorities in connection with the operation and use of any Owner LPS Equipment on an LPS Lot or the Owner Gravity Sewer Line on a GSL Lot.

(j) **Each Owner, for such Owner and any Occupants of such Owner's Lot, and their respective heirs, executors, personal representatives, administrators, successors and assigns, by**



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acceptance of a deed to such Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot, for themselves and their respective successors and assigns, do hereby:

(i) Irrevocably and unconditionally waive, release and forever discharge Developer, its Affiliates, the Engineer and the Association and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of any defect in, malfunction of, or damages caused by any Owner Causes/Casualty or the loss of electrical service to such Owner's Lot or any Dwellings or other Improvements situated thereon; and

(ii) Shall and does hereby indemnify, defend and agree to hold Developer, its Affiliates, the Engineer, the Association and their respective agents, employees, officers, directors, shareholders, members, managers, representatives, and their respective successors and assigns (collectively, the "Indemnified Parties") harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees and expenses, and any and all other amounts suffered, paid or incurred by any of the Indemnified Parties in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any Indemnified Parties may be made a party by reason of (1) any acts or omissions of such Owner or any Occupants, contractors or invitees of such Owner, (2) the failure of such Owner or any Occupants of such Owner to fully and completely abide by and comply with all rules and regulations of the Sewer Service Company regarding the use, operation, maintenance, repair and replacement of the Association-Maintained Sewer Lines or any applicable laws, ordinances, statutes, rules regulations or requirements of any Governmental Authorities, (3) any Owner Causes/Casualty or (4) the loss of electrical service to such Owner's Lot or any Dwellings or other Improvements situated thereon.

(k) Each Owner shall also be obligated to pay all impact fees, use fees, demand charges, and all other costs and expenses charged from time to time by Jefferson County, Alabama (or its successors and assigns) for sanitary sewer services provided to all Dwellings and other Improvements situated on such Owner's Lot (collectively, the "County Charges") of such Owner based on such billing standards and criteria established from time to time by Jefferson County, Alabama (or its successors and assigns). Such County Charges shall be in addition to the Sewer Maintenance Expenses and shall not be paid by the Association.

6.12 RELEASE WITH RESPECT TO ABINGDON BY THE RIVER COMMUNITY FACILITIES.

(a) The Abingdon by the River Community Facilities, if any, provided by the Association for the use and benefit of all Owners and Occupants and their respective Guests are provided without lifeguards or other supervisory personnel and neither the Association, Developer, any Affiliates of Developer, nor any of their respective successors and assigns, will provide any such lifeguards or supervisory personnel in connection with the utilization of the Abingdon by the River Community Facilities, if any, by any Person (including any Owners, Occupants or their respective Guests).

(b) The Owner of each Lot, for such Owner and any Occupants of such Lot, and their respective Guests, heirs, executors, personal representatives, administrators, successors and

assigns, by acceptance of a deed to such Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot, for themselves and their respective successors and assigns, do hereby:

(i) Irrevocably and unconditionally waive, release and forever discharge Developer, its Affiliates, the ARC, the Association and each Governmental Authority and their respective officers, directors, members, managers, partners, agents, representatives, committee members, the holders of any ownership or financial interest in the foregoing entities and committees, and their respective successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of any loss, damage or injury to person or property, including death, as a result of any entry onto the Abingdon by the River Community Facilities, if any, by any such Owner, Occupant, Guest, Mortgagee or any of their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns; and

(ii) Acknowledge and agree that: (1) neither Developer, any Affiliates of Developer, the ARC, the Association, any Governmental Authority nor any of their respective agents, employees, representatives, shareholders, members, managers, partners, officers, directors or the holders of any ownership or financial interest in any of the foregoing entities or committees, or their respective successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about the Abingdon by the River Community Facilities, if any; (2) the use of the Abingdon by the River Community Facilities, if any, by any such Owner or Occupant or any of their respective Guests, heirs, executors, personal representatives, administrators, successors and assigns, shall be at the sole risk and expense of the person or entity using the Abingdon by the River Community Facilities, if any; and (3) the Abingdon by the River Community Facilities, if any, pose a potential threat of life threatening harm and each Owner or Occupant and their respective Guests, family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns, should exercise utmost care and safety precautions in and around the Abingdon by the River Community Facilities, if any.

6.13 COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the City and all other Governmental Authorities including, without limitation, the Act.

6.14 RULES AND REGULATIONS.

(a) The initial Rules and Regulations are attached hereto as **Exhibit B** and are incorporated herein by reference. The Rules and Regulations are subject to modification and amendment from time to time and at any time solely by the action of the Board and without any prior notification of, action, consent of or approval by, any of the Owners. The Board shall also have the right to adopt additional rules and regulations without any action, consent or approval of, or any prior notice to, the Owners, which additional rules and regulations may include, without limitation, the right to approve rental and sales agents, contractors and subcontractors who do business within the Property, shall be incorporated into and form a part of the Rules and Regulations.

(b) In addition to the terms and provisions set forth in this Declaration, the Board may establish and enforce, without any action, consent or approval of, or any prior notice to, the Owners, additional rules and regulations governing the use, improvement, maintenance and repair of all Common

Areas, without any action, consent or approval of, or any prior notice to, the Owners. Such additional rules and regulations shall be binding upon all Owners and Occupants.

6.15 VARIANCES. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article V above and this Article VI. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC.

6.16 ENFORCEMENT AND REMEDIES. In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective Guests of any Owner or Occupant, then the Association shall have the right, at its option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article V, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article V, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Sections 8.01 and 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth in this Section 6.15 shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

ARTICLE VII

MAINTENANCE RESPONSIBILITIES

7.01 RESPONSIBILITIES OF OWNERS.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his or her Lot in a neat, clean, and sanitary condition, both inside and outside of any Dwelling or other Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.06(b) above. All areas of any Lot which are not improved by the construction of a Dwelling thereon shall at all times be maintained by the Owner thereof in a fully and well-kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot up to the edge of the pavement of the roadway abutting such Lot and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines, and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants, and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, trash,

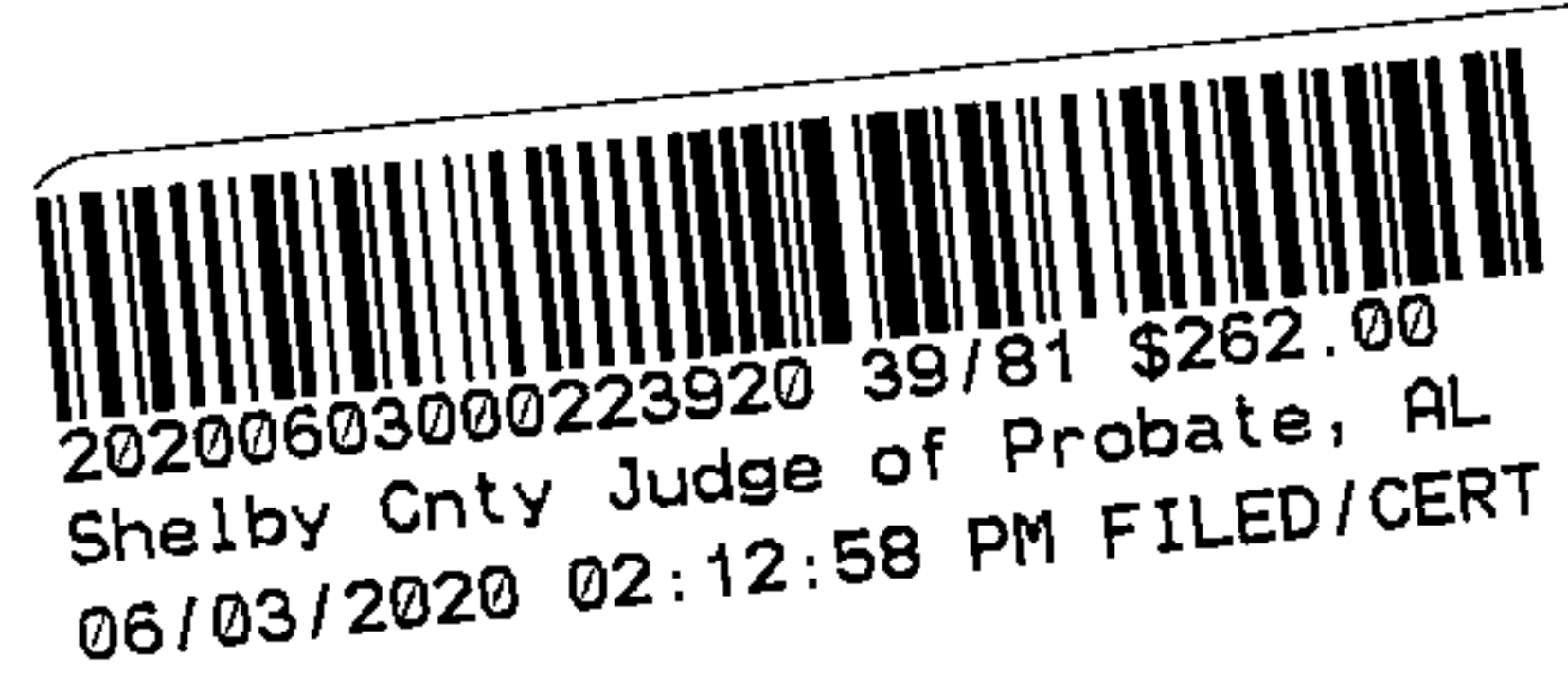
refuse, rubbish, debris, garbage, and waste material shall be promptly removed from any Lot and properly disposed of outside of Abingdon by the River. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas or any other portion of Abingdon by the River.

(c) Subject to the provisions of Section 5.05 above, no Owner shall change or otherwise alter the appearance of any portion of the exterior of any Lot or the landscaping, grounds or other Improvements within a Lot unless such change or alteration is first approved, in writing, by the ARC.

7.02 RESPONSIBILITIES OF ASSOCIATION.

(a) Except as otherwise provided in this Declaration to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in good repair and condition all portions of the Common Areas and all Association-Maintained Sewer Lines (subject to the provisions of Section 6.11 above). The Association shall not be liable for injuries or damages to any person or property (i) caused by the elements, acts of God or any Owner, Occupant, Guest or other Person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Areas onto a Lot or (iii) resulting from thief, burglary or other illegal entry onto the Property or any Lot or Dwelling. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by either the negligence or willful act of an Owner or Occupant, or their respective Guests, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have seven (7) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such seven (7) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted pursuant to Sections 8.01 and 8.07 below. If, and to the extent that, the Association undertakes any action pursuant to this Section 7.02(b) on behalf of any Owner, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.



ARTICLE VIII

ASSESSMENTS

8.01 ASSESSMENTS AND CREATION OF LIEN. Each Owner, by acceptance of a deed to a Lot, regardless of whether such deed contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. Notwithstanding the foregoing, but subject to the provisions of Section 8.06(b) below, Lots owned by Developer or any Affiliate thereof shall not be subject to any Assessments by the Association, whether Annual Assessments, Special Assessments or Individual Assessments. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.07(a) below, and all court costs and attorneys' fees and expenses incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.07(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he or she is the Owner of a Lot and his or her grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.07(a) below, court costs and attorneys' fees and expenses incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall commence as to each Lot as provided in Section 8.06 below and be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property (other than Lots or Dwellings). Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

8.02 UNIFORM RATE OF ASSESSMENTS.

(a) Both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against each Lot at a uniform rate, with the Owner of each Lot being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as determined by a fraction, the numerator of which shall be the total number of Lots owned by such Owner and the denominator of which shall be the total number of Lots within the Property at the time such Annual Assessments or Special Assessments are levied.

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then (i) each Lot within the Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners

of all other Lots in the Property, subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Property, (ii) any Assessments which have been previously assessed by the Association to the Owners for the then applicable calendar year shall not be subject to recalculation and (iii) in no event shall the amounts previously paid as either Annual Assessments or Special Assessments during such calendar year by any Owners be subject to recalculation or refund as a result thereof.

(c) Each Owner of a Lot, by acceptance of a deed to such Lot, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or any Lots or Dwellings are combined, subdivided or resubdivided pursuant to Section 2.06 above or (ii) any portion of the Property becomes Common Areas.

8.03 COMPUTATION OF ANNUAL ASSESSMENTS.

(a) The Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association and (ii) the amount of Annual Assessments which shall be payable by each Lot. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Property for the then applicable year and each Owner shall pay his or her prorata share of the same as provided in Section 8.02 above. As used herein, the term "Annual Assessments" with respect to each Lot shall mean the prorata portion of the Common Expenses payable each calendar year by each Owner in accordance with the provisions of this Section 8.03. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(c) The Common Expenses to be funded by the Annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Association;

(iii) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors' and officers' liability insurance and any other

liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association;

(iv) To the extent the Association and the Lake Wilborn Residential Association, Inc. mutually agree, the Association may collect each year the Annual Amenity Assessments payable by all Owners of Lots under the Club Facilities Agreement (and remit the same to the Lake Wilborn Residential Association, Inc.);

(v) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, street and outdoor lighting, and trash collection services;

(vi) The expenses of owning, maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

(vii) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(viii) The costs and expenses for conducting, promoting, and advertising recreational, social, cultural, or other related programs, as well as street fairs, festivals, and other events for the benefit of the Owners and Occupants;

(ix) The costs and expenses of installing, maintaining, repairing, purchasing, replacing, and operating seasonal and holiday decorations and lighting for any of the Property;

(x) All Sewer Maintenance Expenses;

(xi) All costs and expenses incurred by the Association to cause the Property to comply with the Act;

(xii) All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole and absolute discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots; and

(xiii) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board and (4) for the payment of future Common Expenses.

8.04 SPECIAL ASSESSMENTS. In addition to the Annual Assessments authorized in Section 8.03 above, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred or to be incurred by the Association, including, without limitation, costs which have been,

are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments must be approved by a majority of the Members of the Association who are "in good standing", as defined in the Bylaws, voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 8.04. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

8.05 INDIVIDUAL ASSESSMENTS. The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot or Dwelling: (a) Community Facilities Amenity Fees, as provided in Section 4.06 above, (b) fines against an Owner and such Owner's Lot or Dwelling in accordance with the terms and provisions of this Declaration, (c) any costs or expenses, including, without limitation, collection costs, professional engineering and architectural fees and expenses, attorneys' fees and expenses, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any Owner, Occupant or their respective Guests, to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association pursuant to Sections 5.12, 6.02, 6.15, 6.19, 7.02(b), 8.07, 11.01, 11.02 or 11.03 hereof, (d) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board, and (e) any costs, charges or other amounts payable by any Owner for any special services which the Association and such Owner may have contracted for which have been or will be provided to such Owner by the Association. The Individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner, which due date shall, except as provided in Section 4.06 above, be no earlier than 30 days from the date of such notice or billing invoice for such Individual Assessment.

8.06 DATE OF COMMENCEMENT OF ANNUAL AND SPECIAL ASSESSMENTS.

(a) Subject to the provisions of Section 8.06(b) below, Assessments shall commence as to each Lot on the day on which such Lot is conveyed by Developer to a Purchaser and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board (as provided in Section 8.07(a) below), subject to proration for the remainder of the then calendar year in which such Lot was conveyed by Developer to a Purchaser. Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the day on which such Lot is conveyed by Developer to a Purchaser, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such Additional Property was added to the terms of this Declaration.

(b) Notwithstanding anything provided herein to the contrary, Developer, Developer nor any Affiliate thereof shall be obligated to pay any Assessments.

8.07 EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION.

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. The Association shall provide written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). Any

Individual Assessments levied or assessed against any Owner shall be separately assessed by a written notice or billing invoice sent directly by the Association to such Owner and such Individual Assessment shall be due and payable no later than 30 days from the date of such notice or billing invoice. In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of such Lot shall be deemed in default hereunder and (ii) a late fee in the amount of \$25.00 (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot or Dwelling. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late fee charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days following the due date for the payment of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner for a personal money judgment to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the then applicable late fee charge and interest at the Applicable Rate, together with attorneys' fees and expenses, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Sections 8.01 and 8.07(c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late fees or charges, interest at the Applicable Rate and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments; then:

(i) At any time thereafter, the Association, through the Board or any officer or authorized representative thereof, shall provide written notice of the Assessment and lien to such defaulting Owner, which written notice shall state the date and amount of delinquency and shall be given by personal delivery or first-class United States mail, postage prepaid. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand; and

(ii) At least thirty (30) days prior to recording a statement of lien, the Association shall give written notice (the "Lien Notice") to such defaulting Owner in the manner set forth in Section 10.15 below (except that such Lien Notice, shall be given by certified mail to such defaulting Owner) stating that the statement of lien will be recorded in the Probate Office. At

any time after the expiration of thirty (30) days following the giving of the Lien Notice (but within the twelve (12) months from the date such Assessment was due), the Association shall file a statement of lien and perfect its lien against the Lot of such delinquent Owner, which statement of lien shall be executed by any member of the Board or any officer of the Association having personal knowledge of the facts, contain the following information and be recorded in the Probate Office:

- (1) The name of the Association;
- (2) The name of the defaulting Owner;
- (3) The legal description and street address, if any, of the Lot upon which the lien claim is made;
- (4) The total amount claimed to be due including the due date of any Assessments, together with late charges, interest at the Applicable Rate, collection costs and attorneys' fees and expenses incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (5) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to (A) grant to and vest in the Association and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (B) grant to and vest in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (C) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (D) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.08 SUBORDINATION OF LIEN. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by Mortgagee on such Owner's Lot.

8.09 CERTIFICATES. The Association (or any officer or authorized representative thereof) shall, within thirty (30) days from the date of written request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner or any prospective purchaser of a Lot a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

8.10 EXEMPTIONS FROM ASSESSMENTS. Notwithstanding anything to the contrary in this Declaration, Developer may designate any Lot as being exempt from the payment of Annual Assessments and Special Assessments or may by deed, contract or other written instrument reduce the amount of Annual Assessments or Special Assessments which may be payable by any Lot or Dwelling within the Property.

8.11 ENFORCEMENT RIGHTS OF OTHERS. Each Owner of a Lot acknowledges and agrees that the Lake Wilborn Residential Association, Inc. has certain enforcement and lien rights (including foreclosure rights) as established under the Club Facilities Agreement should any Owner fail to timely pay all Annual Amenity Assessments and Amenity Fees owing to said Lake Wilborn Residential Association, Inc.

ARTICLE IX

CASUALTY, CONDEMNATION, AND INSURANCE

9.01 DAMAGE OR DESTRUCTION TO COMMON AREAS.

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything to the contrary provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, subject to, and in accordance with, the provisions of Section 9.04 above, which such Special Assessment shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner equally as provided in Section 9.02 above. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 DAMAGE OR DESTRUCTION TO LOTS AND DWELLINGS. In the event of any fire or other casualty which damages or destroys any portion of any Lot or any Dwelling or other improvements situated thereon, then the Owner of such Lot shall promptly repair and otherwise restore such Lot and any Dwelling or other improvements situated thereon to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair

shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

9.03 CONDEMNATION OF COMMON AREAS.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within or outside of the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such purchase, repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners pursuant to Section 8.04 above, which such Special Assessments shall be (1) in an amount sufficient to provide funds to pay the remaining costs of such purchase, repair, restoration or reconstruction and (2) levied against each Owner equally as provided in Section 8.02 above; and

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after any purchase of additional lands or the restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Lot and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot which is subject to any such taking and the Board may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

9.04 CONDEMNATION OF LOTS. In the event that all or any portion of a Lot (or a Dwelling or other improvements thereon) is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set



forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and slightly condition.

9.05 INSURANCE.

(a) The Board shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Board may from time to time deem appropriate for the benefit of the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Board in its sole and absolute discretion.

(b) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title, and all other types of insurance with respect to his or her Lot, Dwelling and all other improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot, does hereby waive and release the Association, Developer, the respective Affiliates of Developer, and its respective agents, employees, representatives, partners, shareholders, members, managers, officers, directors, the holders of any ownership or financial interest in any of the foregoing entities, and their respective successors and assigns, from any and all liabilities or responsibilities or any other claims by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Association, Developer or Affiliates of Developer, or any of their respective agents, employees, representatives, partners, shareholders, members, managers, officers or directors, the holders of any ownership or financial interest in any of the foregoing entities, and their respective successors and assigns.

ARTICLE X

TERM AND AMENDMENTS

10.01 TERM. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by at least seventy-five percent (75%) of those Owners "in good standing", as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws, agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 AMENDMENTS PRIOR TO TURNOVER DATE. Subject to the provisions of Section 10.04 below, until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument executed by Developer which is filed and recorded in the Probate Office

without obtaining the approval of the Association, any Owner, Occupant or Mortgagee; provided, however, that in the event any amendment proposed by Developer materially and adversely alters or changes the rights of any Owner to the use of his or her Lot, as determined solely by Developer, in its reasonable discretion, then such amendment shall be valid only upon the written consent or ballot vote of both (a) Developer and (b) at least fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots owned by Developer) who are "in good standing" and are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Notwithstanding anything provided to the contrary in this Section 10.02, each Owner, by acceptance of a deed to any Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot, acknowledges and agrees that (i) the addition of Additional Property to this Declaration pursuant to Section 2.02 above and the amendment of this Declaration to add Additional Property to the terms and provisions hereof, and (ii) any amendments to this Declaration made by Developer pursuant to Sections 2.03, 2.05, 2.06, 2.07 and 8.10 hereof shall not and do not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of his or her Lot and shall not require the consent or approval of the Association, any Owner, Occupant or Mortgagee. Any amendments to this Declaration made pursuant to this Section 9.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.02. Except as specifically provided in this Section 10.02 (with respect to any amendments proposed by Developer which materially and adversely alter or change the rights of an Owner to the use of his or her Lot), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

10.03 AMENDMENTS AFTER TURNOVER DATE. Subject to the provisions of Sections 8.04 and 9.04 below, after the occurrence of the Turnover Date, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of at least fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots owned by either of them) who are "in good standing", as defined in the Bylaws, who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 9.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

10.04 AMENDMENTS BY ASSOCIATION. Notwithstanding anything provided in this Article X to the contrary or elsewhere in this Declaration, (a) the Association shall have the right, in its sole and absolute discretion, to amend this Declaration in accordance with the terms and provisions of Section 6.02(a) above without obtaining the consent or approval of Developer, any Owners, Occupants or Mortgagees and (b) except as specifically provided in item (a) of this Section 10.04, any amendments or modifications to Section 6.02 of this Declaration must be approved by the written consent, approval or vote of at least fifty-one percent (51%) of all Owners of Lots.

ARTICLE XI

DENIAL OF USE PRIVILEGES AND REPURCHASE OPTION

11.01 AUTHORITY AND ENFORCEMENT. In addition to the other rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective Guests violates any

of the provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws, the Rules and Regulations or any other rules and regulations adopted by the Board from time to time, then the Board shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment, (b) suspend an Owner's right, if any, to vote in the Association and (c) suspend or terminate an Owner's or Occupant's privilege (and the privilege of the Guests of such Owner and Occupant) to use all or any of the Abingdon by the River Community Facilities, if any. Any action to be taken by the Board pursuant to this Section 11.01 shall be subject to the satisfaction of the terms and provisions of Section 11.02 below.

11.02 : PROCEDURE.

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or the Rules and Regulations are violated by any Owner or Occupant, or the respective Guests of any Owner or Occupant, the Board shall not impose a fine on any Owner pursuant to Section 11.01(a) above or suspend or terminate the privileges to use any Abingdon by the River Community Facilities pursuant to Section 11.01(c) above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Section 11.02(b) below and providing such Owner the opportunity to appear and be heard and be represented by counsel before the Board.

(b) Any notices required by Section 11.02(a) above shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation;

(iii) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any of the Rules and Regulations may result in the imposition of sanctions or fines; and

(iv) To the extent the Board proposes the imposition of a fine, such notice shall set forth the date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear with counsel before the Board and be heard.

(c) The foregoing procedure set forth in this Section 11.02 shall only be applicable to the possible imposition of fines against an Owner (as provided in Section 11.01(a) above) or the suspension or termination of the privileges to use any of the Abingdon by the River Community Facilities (as provided in Section 11.01(c) above) and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

11.03 REPURCHASE OPTION.

(a) In the event (i) any Owner desires to sell, transfer, convey or exchange his or her Lot to (or with) any third party prior to the completion of the primary Dwelling thereon or (ii) any Owner fails to commence construction or complete construction of the primary Dwelling on such Owner's Lot within the time periods set forth in Section 11.03(b) below then, in either such event, Developer does hereby reserve the right, at its option (but without any obligation), to either (1) repurchase such Lot (the

“Repurchase Option”) in accordance with the terms and provisions of Section 11.03(c) below or (2) elect to participate in any sales proceeds received by such Owner from the transfer, sale or conveyance of such Owner’s Lot in accordance with the terms and provisions of Section 11.03(d) below.

(b) Unless otherwise agreed to in writing by the Developer, each Owner shall:

(i) Within ten (10) months from the date on which such Owner purchases a Lot from Developer, submit to the ARC the plans and specifications required by the terms and provisions of Section 5.06(b) above;

(ii) Within twelve (12) months from the date on which such Owner purchases a Lot from Developer, commence construction of a Dwelling on such Lot in accordance with the plans and specifications therefore which have been approved by the ARC;

(iii) Following commencement of construction, diligently pursue such construction to completion; and

(iv) On or before twelve (12) months following the date on which the ARC has approved the plans and specifications for such Dwelling, substantially complete construction of such Dwelling, including all landscaping, in accordance with the plans and specifications for the same which have been approved by the ARC.

As used herein, the term “commence construction” shall mean the commencement by such Owner of construction of the primary Dwelling on such Lot by substantially clearing, grading and excavating such Lot and otherwise commencing to make other Improvements to such Lot such as, but not limited to, pouring of footings and foundations (or a concrete slab) and commencement of framing work. If, at any time after an Owner has commenced construction, such Owner fails to make significant construction progress during any 30-day period, such failure shall be considered to be a failure to diligently pursue construction as required by the terms and provisions of Section 11.03(b)(iii) hereof. The primary Dwelling on each Lot shall be deemed to have been substantially completed upon the issuance of a final certificate of occupancy for such Dwelling by the City and the completion of all landscaping work for such Lot in accordance with landscaping plans approved by the ARC (“Substantial Completion”). Notwithstanding anything provided in this Section 11.03(b) to the contrary, all of the time periods specified in this Section 11.03(b) shall be extended for casualty, extreme material shortages, inclement weather conditions which are not normal or customary for the time of year during which construction of such Dwelling is being undertaken and any other significant matters beyond the reasonable control of an Owner (or his or her builder); provided, however, that no extension shall be granted as a result of any inability to obtain financing or funding for the construction of such Dwelling.

(c) In the event any Owner fails to commence, diligently pursue or complete construction of a Dwelling on his or her Lot in accordance with the requirements of Section 11.03(b) above, then Developer shall have the right, at any time after the expiration of any of the time periods set forth in Section 11.03(b) above, to provide written notice to such Owner exercising the Repurchase Option in accordance with the remaining terms and provisions of this Section 11.03(c). The consummation of the Repurchase Option by Developer shall occur no later than thirty (30) days after Developer has given written notice to such Owner of Developer’s election to exercise the Repurchase Option. At the closing of the purchase and sale of any Lot which is being repurchased by Developer by virtue of the terms and provisions of this Section 11.03, the Owner of such Lot subject to such Repurchase Option shall transfer and convey the Lot subject to such Repurchase Option to Developer by statutory warranty deed, free and clear of all liens, encumbrances and any other matters of title other than those matters of record in existence as of the date on which such Lot was originally conveyed by Developer to the first Owner of such Lot. Such Owner shall, at his or her sole cost and expense, be obligated to pay all sums and otherwise take all action necessary

or required to remove any and all liens, encumbrances and other title matters and exceptions encumbering such Owner's Lot other than any such liens, encumbrances and other title matters and exceptions in existence as of the date on which Developer conveyed such Lot to the first Owner of such Lot. Contemporaneously with the delivery of the deed by such Owner to Developer, Developer shall pay to such Owner the Original Purchase Price, as defined in Section 11.03(d) below, paid by such Owner to Developer (or if such Owner has acquired his or her Lot from a previous Owner other than Developer, then Developer shall pay to such current Owner the Original Purchase Price paid to Developer by the first or original Owner of such Lot), in each case, without interest thereon. The Owner of such Lot subject to the Repurchase Option shall pay, prior to delivery of the deed to the Developer, any and all outstanding Assessments and any other charges due and owing under this Declaration. Real estate ad valorem taxes and any prepaid Assessments shall be prorated as of the date of delivery of such deed.

(d) In the event the Owner of any Lot desires to sell, transfer or convey his or her Lot to any third party prior to Substantial Completion, as defined in Section 11.03(b) above, of the primary Dwelling thereon, then Developer shall have the right, at its option, to either (i) exercise the Repurchase Option and repurchase the Lot in accordance with the terms and provisions of Section 8.04(c) above or (ii) elect, in writing, to waive its Repurchase Option, in which event Developer shall be entitled to receive twenty-five percent (25%) of the Net Profit, as herein defined, received by such Owner from the resale of such Lot, which amount will be due and payable in full upon the transfer and sale of any Lot by such Owner to any third party, which obligation shall be a personal obligation of the Owner of such Lot (the "Sales Participation Option"). As used in this Section 11.03(d), the following terms shall have the following meanings:

(i) "Gross Resale Price" means the total amount paid to such Owner by a third party purchaser in connection with the resale of such Owner's Lot, including compensation in any form paid to such Owner regardless of whether the same is reflected in the Gross Resale Price for such Lot, but without deduction for any costs of sale, prorations or other deductions from the Gross Resale Price received by such Owner in any such resale;

(ii) "Net Profit" means the Gross Resale Price, as herein defined, for such Lot, less the Original Purchase Price, as herein defined, for such Lot; and

(iii) "Original Purchase Price" means the gross amount originally paid to Developer by the first Owner of such Lot (increased by the costs or fair market value, whichever is less, of any Improvements made by the then current Owner to such Lot in accordance with plans approved by the ARC) but without deduction for any costs of sale, prorations or other adjustments to the Original Purchase Price paid to Developer by the first Owner of such Lot.

(e) The Repurchase Option retained and reserved by the Developer under the provisions of Sections 11.03(a) and 11.03(c) above shall be and are subject and subordinate to the rights of any Mortgagee under any Mortgage which was duly recorded in the Probate Office prior to the exercise of the Repurchase Option by Developer.

(f) The Repurchase Option and the Sales Participation Option of Developer set forth herein shall be binding on the first Owner of each Lot and all of the heirs, executors, successors and assigns of such Owner and may be enforced by Developer by an action for specific performance. In the event any Owner fails to timely and promptly perform all of such Owner's obligations set forth in this Section 11.03 with respect to the exercise by Developer of the Repurchase Option or the Sales Participation Option, such Owner shall also pay to Developer any and all costs and expenses incurred by Developer in enforcing the terms and provisions of this Section 11.03 including, without limitation, reasonable attorneys' fees and

expenses and court costs. The Repurchase Option and the Sales Participation Option shall be and are covenants running with the land which shall be binding on the Owner of each Lot and such Owner's heirs, executors, successors, and assigns.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.01 CONTROL BY DEVELOPER. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT OTHERWISE PROVIDED TO THE CONTRARY IN SECTION 10.02 ABOVE).

12.02 LEGAL EXPENSES. In addition to all of the other rights and remedies set forth in this Declaration, in the event Developer, the Board, the Association or any of their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The Association and its agents and representatives, and the Board are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure any such violation or breach by any Owner.

12.03 SEVERABILITY. If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

12.04 CAPTIONS AND HEADINGS. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

12.05 PRONOUNS AND PLURALS. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

12.06 BINDING EFFECT. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns and shall inure to the benefit of Developer, Developer, the Association, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

12.07 CONFLICT OR AMBIGUITY. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law,



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no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between the *Code of Alabama*, any laws, regulations or ordinances of the City, this Declaration, the Certificate of Formation or the Bylaws, then the provisions of the *Code of Alabama*, any laws, regulations or ordinances of the City, this Declaration, the Certificate of Formation, and the Bylaws, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency.

12.08 NO REVERTER. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

12.09 INTERPRETATION. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer, or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

12.10 RIGHTS OF THIRD PARTIES. This Declaration shall be recorded for the benefit of Developer, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

12.11 NO TRESPASS. Whenever the Association, Developer, and its agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot, the entering thereon and the taking of such action shall not be deemed a trespass.

12.12 NO PARTITION. Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

12.13 STANDARDS FOR REVIEW. Whenever in this Declaration the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of the Association.

12.14 ORAL STATEMENTS. Oral statements or representations by Developer, any Affiliates of Developer, the Association, the ARC or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the Association, or the ARC.

12.15 NOTICES. Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Lot of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Association that all notices be submitted to such Owner by facsimile transmission or through the Internet utilizing a specific electronic mailbox address for that

particular Owner. Subject to the provisions of Section 8.07(c) above, all notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Association (or if no address has been furnished, then to the Lot of such Owner), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the street address for such Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of such Lot, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such facsimile notice or (d) sent by Internet to an electronic mailbox address provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Association. All notices to the Association shall be delivered or sent to the following address:

Abingdon by the River Residential Association, Inc.
3545 Market Street
Hoover, Alabama 35226
Attention: Mr. Jonathan Belcher

or to such other address as the Association may from time to time specify in a notice to the Owners.

12.16 ASSIGNMENT. Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

12.17 FURTHER ASSURANCES. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer or the Association for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

12.18 NO WAIVER. All rights, remedies and privileges granted to Developer, and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure by Developer or the Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.19 INDEMNITY FOR DAMAGES. Each and every Owner and future Owner, by accepting a deed to any Lot, agrees to indemnify Developer, the Affiliates of Developer, and the Association for any damage caused by such Owner, the Occupants of such Owner and their respective Guests to roads, streets, gutters, sidewalks, walkways or other aspects of public ways, including all surfacing thereon, or to water drainage

or storm sewer lines, or sanitary sewer lines constructed within the Property by Developer, or Affiliates of Developer have responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by an Owner, each Owner accepts knowledge of this Declaration, and ratifies the covenants contained herein and thus releases the right to prosecute Developer, or Affiliates of Developer for the conveniences the Owner deems inadequate or unbecoming of the Owner's needs or desires.

12.20 DEEDS SUBJECT TO COVENANT. Each conveyance of a Lot shall be subject to the terms and conditions of this Declaration regardless of whether such conveyance contains a reference to this Declaration.

12.21 PERPETUITIES. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

ARTICLE XIII **DISPUTE RESOLUTION**

13.01 AGREEMENT TO RESOLVE DISPUTES WITHOUT LITIGATION.

(a) Developer, the Association and their respective officers, directors, and committee members, all Lot Owners, and all Persons subject to this Declaration (collectively, "Bound Party"), agree that it is in the best interest of all concerned to resolve disputes involving the Subdivision, Developer, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to directly or indirectly file suit in any court with respect to a Claim (hereinafter defined), and to submit such Claim to the alternative dispute resolution procedures set forth in Section 13.02.

(b) As used in this Article and subject to the remaining terms and provisions of this Section 13.01(b), the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of this Declaration, the Certificate of Formation or the Bylaws (collectively, the "Governing Documents"); or

(ii) The rights, obligations and duties of any Bound Party under the Declaration or any Governing Documents.

Notwithstanding anything provided to the contrary in this Section 13.01(b), the following shall **not** be considered "Claims" unless **all** parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.02:

(1) Any action, whether by suit or otherwise, by the Association to collect Assessments or other amounts due from any Owner;

(2) Any action, whether by suit or otherwise, by the Association to obtain a temporary restraining order (or emergency equitable relief) against any Owner and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of any of the Governing

Documents;

(3) Any suit between Owners, which does not include Developer, Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action Any suit in which any indispensable party is not a Bound Party; or

(4) Any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 13.02(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article XIII.

13.02 DISPUTE RESOLUTION PROCEDURES.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Board stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) The legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) The Claimant's proposed resolution or remedy; and

(iv) The Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 13.02(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama selected by both sides if the Association is a party. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be required to initiate arbitration proceedings on the Claim, as set forth in Section 13.02(e) below. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Arbitration; No Trial by Jury. Any dispute between an Owner or the Association, as one of the parties, against Developer and its Affiliates, as the other party ("Dispute"), and any Claims which remain after the conclusion of the dispute resolution procedures described in Section 13.02 above, shall be resolved by final and binding arbitration by a single arbitrator in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect and shall not be submitted to a lawsuit or other proceedings in any Alabama state court or any federal court. EACH PARTY ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL EITHER BEFORE A JUDGE OR A JURY RELATING TO ALL CLAIMS AND DISPUTES. All disputes concerning the arbitrability of any Claim or the enforceability or scope of this provision shall be subject to the same binding arbitration. The parties shall bear equally the cost of the arbitrator, and each party shall otherwise bear its own costs; provided, however, that the prevailing party shall be entitled to recover all of its costs in such arbitration, including reasonable attorneys' fees and expenses. The arbitrator shall follow the law applicable to any Claim and shall be empowered to award any damages or other relief which would be available under law applicable to any such Claim. The determination of the arbitrator shall be final, binding on the parties, and non-appealable and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by, and relating to, the Property, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.

13.03 INITIATION OF LITIGATION BY ASSOCIATION. In addition to compliance with the foregoing alternative dispute resolution procedures, the Association shall not initiate any judicial or administrative proceedings unless first approved by the affirmative vote of the Members in "good standing", as defined in the Bylaws, entitled to cast at least seventy-five percent (75%) of the total number of all votes in the Association, except that no such approval shall be required for actions or proceedings involving the following:

(a) Initiated to enforce the provisions of this Declaration, including, but not limited to, collection of Assessments and foreclosure of liens;

(b) Initiated to challenge taxation or condemnation proceedings involving the Common Areas;

(c) Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) To defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 13.03 shall not be amended unless such amendment to this Declaration is approved by the same percentage of votes necessary to institute proceedings.



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IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed as of the day and year first above written.

FLEMMING PARTNERS LLC, AN ALABAMA LIMITED LIABILITY COMPANY

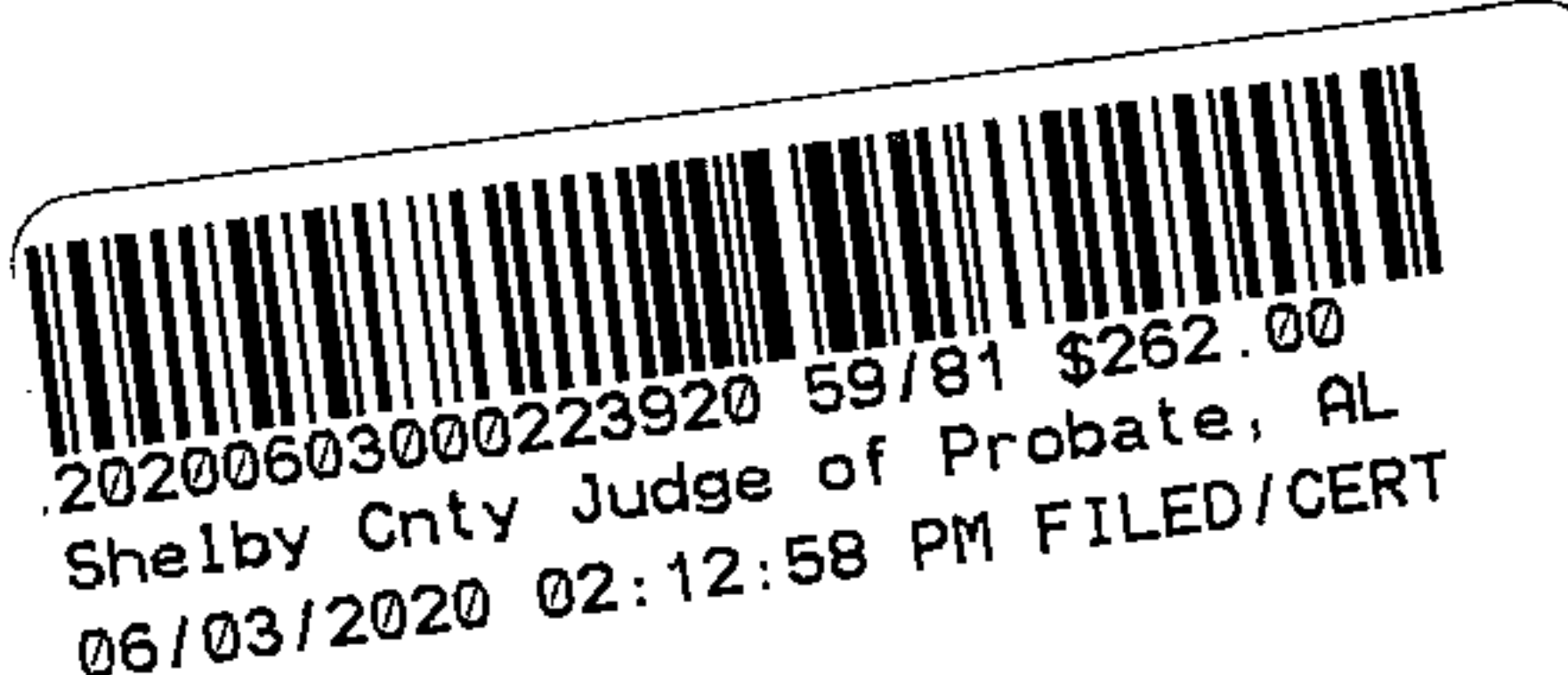
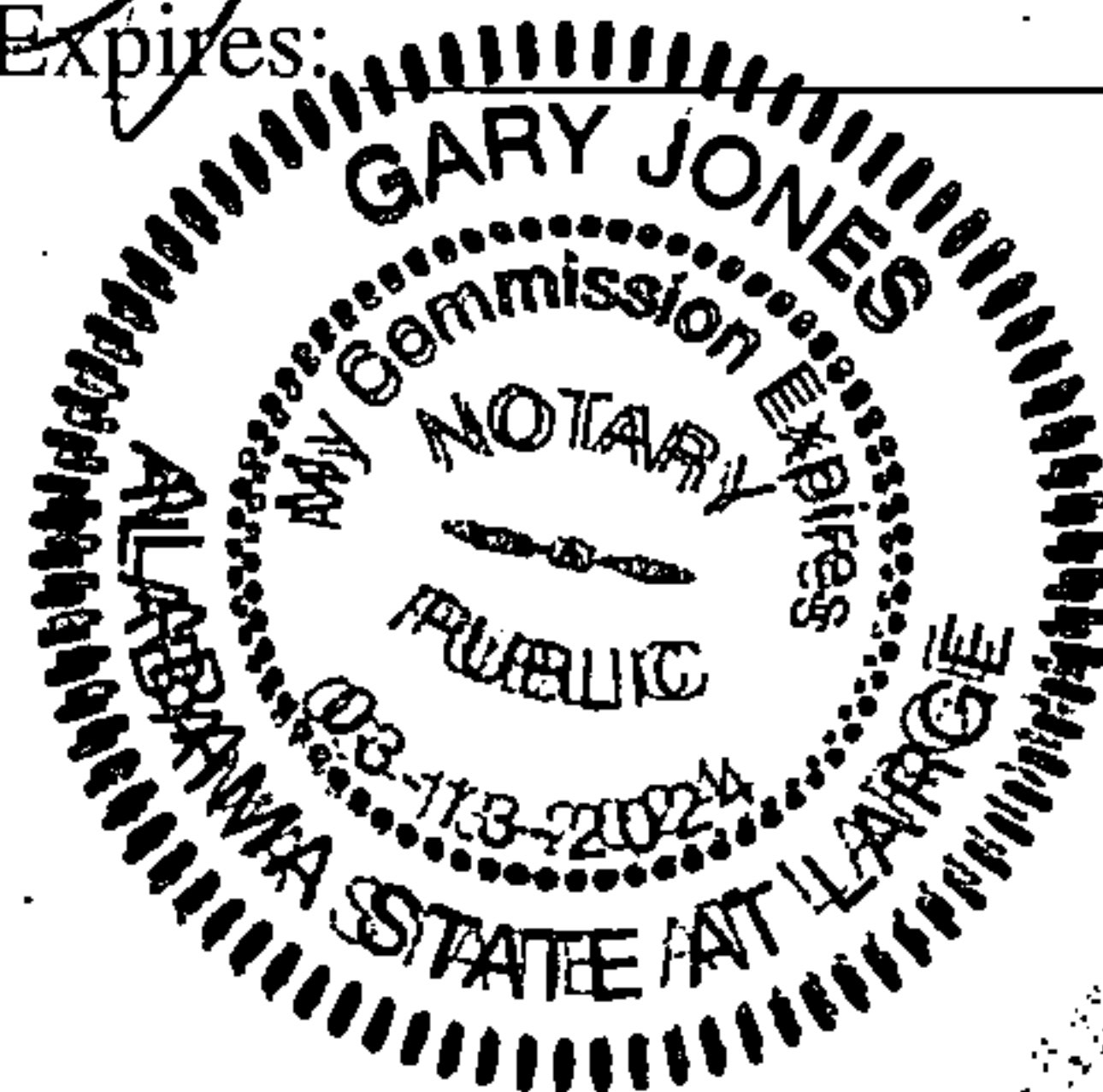
By: [Signature]
Printed Name: Scott Rohrer
Title: VP

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that SCOTT ROHRER whose name as VP SALES & MARKETING of SB DEV. CORP., an Alabama corporation, 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 2 day of June, 2020.

[Signature]
Notary Public
My Commission Expires: _____



CONSENT OF ASSOCIATION

The undersigned, Abingdon by the River Residential Association, Inc., an Alabama nonprofit corporation, has joined in the execution of this Declaration in order to consent to and agree to be bound by all of the terms and provisions of this Declaration, including, without limitation, the provisions of Section 4.09 of the Declaration.

Dated as of the 3 day of June, 2020.

ABINGDON BY THE RIVER RESIDENTIAL
ASSOCIATION, INC., an Alabama nonprofit
corporation

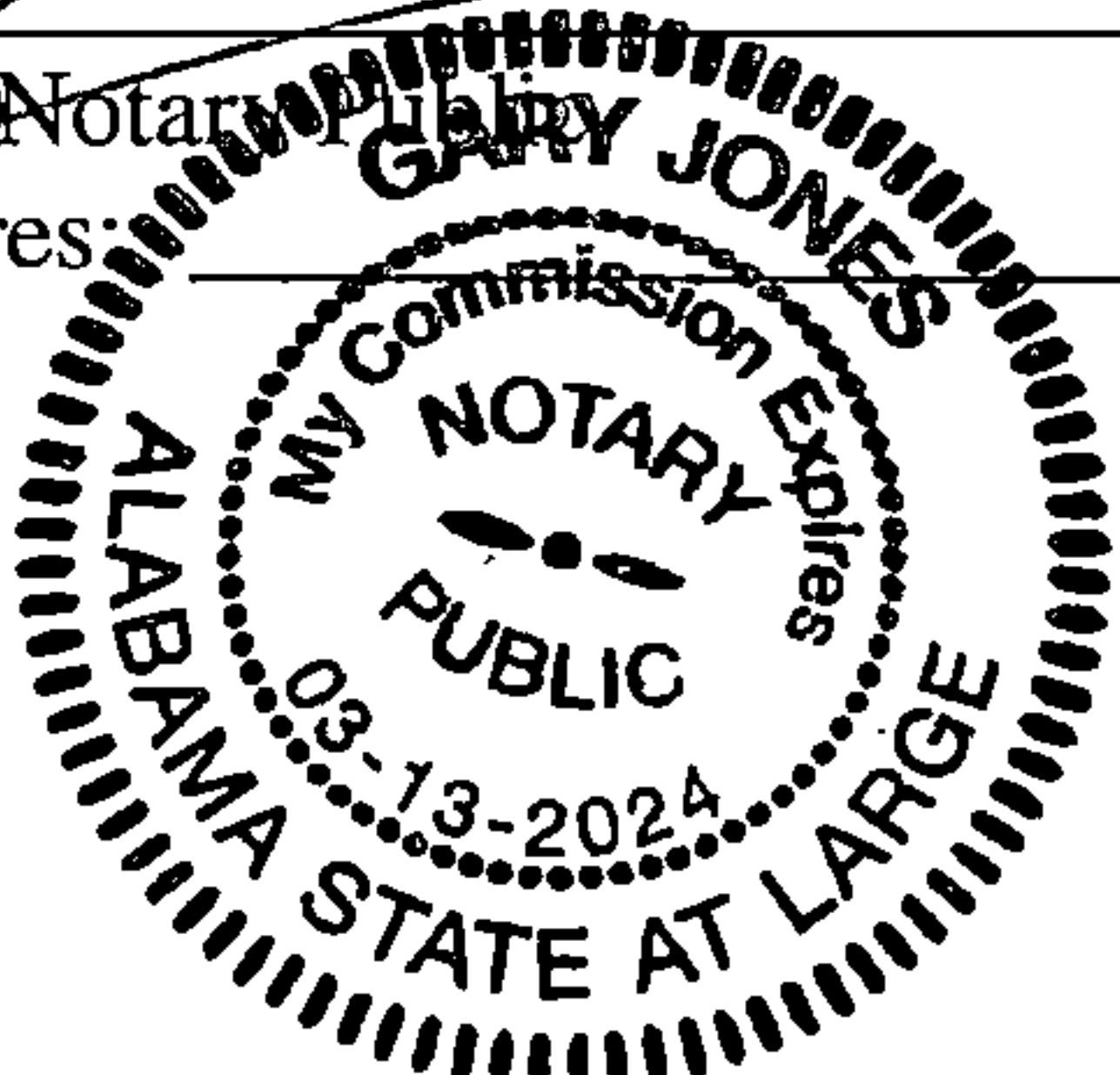
By: [Signature]
Printed Name: Scott Rohrer
Title: Member


STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that SCOTT ROHRER, whose name as VPMKTG'S SALES of Abingdon by the River Residential Association, Inc., an Alabama nonprofit corporation, 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said nonprofit corporation.

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

[NOTARIAL SEAL]

[Signature] Notary Public
My commission expires: _____



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CONSENT OF MORTGAGEE

THIS CONSENT OF MORTGAGEE (this "Consent") is made and entered into as of the 22nd day of May, 2020 by Regions Bank, an Alabama banking corporation ("Mortgagee").

R E C I T A L S:

Mortgagee is the holder of that certain Amendment to Master Mortgage dated as of May 22, 2020 executed by SB DEV. CORP., an Alabama corporation ("Mortgagor"), recorded as Instrument Number 20200527000211830 in the Office of the Judge of Probate of Shelby County, Alabama, and in 2020054284 in the Office of the Judge of Probate of Jefferson County, Alabama, as the same may be amended from time to time (collectively, the "Mortgage").

The Mortgage encumbers various real property including all of the Property, as defined and described in the Declaration (as defined below).

Mortgagee desires to (a) consent to the execution by Mortgagor of the Abingdon by the River Declaration of Covenants, Conditions and Restrictions dated as of June 3, 2020 (the "Declaration") which is being recorded contemporaneously herewith and to which this Consent is attached and made a part thereof and (b) agree that, following the foreclosure of the Mortgage, the rights and interests of all of the parties to the Declaration shall not be affected thereby. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby covenant and agree as follows:

1. Mortgagee does hereby consent to the execution of the Declaration.
2. Mortgagee does hereby agree that, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in the Property (collectively, a "Foreclosure Action"), then (a) the Declaration and all of the rights and privileges under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Declaration and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Mortgagor under the Declaration and shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Declaration and their respective successors and assigns to confirm that all of the terms and provisions of the Declaration shall continue in full force and effect following any such Foreclosure Action.



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IN WITNESS WHEREOF, Mortgagee has executed this Consent as of the day and year first above written.

REGIONS BANK, an Alabama banking corporation

By: 

Printed Name: Scott R. McLay

Title: Senior Vice President

STATE OF GEORGIA)
 :
COUNTY OF COBB)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Scott R. McLay, whose name as Senior Vice President of Regions Bank, an Alabama banking corporation, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said Regions Bank.

Given under my hand and seal this 21 day of May, 2020.




Notary Public
My commission expires: 06/19/2022



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Signature Page to
Consent of Mortgagee

EXHIBIT A

Legal Description of Property

All of the lots in the Final Plat of the Subdivision of Abingdon by the River Phase 1 as recorded in Office of the Judge of Probate for Jefferson County, Alabama in Map Book 52, Page 66.



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EXHIBIT A

Legal Description of Property

Final Plat of the Subdivision of Abingdon by the River Phase 1as recorded in the Office of the Judge of Probate for Jefferson County, Alabama in Map Book 52, Page 66.

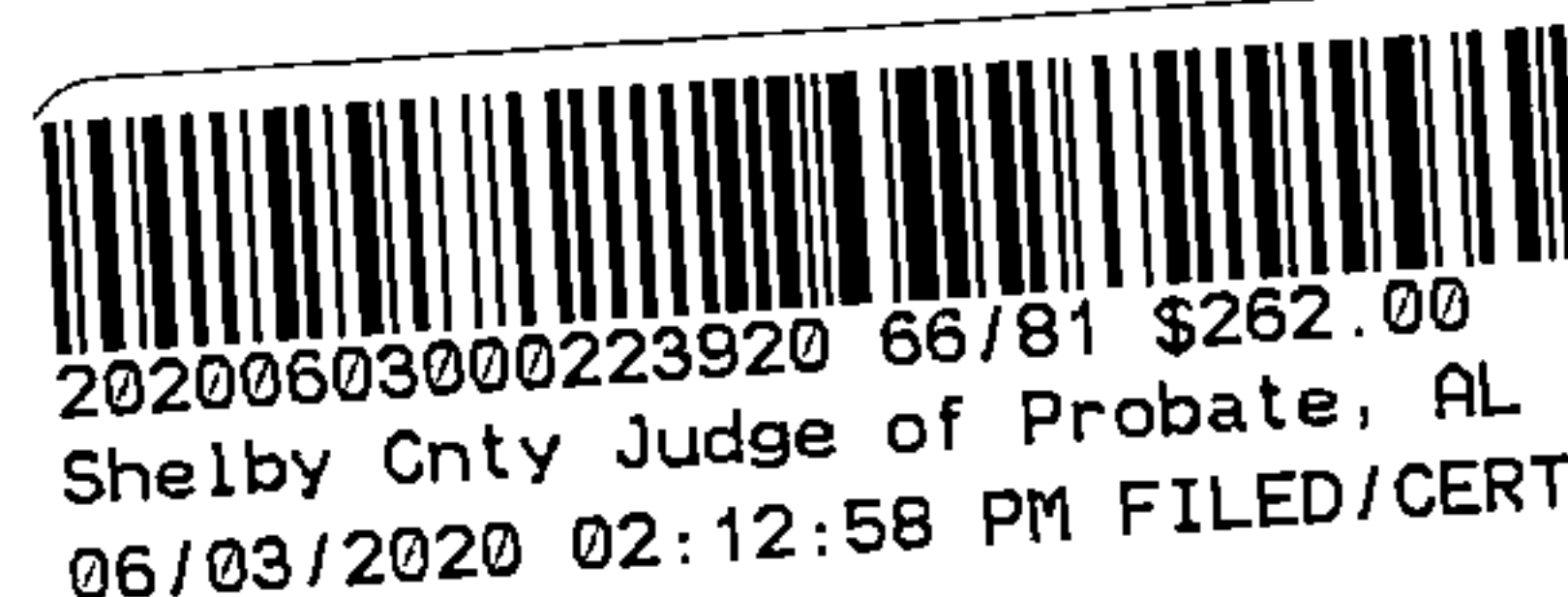


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EXHIBIT B

Rules and Regulations

ABINGDON BY THE RIVER RULES AND REGULATIONS



Developer and the Board of Directors of Abingdon by the River Residential Association, Inc. have adopted these Rules and Regulations (the "Rules and Regulations") in order to maintain the aesthetics and lasting quality of the Property as well as to ensure the long-term viability and the value of all Dwellings and other improvements constructed within the Property. These Rules and Regulations do not anticipate all acceptable or unacceptable behavior in advance and are subject to amendment and modification from time to time and at any time by action of the Board. These Rules and Regulations, as the same may be amended from time to time by the Board in the manner set forth in Section 6.13 of the Declaration, as hereinafter defined, will be binding upon all Owners and Occupants of any Lots within the Property and their respective Guests.

These Rules and Regulations are referred to in, and constitute a part of, the Abingdon by the River Residential Declaration of Covenants, Conditions and Restrictions which have been contemporaneously recorded herewith (the "Declaration"). *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.* These Rules and Regulations are in addition to all of the terms and provisions set forth in the Declaration, including, specifically, the provisions of Articles V and VI of the Declaration. In the event of any conflict or ambiguity between the terms and provisions set forth herein and those set forth in the Declaration, then, except as otherwise expressly provided herein to the contrary, the terms and provisions of the Declaration shall at all times control. These Rules and Regulations may be amended at any time and from time to time by the Board in the manner provided in Section 6.13 of the Declaration and variances to these Rules and Regulations may be granted as provided in Section 1.30 below.

1.01 TRASH, RUBBISH AND NUISANCES.

(e) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots, Dwellings, Common Areas or any other real property in close proximity to the Property. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his or her Lot or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same. Noxious or offensive activities shall not be carried on in or from any Lot or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Each Owner and Occupant shall comply with all noise and nuisance ordinances of all applicable Governmental Authorities. To the extent any Owner or Occupant violates any noise or nuisance ordinances of any Governmental Authorities, enforcement of such noise or nuisance ordinances shall be solely by the applicable Governmental Authority and not by the Association.

(f) Trash, garbage and any other refuse or waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at

the Property and all adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers may be moved to the side or front yard of any Dwelling on trash collection days so long as such trash cans and containers are removed from the front and side yard promptly after trash has been collected.

(g) No outdoor burning of trash, garbage, leaves, wood, shrubbery, or other materials shall be permitted on any Lot. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any laws, ordinances, statutes, code provisions, rules, regulations or requirement of any Governmental Authority with respect to the outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the applicable Governmental Authority and not the Association.

1.02 RECREATIONAL VEHICLES AND MACHINERY AND EQUIPMENT.

(h) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any type or nature, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, parked, stored or allowed to remain on any of the streets within the Property or on any Lot unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot. Any such enclosed structure must be approved by the ARC. Neither the Common Areas nor the roadways within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery, or equipment.

(i) Vehicles used primarily for commercial purposes and vehicles with commercial writings on their exteriors are prohibited from being parked on or within any portion of the Property, including any Lots or Dwellings, except as follows: (i) not more than one (1) pick-up truck or one (1) mini-van containing commercial writings on their exteriors may be parked on any Lot (but only on or within paved parking surfaces of such Lot) and (ii) any other trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily within the Property only if (1) such vehicles are necessary in connection with the construction of any Improvements on a Lot or are providing repair or maintenance services on any Lot and (2) such vehicles are not parked overnight on a Lot .

(j) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot, within or on any roadway within the Property or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then, only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.

(k) The Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, motor homes, tractors, equipment, machinery, trailers (with or without wheels), trucks (other than pick-up trucks), vans (other than mini-vans used solely for passenger uses), commercial vehicles of any type, campers, motorized campers or trailers, boats or other water craft, boat trailers, motorcycles, motorized bicycles, golf carts, all-terrain vehicles, motorized go-carts and other forms of transportation. Without limiting the foregoing, the Board shall have the right, in its sole and absolute discretion, to elect from time to time to authorize the use and parking of any of the following within the Property: electric golf carts, electric carts, electric vehicles, neighborhood electric vehicles or other types of vehicles which are powered solely by electricity or solar energy (collectively, "NEVs").

(l) To the extent the use of NEVs has been approved by the Board and all applicable Governmental Authorities, then:

(i) The Board shall have the right (but not the obligation) to designate the manufacturer, color, size and type of NEVs which may be utilized within the Property, including, specifically, designating the source from which such NEVs may be either purchased or leased;

(ii) The Board reserves the right, from time to time, to require that the operator of such vehicles be limited to drivers who are a minimum age (which may be higher than sixteen (16) years of age) and who possess a valid driver's license;

(iii) No personalization of NEVs shall be authorized or permitted;

(iv) The Board reserves the right, from time to time, to limit and restrict the number of NEVs which any Owner or Occupant of a Lot may utilize on or within the Property; and

(v) The Board shall have the right at any time and from time to time to adopt additional rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of NEVs within the Property.

1.03 **SWIMMING POOLS AND TENNIS COURTS.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may not be constructed, installed and maintained on any Lot unless the ARC has approved the same in writing and the construction of the same satisfy all restrictions and requirements imposed by the ARC with respect thereto. Above-ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water facilities and amenities and tennis courts within the Property. Swimming pools and tennis courts, if approved by the ARC, shall be fenced as may be required by any of the Governmental Authorities, which fencing must also be approved by the ARC. All pool equipment shall be screened from view from outside the Lot.

1.04 **GARAGES, DRIVEWAYS AND PARKING.**

(m) Each Dwelling shall provide for off-street parking for at least two (2) automobiles in enclosed garages (which must be equipped with garage doors). All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited; provided, however, that, with ARC approval (i) driveways may utilize concrete or asphalt ribbons with grass or other surfaces as approved by the ARC and (ii) gravel and loose stone walkways at the rear of a Dwelling and which are not visible from any roadways within or adjacent to the Property may be allowed. Garage doors shall be constructed of such materials as are approved by the ARC.

(n) Garages must be wholly-enclosed. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC. All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in such garages and garages shall not be used for storage or for any other purposes or uses which would result in the garage being unavailable for the parking of vehicles therein. Non-operable vehicles shall not be stored in any garages if the same would result in any vehicles being parked outside and not in a garage.



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(o) In no event shall any automobiles or other vehicles, machinery or equipment be parked or left unattended on or within (i) any areas of a Lot which are not within or part of the driveways or enclosed garages for such Lot or (ii) any Common Areas. Vehicles shall be parked only in driveways or in garages. Vehicles shall not be parked on any landscaped or natural areas of a Lot or within any of the Common Areas. No vehicles, machinery or equipment shall be (1) repaired or restored outside an enclosed structure (e.g., a garage) on any Lot or (2) placed on any types of blocks or other types of fixtures or personal property which are located outside of an enclosed garage.

(p) No portion of any Lot may be utilized to provide access, ingress to or egress from any property outside the boundaries of the Property without the express prior written consent of the ARC, which consent may be withheld by the ARC in its sole and absolute discretion.

(q) To the extent any Owner or Occupant or any of their respective builders, contractors, subcontractors, agents, employees, guests or invitees damage or destroy any of streets and roads or any sidewalks, curbing or retaining walls within the Property, then the Owner of such Lot shall promptly cause, at his, her or its sole cost and expense, such damaged streets and roads, sidewalks, curbing or retaining walls to be repaired and replaced in accordance with any and all requirements of the Association and all applicable Governmental Authorities.

1.05 OUTDOOR FURNITURE, BASKETBALL GOALS, GRILLS, RECREATIONAL FACILITIES AND CLOTHESLINES.

(a) One (1) bench is allowed in the front of a Dwelling as long as it is located on the front porch or along the walkway to the front door of such Dwelling. Benches should be constructed of wood, wood, and wrought iron, or concrete and be of a color in keeping with the color of the Dwelling. All benches shall be maintained in good repair and condition at all times.

(b) No interior furniture or furnishings (i.e., sofas, appliances, etc.) shall be allowed on the front porches of any Dwelling; however, except as set forth below, porch swings, rocking chairs, gliders and other types of outdoor furniture, including wicker furniture, shall be allowed. Notwithstanding the foregoing, no molded plastic furniture or furnishings shall be allowed on the front porches of any Dwellings. All front porches must be kept in a neat and orderly condition at all times. The color of all furniture or furnishings allowed on or within the front porches of any Dwelling must be approved in writing by the ARC.

(c) Because Abingdon by the River is an age-restricted community, basketball backboards and goalposts, playhouses, treehouses, children's toys, swing sets, jungle gyms, trampolines, batting cages and other outdoor and recreational or play equipment and appurtenances shall not be constructed, placed or located on any Lot without the prior written consent of the ARC.

(d) Outside clotheslines or other outside facilities for drying or airing clothes are prohibited on any Lot. No clothing, rugs or other items shall be hung, placed, or allowed to remain on any railing, fence, or wall.

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the side or rear of a Dwelling but only to the extent that the same is not visible from any streets and roads within the Property. No commercial barbecue equipment, including, without limitation, commercial grade smokers and grills, shall be placed, stored, or operated on any Lot. The foregoing shall not prohibit or preclude any Owner from constructing an outdoor fireplace on such Owner's Lot so long as the location of the same has been approved by the ARC.

(f) Up to three (3) items consisting of bird baths, statuary, fountains and/or yard art are permitted on a Lot which may be visible from any street subject to the following: statues shall be no taller than 18 inches; bird baths shall be located in the back yard and not visible from any street; statues and yard art shall be of a subdued color; and fountains must be submitted to and approved by the ARC.

(g) One (1) sixteen (16) square foot or smaller flag may be displayed on a Dwelling. Flags may include (1) American flag, a service flag, a university flag, or a seasonal flag. Seasonal flags may be displayed in the appropriate season only. All flags shall always be maintained in good repair and condition and in accordance with any requirements of any Governmental Authority. Free standing flag poles should be less than sixteen (16) feet in height and not visible from any street unless approved by the ARC.

(h) Any weathervanes to be installed on a Dwelling must be approved by the ARC.

1.06 **YARD AND GARAGE SALES.** The Association shall have the right, in its sole and absolute discretion, to limit, restrict and prohibit any yard, garage, basement or other types of sales within the Property and to adopt additional rules and regulations, as well as charging fees, for any such sales.

1.07 **LANDSCAPING AND TREES.**

(a) **Cutting of Trees and Other Plant Life.** No trees having a trunk diameter of two (2) inches or more at a point six (6) inches above ground level may be cut, removed or mutilated without first obtaining the prior approval of the ARC; provided, however, that the foregoing shall not be (i) applicable to the cutting and removal of any trees situated within ten (10) feet of the foundation of any Dwelling, any driveways for a Lot or any decks or patios on a Lot, (ii) deemed to prohibit the cutting and removal of any dead or diseased trees on a Lot or (iii) applicable to Developer. The provisions of this Section 1.07 shall be applicable at all times, including, without limitation, at the time of construction of a Dwelling on a Lot and after completion of construction of a Dwelling on a Lot.

(b) **Obstructions.** No plant materials shall be placed or permitted to remain on any Lot if the same would interfere with or obstruct traffic sight-lines for any of streets or roads. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive, and binding on all Owners.

(c) **Rocks and Rock Walls.** No rocks, rock walls or other substances shall be placed on any Lot as a front or side yard border to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit access to the same unless otherwise approved in writing by the ARC. Any walls, including retaining walls, to be constructed on any Lot must be approved by the ARC.

(d) **Native Plants.** Each Owner shall, to the extent practicable, attempt to incorporate into the landscaping plan for his or her Dwelling the natural plant life existing on such Lot and shall otherwise take such steps which would, to the extent practicable, preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels, which exist on such Lot. The ARC may from time to time promulgate rules and regulations adopting an approved list of plant life which must be utilized on any Lot, which rules and regulations may also prescribe that a minimum dollar amount be established and utilized as a landscaping budget for each Lot.

(e) **Turf Grass Height.** The Board has the right to adopt turf grass guidelines which, among other things, may mandate that the height of specific types of turf grass does not exceed specified heights. All Owners shall abide by any such guidelines.

(f) Decorations. Seasonal or holiday decorations (*e.g.*, Christmas trees and lights, pumpkins, Easter decorations) may not be placed on any Lot more than 30 days prior to such holiday and shall be promptly removed from each Lot no later than 20 days following the date of such holiday.

(g) Maintenance Requirements. Except as provided in Section 5.06 of the Declaration, approval of the ARC should be obtained prior to making landscape changes. All Owners are responsible for properly maintaining a neat appearance of all landscaping visible to the public from any streets or roadways. Regular maintenance includes:

- (i) Regular mowing of grass and removal of grass clippings;
- (ii) Treatment to control weeds;
- (iii) Pruning of trees and shrubbery;
- (iv) Edging grass along curb or gutter, drives, walks and natural areas;
- (v) Regular removal of leaves from all areas of a Lot;
- (vi) Regular refreshing of mulch in natural areas and/or planting beds;
- (vii) Replacing any dead shrubs or trees, which were part of an approved landscape plan. Replacements should be of the same type as the original and of an appropriate size; and
- (viii) Maintaining all irrigation and the landscaping (other than pavement and curb and gutters) located within the right-of-way of any roads adjacent to such Owner's Lot.

(h) Curb and Gutter. Rocks and other similar items are not permitted on, in or adjacent to the curb or gutter. Painted house numbers are not permitted on the curb or gutter.

(i) Edging (Border). Edging is permitted only if properly installed and maintained. Acceptable edgings are black plastic, steel, or aluminum. Brick, stone and concrete products are permitted if they repeat materials and colors of the house, while blending with surroundings and having a maximum height of six inches. Poured in place concrete edging is not permitted.

(j) Foundation Plantings. All Dwellings should have shrubs planted along the front foundation. The size, type, spacing and quantity of shrubs required will be evaluated based on the height of the foundation wall (from the ground up to the first floor). Approval of the ARC is required prior to making changes to foundation plantings.

(k) Gardens. All gardens designed for the production of vegetables and flowers for cutting should be located in the rear yard. These gardens are not permissible in front yards. Approval of the ARC is required if a garden will be visible from any street.

(l) Garden Hoses. Garden hoses should be of a subdued color and stored neatly on a hose reel or similar container when not in use.

(m) Landscape Timbers. Landscape timbers and railroad ties should not be used in the front yard, including construction of planters or around trees. Planters should be constructed of masonry

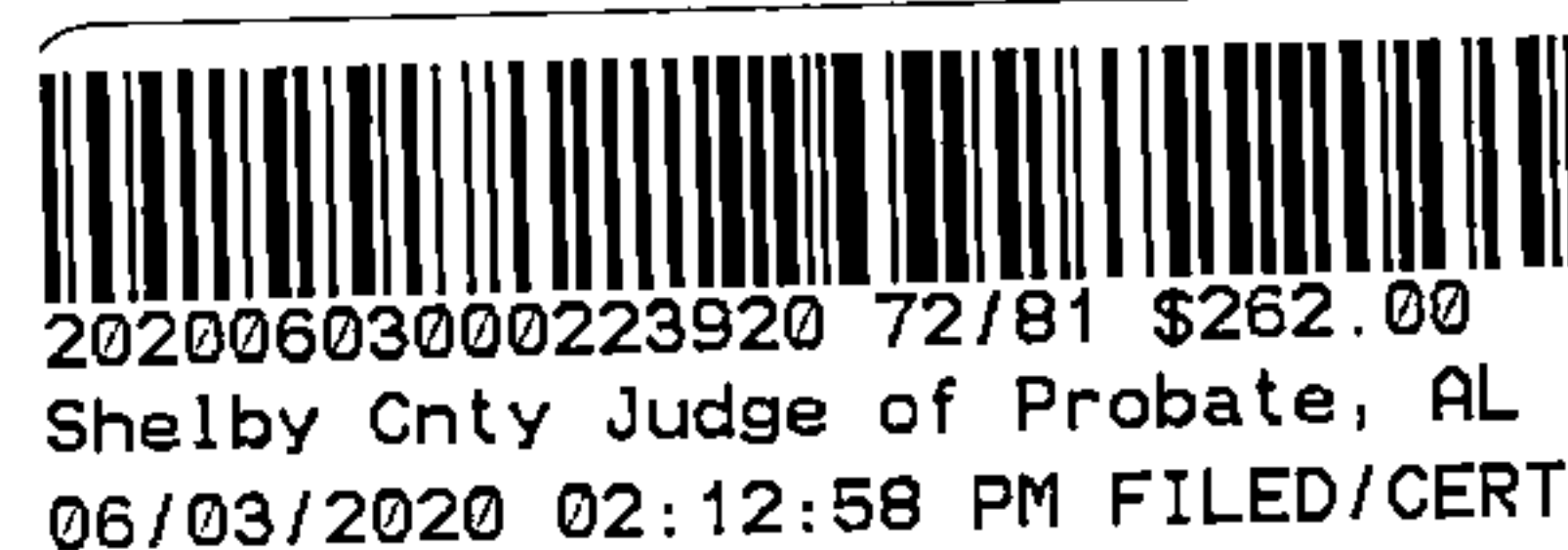
to match the house. Neither railroad ties nor landscape timbers should be used for construction of retaining walls in highly visible areas.

(n) Natural Areas and Planting Beds. A fresh layer of pine straw or naturally colored pine bark should be maintained and weed-free in areas not covered with sod, Mondo, Pachysandra, Ivy, or another approved ground cover in the front and side yards of all Dwellings. White rock or other light colored materials are not permitted. A distinction should be maintained between sod or ground cover and natural area by regularly edging along the boundary. The size and location of planting beds should be maintained according to their original condition or subsequently approved landscape plan approved by the ARC.

1.08 ANIMALS AND PETS. No animals, livestock, reptiles, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or any other portion of the Property; provided, however, that dogs and cats are allowed on a Lot or within a Dwelling so long as the same (a) do not become a nuisance to other Owners or Occupants and (b) are not kept for breeding or commercial purposes. Pets such as snakes, alligators and other reptiles are prohibited. The Board may adopt from time to time a specific listing of permitted and prohibited pets, including species or types of dogs or other animals which will not be allowed or which will be permitted within the Property. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas and spaces) shall be located only at the rear of a Dwelling, shall not be visible from any roadways within or adjacent to the Property and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot which are screened with appropriate landscaping approved by the ARC or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot of any other Owner, within any street right-of-way or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any requirements of any Governmental Authority with respect to any pets or other animals maintained by such Owner or Occupant on or within any Lot or within any portion of the Property, then enforcement of such governmental requirements shall be solely by the applicable Governmental Authority and not the Association. Each Owner of any pets within the Property shall and does agree to indemnify, defend and hold the Association, the ARC and Developer harmless from and against any and all claims, demands, actions, causes of action, losses, liabilities and expenses, including reasonable attorneys' fees and expenses, suffered paid or incurred by the Association, the ARC or Developer as a result of any violation by such Owner of any of the terms and provisions of this Section 1.08 or the actions of such Owner's pets which may cause injury of damage to person or property.

1.09 EXTERIOR LIGHTING. Exterior landscape lighting along the driveway, walkways and landscaping beds adjacent to a Dwelling is permitted. All lighting fixtures should be low voltage and no taller than eighteen (18) inches in height. The color of the light fixtures should blend with the surrounding areas (*i.e.*, black, bronze, copper or green). The ARC reserves the right to determine the appropriate number and spacing of any such landscape lighting. Lighting should not produce a glare onto any adjoining Lots or streets.

1.10 FENCES. No chain link or vinyl coated fences shall be allowed on any Lot. All fences, including the height, materials to be used, paint colors, style or architectural features of such fences and the location of any fences, must be approved in writing by the ARC.



1.11 **WINDOWS, WINDOW TREATMENTS AND DOORS.**

(r) Reflective glass shall not be permitted on the exterior of any Dwelling. Appropriate window treatments shall be used on all windows. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades, or other purposes. Sheets, bed linens, blankets and paper or plastic bags or similar items are not appropriate window treatments. Outdoor curtains or draperies for patios or other outdoor areas on any Lot must be approved in writing by the ARC.

(s) The ARC may adopt guidelines for the types of windows and materials from which windows may be constructed on any Dwelling. All exterior doors on any Dwelling or other Improvements on a Lot must be approved by the ARC as to style, materials used, color, size, and types of door hardware to be utilized. Burglar bars on windows and doors shall not be permitted. Screen doors shall be authorized only on the rear of a Dwelling. No aluminum or metal doors with glass fronts (*e.g.*, storm doors) shall be allowed on the front of any Dwelling.

1.12 **MAILBOXES.** Each Lot shall have only one (1) mailbox; provided, however, that (a) if required by the United States Postal Service; mailbox kiosks may be required in lieu of individual mailboxes and shall be located within any of the Common Areas of the Property and (b) the ARC may authorize and require that double mailboxes containing only one post be located at or near the common property line of two (2) Lots which will serve both Lots. All mailboxes shall be of the type, design, color, and location as may be established in the Architectural Standards or approved by the ARC. Mailboxes shall contain only the house number of the Lot as approved by the ARC, but no further inscription, paintings, ornaments, or artistry shall be allowed.

1.13 **HVAC EQUIPMENT.** No window mounted heating or air conditioning units or window fans shall be permitted. The location of all heating, ventilating, and air conditioning ("HVAC") equipment must be approved as part of the plans to be submitted to and approved by the ARC. All HVAC equipment must be appropriately screened with landscaping, which screening must be approved by the ARC.

1.14 **SATELLITE DISHES AND ANTENNAE.** One (1) satellite dish no more than two (2) feet in diameter may be installed on a Dwelling so long as any such satellite dish (a) is not installed in the front yard of any Lot (whether on the ground or on any pole or other improvement), (b) is installed on a Dwelling in a location which, to the greatest extent possible, will not be visible from the street adjoining such Lot, (c) if mounted on the rear or side roof of a Dwelling, then such satellite dish and its supports shall blend with the color of the roof, and (d) does not violate any other terms and provisions of the Declaration or these Rules and Regulations, including, but not limited to, the removal of any trees from such Lot. Any additional antennas that are required in order to receive local television stations should be installed internally (in an attic space); otherwise, the location of any such additional antennas outside a Dwelling must be approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.

1.15 **SIGNAGE.** Subject to the provisions of Section 6.10(b) of the Declaration, no signs or advertising posters of any kind (other than one (1) "for sale" or "for rent" sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC, in its sole and absolute

discretion. Notwithstanding the foregoing, the restrictions set forth in this Section 1.15 shall not be applicable to any signs erected pursuant to Section 6.10(b) of the Declaration.

1.16 **BULLETIN BOARDS.** No notices, flyers or advertisements shall be posted on or within the Common Areas or any streets and roads of the Property, including any bulletin boards within or on any of the Common Areas of the Property, without the prior written approval of the Board.

1.17 **COMPLAINTS.** Complaints regarding any services or the condition of any portion of the Property shall be made in writing to the Board.

1.18 **DAMAGE TO PROPERTY.** All Owners will be held responsible for the conduct of their immediate family members and Occupants while on or within any portion of the Property and for their adherence to all of these Rules and Regulations. Each Owner shall be responsible and reimburse the Association or third parties for any damage to any of the Common Areas or to the property of any third party caused by such Owner or any Occupants of the Dwelling of such Owner.

1.19 **FLAMMABLE AND TOXIC SUBSTANCES.** No Owner or Occupant shall at any time bring into or keep on or within any portion of the Property any flammable, combustible, explosive or other harmful fluids, chemicals or substances or any toxic or hazardous waste or substance except as shall be necessary and appropriate for permitted uses of a Lot or any Improvements thereto; provided, however, that the foregoing shall not be applicable to (a) the Association in connection with the maintenance and operation of any of the Property or to Developer in connection with the development of any portion of the Property or any real property owned by Developer situated adjacent thereto or in close proximity therewith or (b) the use of propane, natural gas or lighter fluid for outdoor grills (which satisfy the requirements of Section 1.05(e) above).

1.20 **RADIOS AND STEREOS.** No Owner or Occupant shall play upon or cause to be played upon any musical instrument or otherwise operate or permit to be operated any radio, stereo, compact disk or tape player, television, loudspeaker or other sound amplification device in or upon any Lot or any Improvements thereto or any of the Common Areas if the same would violate any governmental requirements or any noise or nuisance ordinances of any applicable Governmental Authority. The enforcement of any governmental requirements and any noise or nuisance ordinances shall be undertaken by the applicable Governmental Authority and not the Association.

1.21 **LAWNMOWERS AND YARD MAINTENANCE EQUIPMENT.** No Owner or Occupant shall operate a lawnmower, edger, trimmer, leaf blower, chain saw or similar yard maintenance equipment prior to 7:00 a.m. or after dusk.

1.22 **OBSTRUCTIONS.** No walkways, sidewalks, entrances or streets and roads within the Property shall be obstructed or encumbered or used for any purposes other than ingress or egress nor shall such areas be used for the storage of any personal property. Any personal property of an Owner or Occupant (other than vehicles and personal property located outside a Dwelling which is specifically allowed by these Rules and Regulations or which have been approved by the ARC) must be stored within (inside) the Improvements situated on a Lot.

1.23 **ACCESSORY DWELLINGS.**

(a) The use of accessory buildings (*i.e.*, gazebos, storage buildings, gazebos, pavilions and other similar buildings which are detached from a Dwelling), in general, is discouraged (other than for garages which are allowed as accessory buildings, subject to the provisions of Section 1.23(c) below) and will be subject to strict review and scrutiny by the ARC. Greenhouses, storage sheds or buildings, storage

spaces and other structures, if any, must be incorporated into the design of the Dwelling and plans and specifications for any such accessory buildings must be submitted to, reviewed by and approved by the ARC. No accessory building shall be constructed on a Lot prior to construction of a Dwelling on such Lot. Any structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas and spaces) shall be located only at the rear of a Dwelling, shall not be visible from any roadways within or adjacent to the Property and shall be constructed of materials and of a size approved by the ARC. No metal, aluminum, fiberglass, plastic or canvas barn carport, garage, utility building, storage building or other structure shall be erected or placed on any Lot.

(b) No temporary housing or shelters and no trailer, shack, tent, barn, shed, storage shed, tool shed, utility building, portable building, storage building, portable storage building, stable, poultry house or yard, rabbit hut, treehouse, dollhouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit (i) any detached garages or other structures which are approved in writing by the ARC, subject to the provisions of Section 1.23(c) below, (ii) to the extent approved by the ARC, dog houses for not more than three (3) dogs so long as such dog houses are visibly screened with landscaping from view from all roadways within or adjacent to the Property, (iii) to the extent approved by the ARC, temporary structures for social functions as may be permitted by the rules and regulations of the Board or (iv) construction trailers and/or sales offices of Developer.

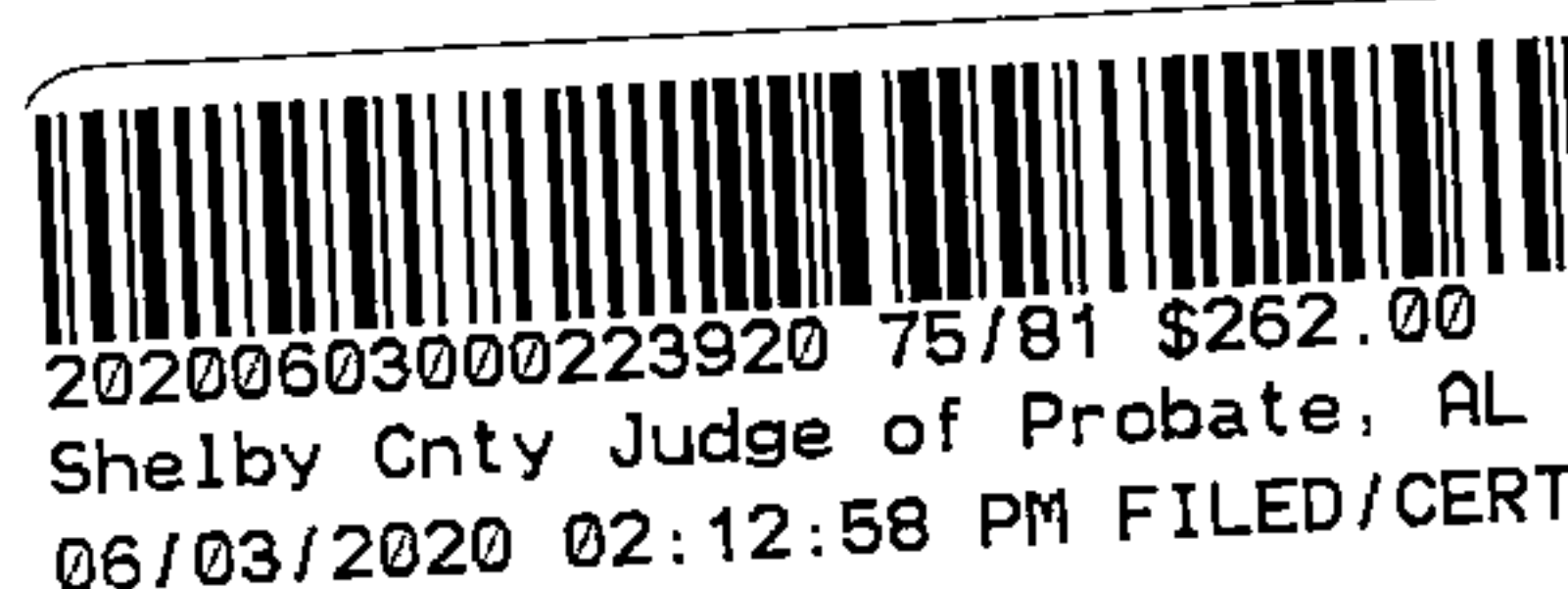
(c) Garages are approved accessory buildings so long as the same are used for the storage of not more than two (2) passenger vehicles.

1.24 **PESTICIDES AND FERTILIZATION.** The Board may adopt rules and regulations regarding the types of pesticides and fertilizers which may be used whether the Property, including prohibiting or limiting the uses of certain pesticides and fertilizers along, around or near any wetlands, streams, creeks, ponds, lakes or rivers which flow through any portion of the Property.

1.25 **ABINGDON BY THE RIVER COMMUNITY FACILITIES.**

(a) The Board, shall have the right, from time to time, to adopt as part of the Rules and Regulations, additional rules and regulations for the use of any of the Abingdon by the River Community Facilities, including, without limitation: authorizing third parties who are not Owners to utilize any of the Abingdon by the River Community Facilities on such terms as the Board may, in its sole and absolute discretion, determine; adopting limitations or restrictions on the number of (and frequency of use by) Guests of Owners who may use the Abingdon by the River Community Facilities; limiting the use of certain of the Abingdon by the River Community Facilities only to the Occupants and immediate family members of any Owners; establishing hours and days that the Abingdon by the River Community Facilities will be open and available for use; requiring an Owner to be responsible for any damages to the Abingdon by the River Community Facilities caused by such Owner or such Owner's Occupants or any of their respective Guests; suspending or revoking the privileges of any Occupant or the Guests of any Occupant to use any of the Abingdon by the River Community Facilities pursuant to the provisions of Article XII of the Declaration; and such other rules and regulations which the Board may from time to time adopt, including, without limitation, adopting rules and regulations for use of the Abingdon by the River Community Facilities for private parties sponsored by an Owner and establishing fees and charges for such private parties.

(b) Each Owner, for such Owner and any Occupant of such Owner's Lot or Dwelling and their respective Guests, by acceptance of a deed to such Lot or any entry onto any of the Abingdon by the River Community Facilities, and each Mortgagee by acceptance of Mortgage encumbering such Lot or the Dwelling situated thereon, for themselves and their respective successors and assigns, do hereby:



(i) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association and each Governmental Authority and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of any loss, damage or injury to person or property, including death, as a result of any entry onto any of the Abingdon by the River Community Facilities, if any, by any such Owner, Occupant, or any of their respective Guests or any Mortgagee or any of its successors and assigns; and

(ii) Acknowledge and agree that: (1) neither Developer, the ARC, the Association, any Governmental Authority nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about the Abingdon by the River Community Facilities, if any; (2) the use of the Abingdon by the River Community Facilities, if any, by any such Owner or Occupant or any of their respective Guests, shall be at the sole risk and expense of the Person using the Abingdon by the River Community Facilities, if any; and (3) the Abingdon by the River Community Facilities, if any, which contain any water features or pools, as with any other body of water, pose a potential threat of life threatening harm and each Owner or Occupant and their respective Guests should exercise utmost care and safety precautions in and around the Abingdon by the River Community Facilities, if any.

1.26 **STORM DRAINS.** Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets, and other structures necessary for control of storm drainage and runoff for the Property. No Owner or Occupant or any of their respective licensees, invitees or contractors shall alter, modify, or in any way interfere with the functionality of these structures. Additionally, no Owner or Occupant or any of their respective licensees, invitees or contractors shall allow debris, grass clippings, fences, or any other items to impede or impair the function of any drainage structure and shall maintain the same if located on such Owner's Lot.

1.27 **AGE-RESTRICTED COMMUNITY COMPLIANCE.**

(a) All Owners and Occupants shall strictly comply with all of the terms and provisions of Section 6.02 of the Declaration regarding satisfaction of the age restriction requirements for Abingdon by the River which require that all Dwellings situated on any of the Lots are intended and shall be operated for occupancy by persons who are 55 years of age or older, although younger persons are not restricted from occupying a Lot along with a person 55 years of age or older so long as such co-occupancy is in compliance with all of the terms and provisions of Section 6.02 of the Declaration and the Act.

(b) In furtherance of the provisions of Section 1.27(a) above, no minor child (under the age of nineteen (19) years of age) may reside in any Dwelling within Abingdon by the River for more than sixty (60) days during any calendar year.

1.28 **SANITARY SEWER REQUIREMENTS.** All Owners shall strictly comply with (a) all of the terms and provisions of Section 6.11 of the Declaration regarding the installation and operation of the sanitary sewer system equipment on such Owner's Lot and (b) all rules, regulations and requirements of the Sewer Service Company which may be promulgated by the Sewer Service Company from time to time.

1.29 **ADDITIONAL RULES AND REGULATIONS.** These Rules and Regulations are subject to change, modification, amendment, rescission and enlargement at any time and from time to time by action of the Board of Directors of the Association, without the consent or approval of the Owners or Mortgagees of any Lot. All Owners and Occupants shall be bound by and agree to comply with all additional Rules and Regulations adopted from time to time by the Board as well as any and all changes, modifications, amendments, rescissions and enlargements of these Rules and Regulations.

1.30 **VARIANCES.** The ARC (with the consent and approval of the Board) shall have the exclusive right to grant variances with respect to any of the provisions of these Rules and Regulations. Any variance request shall be in writing and, upon approval of the same by the ARC (and the Board) shall be evidenced by a written variance executed by the ARC and the Board.

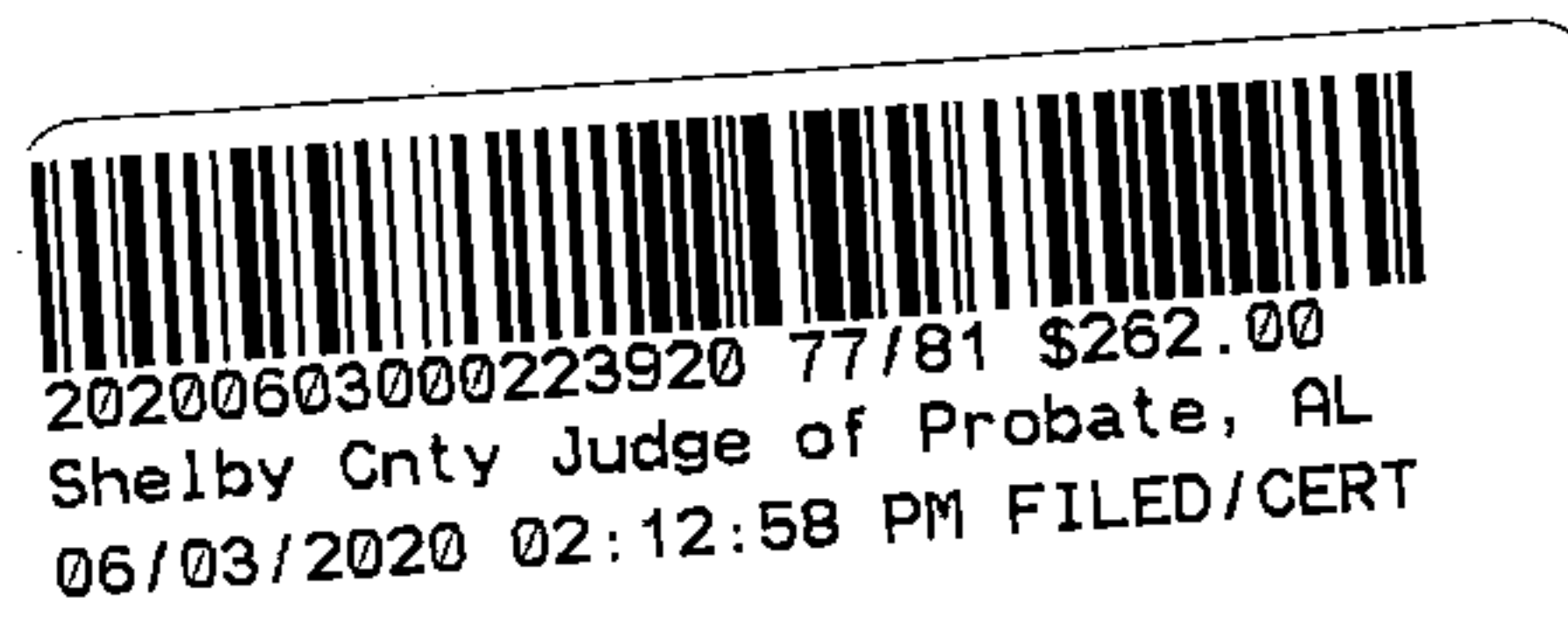


Exhibit C-1

Illustration of Owner Sewer Line Connection to County Gravity Sewer Main

See Attached.

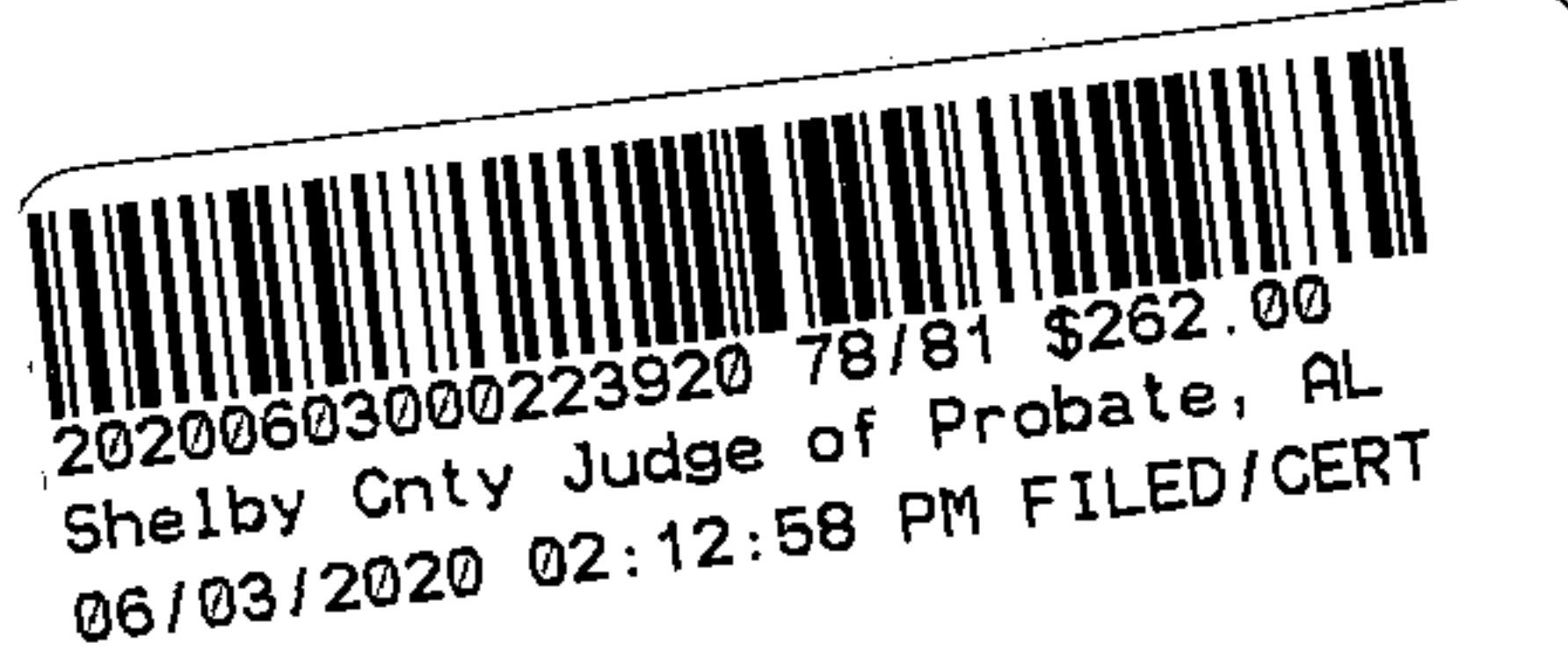
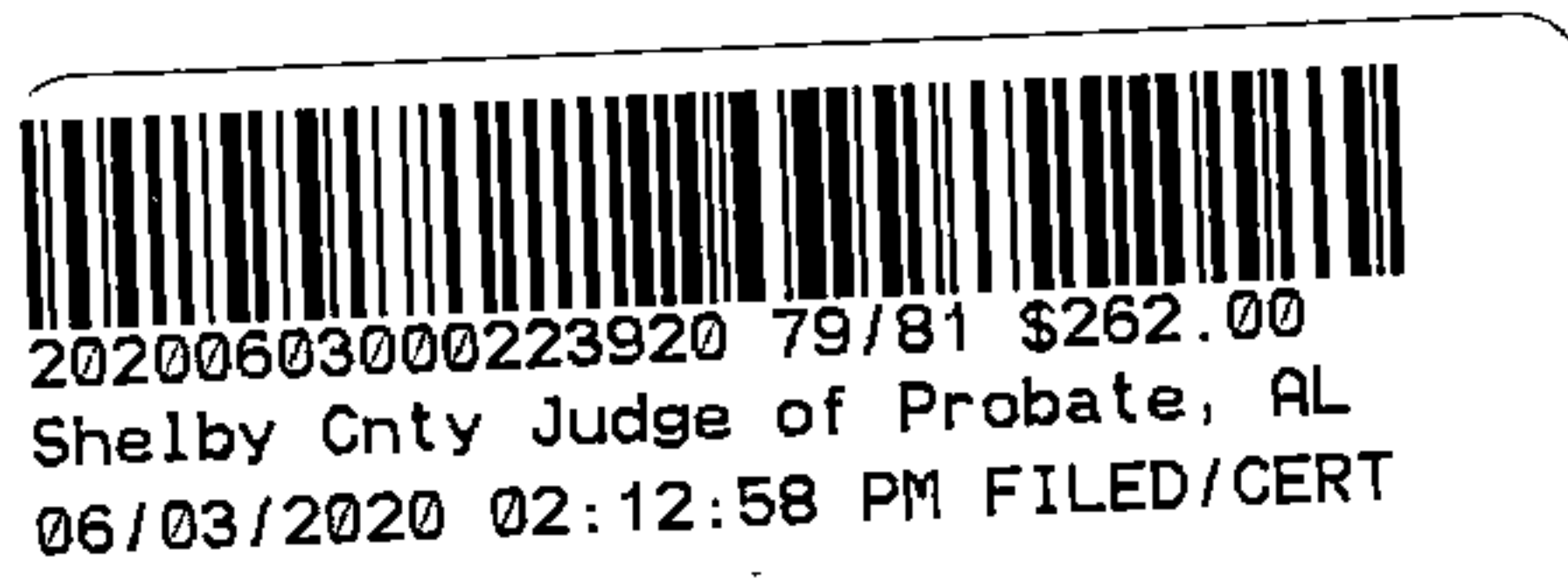


EXHIBIT C-1
GRAVITY SEWER
OWNER EQUIPMENT



NOTES:

THE HOME OWNER IS RESPONSIBLE FOR MAINTENANCE OF THE GRAVITY SEWER LINES IN THE HOUSE AND UP TO AND INCLUDING THE HOUSE CLEANOUT.

THE HOMEOWNERS ASSOCIATION MAINTAINS THE SEWER LATERAL FROM THE MAIN TO IMMEDIATELY DOWNSTREAM OF THE HOUSE CLEANOUT.

JEFFERSON COUNTY MAINTAINS THE SEWER MAIN ONLY. NO PART OF THE SEWER LATERAL IS MAINTAINED BY THE COUNTY.

JEFFERSON COUNTY ENVIRONMENTAL SERVICES DEPARTMENT GRAVITY SEWER MAIN (COUNTY SEWER MAIN) (MAINTAINED BY THE COUNTY)

HOUSE CLEANOUT - THE TOP OF THE HOUSE CLEANOUT IS VISIBLE ABOVE GROUND AND IS USUALLY MADE OF WHITE PVC. BY CODE THIS CLEANOUT IS LOCATED WITHIN 30 INCHES OF THE FACE OF THE HOUSE. (MAINTAINED BY HOMEOWNER)

4" GRAVITY SEWER LINE IN THE HOUSE AND BETWEEN THE HOUSE AND THE HOUSE CLEANOUT. (MAINTAINED BY HOMEOWNER)

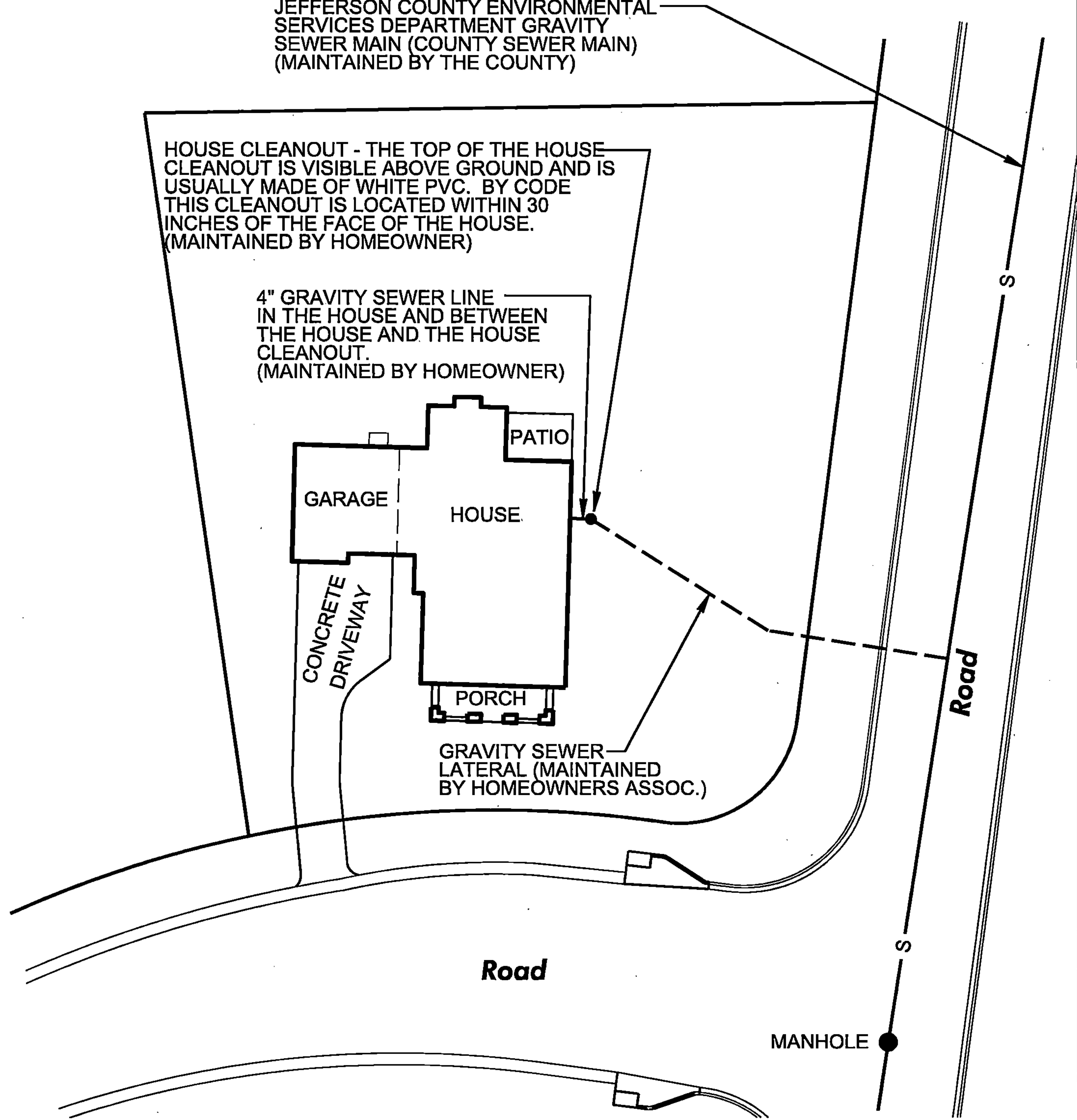


Exhibit C-2

Illustration of Owner LPS Equipment Connection to County Low Pressure Sewer Main

See Attached.

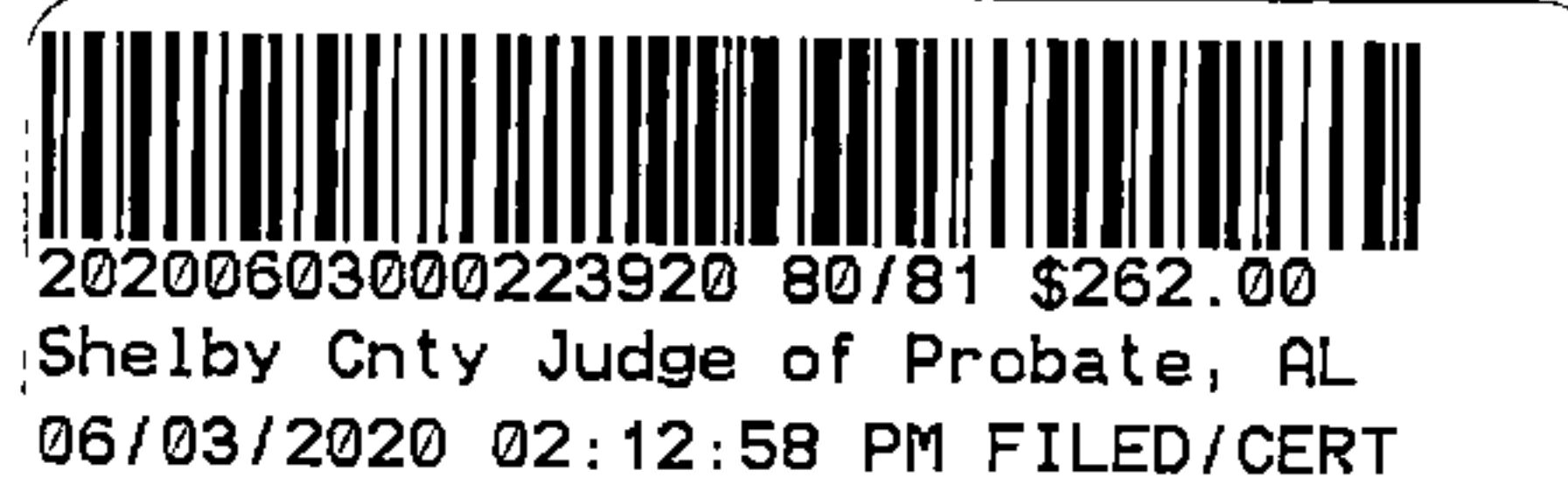


EXHIBIT C-2
LPS OWNER EQUIPMENT



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Shelby Cnty Judge of Probate, AL
06/03/2020 02:12:58 PM FILED/CERT

NOTE:

THE HOME OWNER IS RESPONSIBLE FOR MAINTENANCE OF THE GRAVITY SEWER LINES IN THE HOUSE.

THE LOCATION OF THE PUMP, CONTROL PANEL AND VALVE BOXES MAY VARY FROM THIS TYPICAL EXAMPLE.

*JEFFERSON COUNTY MAINTAINS THE SEWER LATERAL FROM THE COUNTY SEWER MAIN TO THE VALVE BOX, BUT DOES NOT MAINTAIN THE VALVE OR VALVE BOX.

