

STATE OF ALABAMA)
 :
COUNTIES OF JEFFERSON AND SHELBY)

CLUB FACILITIES AGREEMENT

THIS CLUB FACILITIES AGREEMENT (this "Agreement") is made and entered into this 3 day of June, 2020 by and between **LAKE WILBORN RESIDENTIAL ASSOCIATION, INC.**, an Alabama nonprofit corporation, and **FLEMMING PARTNERS, LLC**, an Alabama limited liability company.

RECITALS:

Flemming Partners, LLC, as hereinafter defined, is the sole owner of the Abingdon by the River Property, as hereinafter defined.

Lake Wilborn Association, as hereinafter defined, is the property owners' association formed to own and operate the Pool Facilities, as hereinafter defined, under the Lake Wilborn Declaration, as hereinafter defined.

Pursuant to the provisions of Section 4.06(d) of the Lake Wilborn Declaration, the Board of Directors of Lake Wilborn Association has determined that the Occupants, as hereinafter defined, of a Dwelling, as hereinafter defined, situated within any Lot, as hereinafter defined, within the Abingdon by the River Property shall have the right to utilize the Pool Facilities of Lake Wilborn Association, subject to and upon the terms and conditions hereinafter set forth.

Flemming Partners, LLC and Lake Wilborn Association desire to enter into this Agreement in order to authorize the use of the Pool Facilities by the Occupants of Dwellings within the Abingdon by the River Property and create the mandatory obligation on the part of the Owners of each Lot or Dwelling to pay Assessments, as such term is hereinafter defined, which rights and obligations shall be covenants running with title to all Lots and Dwellings within the Abingdon by the River Property and shall be binding upon and inure to the benefit of Lake Wilborn Association, SB Dev, all Owners and their respective heirs, executors, personal representatives, successors and assigns.

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

1. **Definitions.** As used throughout this Agreement, 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:


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(a) **“Abingdon by the River Declaration”** shall mean that certain Abingdon by the River Declaration of Covenants, Conditions and Restrictions dated _____, 2020 and contemporaneously recorded herewith in the Office of the Judge of Probate of Jefferson County, Alabama and in the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time.

(b) **“Abingdon by the River Property”** shall mean and include (i) that certain real property situated in the City of Hoover, Jefferson and Shelby Counties, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference, (ii) any Additional Property which Flemming Partners, LLC adds from time to time to the terms and provisions of the to the Abingdon by the River Declaration and (iii) any Other Property which may be added to the terms and provisions of this Agreement pursuant to the provisions of **Paragraph 8** below.

(c) **“Additional Property”** shall have the meaning given to such term in the Abingdon by the River Declaration which, pursuant to the Abingdon by the River Declaration, means any real property owned by Flemming Partners, LLC which Flemming Partners, LLC elects to add from time to time to the terms and provisions of the Abingdon by the River Declaration. All such Additional Property added from time to time to the Abingdon by the River Declaration shall become part of the Abingdon by the River Property and shall be subject to all of the terms and provisions of this Agreement.

(d) **“Annual Amenity Assessment”** shall mean an amount equal to \$500.00 for the 2020 calendar year, which amount shall be subject to increase each year thereafter (beginning in calendar year 2021), as determined by Lake Wilborn Association; provided, however, that in no event shall the Annual Amenity Assessment in any year be more than fifty percent (50%) of the total “Annual Assessment”, as defined in the Lake Wilborn Declaration, for the then applicable calendar year which is assessed by Lake Wilborn Association to the owners of the real property subject to the Lake Wilborn Declaration. The Annual Amenity Assessment shall be payable by the Owner of each Lot or Dwelling within the Abingdon by the River Property in accordance with the terms and provisions of **Paragraph 3** below.

(e) **“Amenity Fee”** shall have the same meaning given to such term in the Lake Wilborn Declaration. The Amenity Fee shall be payable by the Owner of each Lot or Dwelling within the Abingdon by the River Property in accordance with the terms and provisions of **Paragraph 3** below.

(f) **“Assessments”** means, collectively, Annual Amenity Assessments, Amenity Fees, and Individual Assessments.

(g) **“Dwelling”** means any single-family residential home constructed on any Lot within the Abingdon by the River Property.

(h) **“First Purchaser”** means the first person (other than any Affiliates, as defined in the Lake Wilborn Declaration, thereof) to purchase a completed Dwelling on a Lot.

(i) **“Guest”** means any natural person who, at the request or invitation of the Occupant of any Dwelling, enters onto any of the Pool Facilities. Guests shall include any and all family members or invitees of any Occupant. All actions or omissions of any Guest of an Occupant shall be deemed the actions and omissions of the Owner of the applicable Lot.

(j) **“Individual Assessments”** shall have the meaning given to such term in Paragraph 4 below.

(k) **“Lake Wilborn Association”** means Lake Wilborn Residential Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

(l) **“Lake Wilborn Declaration”** means the Lake Wilborn Residential Declaration of Covenants, Conditions and Restrictions dated as of August 31, 2017 which has been recorded as Instrument 20170913000333990 in the Probate Office, as the same may be amended from time to time.

(m) **“Lot”** means any portion of the Abingdon by the River Property reflected on a Subdivision Plat which is intended for the construction of a Dwelling thereon. Notwithstanding anything provided herein to the contrary, any “common areas” or other areas within the Abingdon by the River Property which are not intended for the construction of a Dwelling thereon shall not constitute a Lot.

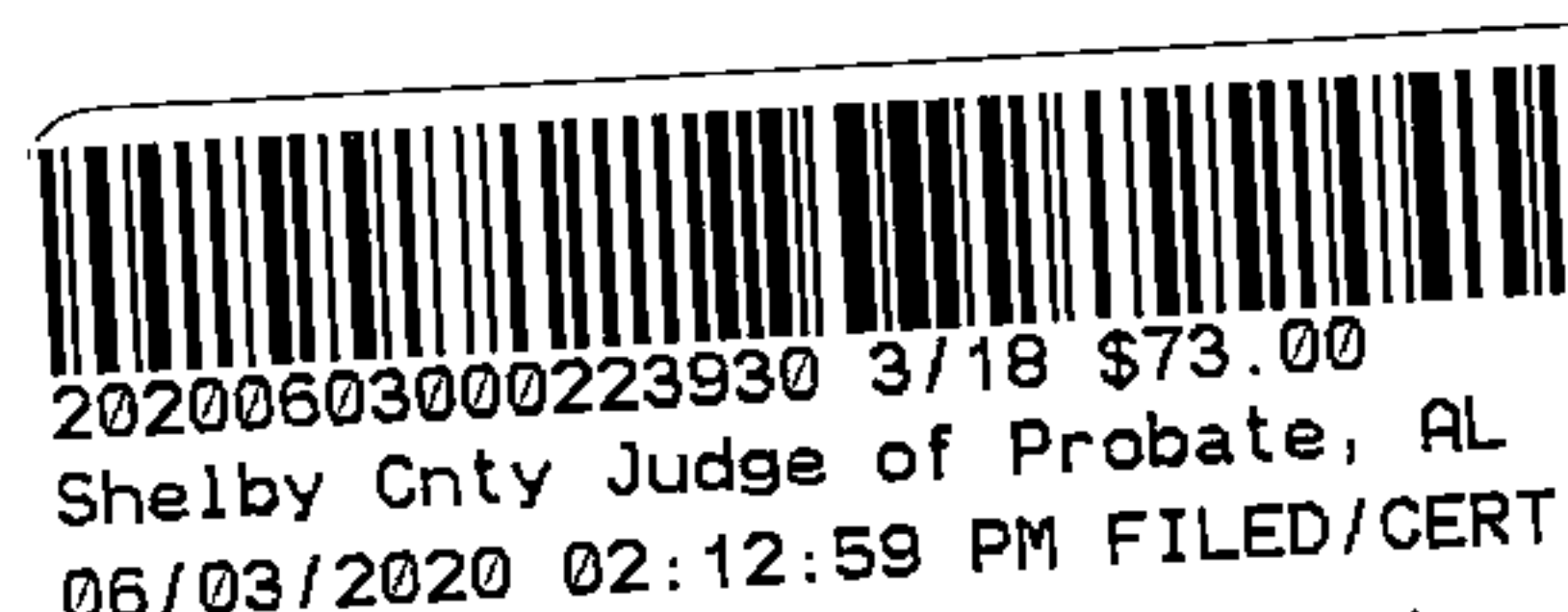
(n) **“Mortgage”** with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or Dwelling or any interest therein and which has been duly and properly recorded in the Probate Office.

(o) **“Mortgagee”** with an initial capital letter, shall mean and refer to the holder of any Mortgage.

(p) **“Occupant”** shall mean and include any natural person who occupies, resides, or lives in a Dwelling, including the Owner of such Lot if such Owner occupies, resides, or lives in the Dwelling on such Owner’s Lot. All actions or omissions of the Occupant of any Dwelling shall be deemed the actions and omissions of the Owner of the Lot on which such Dwelling is situated.

(q) **“Other Property”** shall mean any real property owned by Flemming Partners, LLC (other than the Abingdon by the River Property or any Additional Property) which SB Dev, with the written consent of Lake Wilborn Association, may, from time to time, submit to and add to the provisions of this Agreement pursuant to the terms and provisions of Paragraph 8 below.

(r) **“Owner”** with a capital letter, means the holder of fee simple title to any Lot, including SB Dev, 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.

(s) **"Pool Facilities"** means any and all swimming pools and clubhouses owned or operated by Lake Wilborn Association, which are located on or within any of the real property subject to the Lake Wilborn Declaration.

(t) **"Probate Office"** means, as applicable, either or both of the Office of the Judge of Probate of Jefferson County, Alabama and the Office of the Judge of Probate of Shelby County, Alabama.

(u) **"Rules and Regulations"** means any and all rules and regulations adopted from time to time by Lake Wilborn Association with respect to the use of the Pool Facilities; provided, however, that in no event shall any of the rules and regulations adopted by Lake Wilborn Association for the use of the Pool Facilities discriminate against the Occupants of any Lots or Dwellings within the Abingdon by the River Property which would be different than those rules and regulations which affect, or which are applied to, the owners or occupants of any of the real property subject to the Lake Wilborn Declaration.

(v) **"SB Dev"** means Abingdon by the River, an Alabama corporation, and its successors and assigns.

(w) **"Subdivision Plat"** means any subdivision plat reflecting any Lots within the Abingdon by the River Property which has been recorded in the Probate Office.

2. **Grant of Use Rights.**

(a) Subject to the terms and provisions of this Agreement, Lake Wilborn Association does hereby grant to Flemming Partners, LLC and each Occupant of each Dwelling within the Abingdon by the River Property and their respective Guests the permanent, perpetual and non-exclusive right, in common with Lake Wilborn Association, all owners, occupants and other persons authorized under the Lake Wilborn Declaration or by the Lake Wilborn Association, to use and enjoy the Pool Facilities, subject to and upon the terms and conditions set forth in this Agreement. The foregoing use right applies to and benefits only Occupants and their respective Guests and does not extend to any Owner unless such Owner is also an Occupant of a Dwelling within the Abingdon by the River Property.

(b) Lake Wilborn Association, shall have the right, from time to time, to adopt, modify, change, add to and alter as part of the Rules and Regulations any and all rules and regulations for the use of any of the Pool Facilities, including, without limitation: authorizing additional third parties to utilize any of the Pool Facilities on such terms as Lake Wilborn Association may, in its sole and absolute discretion, determine; adopting limitations or restrictions on the number of (and frequency of use by) Guests of Occupants who may use the Pool Facilities; limiting the use of certain of the Pool Facilities only to the Occupants of Dwellings within the Abingdon by the River Property; establishing hours and days that the Pool Facilities will be open and available for use; requiring an Owner to be responsible for any damages to the Pool Facilities

or any personal property situated on or within the Pool Facilities caused by the Occupant (or such Occupant's Guests) of the Dwelling situated on the Lot owned by such Owner; and such other rules and regulations which Lake Wilborn Association may from time to time adopt, including, without limitation, adopting rules and regulations for use of the Pool Facilities for private parties sponsored by an Occupant and establishing fees and charges for such private parties. Notwithstanding anything provided to the contrary in this Agreement or the Lake Wilborn Declaration, all Rules and Regulations shall be applied uniformly to, and without discrimination between, Occupants (and their Guests) of Dwellings within the Abingdon by the River Property and the owners, occupants and guests of the real property subject to the Lake Wilborn Declaration.

(c) In addition to the other rights and remedies provided elsewhere in this Agreement, in the event any Occupant or the Guest of any Occupant violates any of the provisions of this Agreement or the Rules and Regulations, then Lake Wilborn Association shall have the power and right, at its option, to (i) impose an Individual Assessment against the Owner of a Lot or Dwelling for the costs incurred by Lake Wilborn Association to repair or replace any of the Pool Facilities or any personal property situated thereon which may be damaged or destroyed by the acts or omissions of the Occupant (or the Guests of any Occupant) of such Owner's Dwelling and (ii) suspend or terminate an Occupant's privilege (and the privilege of such Occupant's Guests) to use all or any of the Pool Facilities. Any action to be taken by Lake Wilborn Association pursuant to this Paragraph 2(c) shall be subject to the satisfaction of the terms and provisions of Paragraph 2(d) below.

(d) In the event any of the terms or provisions of this Agreement or the Rules and Regulations are violated by any Occupant, or the Guests of any Occupant, Lake Wilborn Association shall not suspend or terminate the privileges to use any Pool Facilities pursuant to Paragraph 2(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 this Paragraph 2(d) and providing such Owner the opportunity to appear and be heard and be represented by counsel before Lake Wilborn Association. Any notices to an Owner required by this Paragraph 2(d) shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation; and
- (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 Agreement or any of the Rules and Regulations may result in the suspension or termination of the use privileges relating to the use of the Pool Facilities.

The foregoing procedure set forth in this Paragraph 2(d) shall only be applicable to the possible suspension or termination of the privileges to use any of the Pool Facilities and shall not apply to the exercise of any of the rights and remedies specified in any other paragraph or provision of this Agreement. Notwithstanding anything provided herein to the contrary, the suspension or

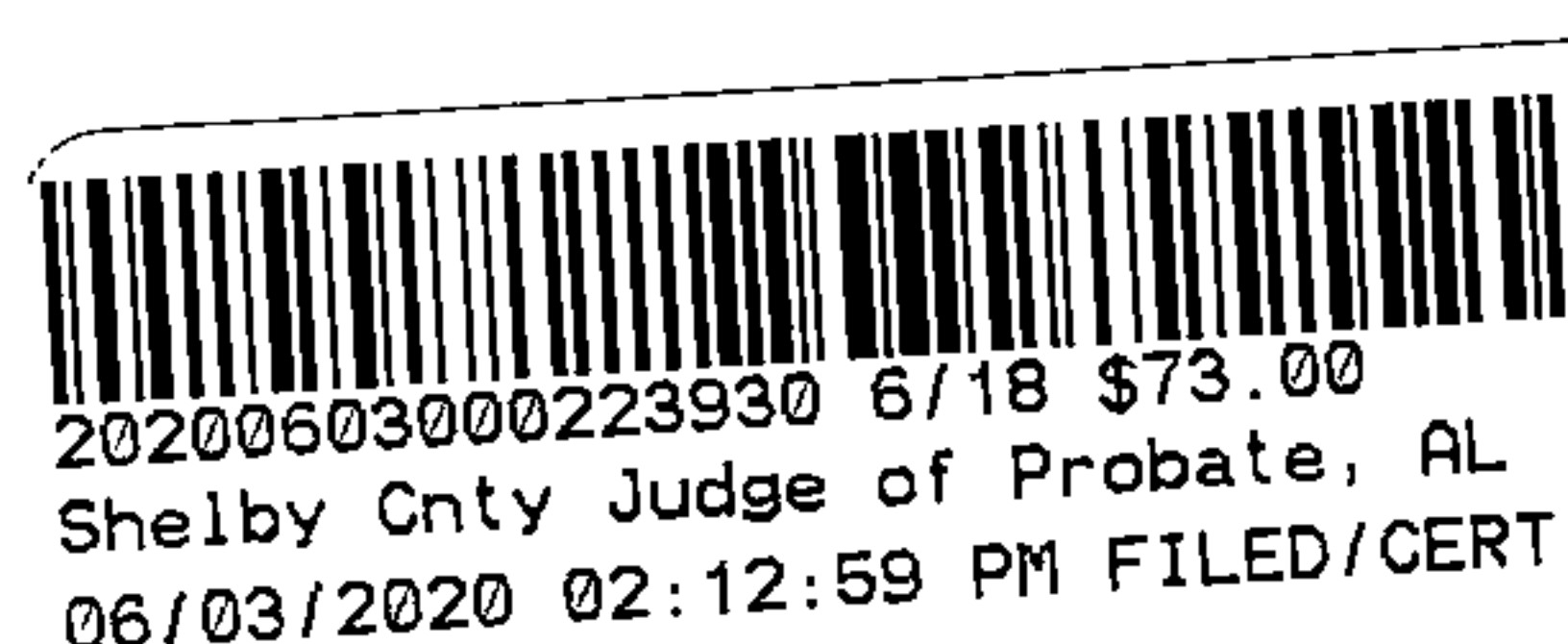
termination of privileges of any Occupant or such Occupant's Guests to use the Pool Facilities shall not alter, limit, or suspend the obligation of paying Assessments.

(e) The Pool Facilities provided by Lake Wilborn Association for the use and benefit of all Occupants and their respective Guests are provided without lifeguards or other supervisory personnel and neither Lake Wilborn Association, PR Wilborn, LLC, Lake Wilborn Partners, LLC, Flemming Partners, LLC nor any of their respective Affiliates, as defined in the Lake Wilborn Declaration, successors and assigns (collectively, the "Released Parties"), will provide any such lifeguards or supervisory personnel in connection with the utilization of the Pool Facilities.

(f) The Owner of each Lot, for such Owner and any Occupants (and the respective Guests of such Occupants), and their respective heirs, executors, personal representatives, administrators, successors and assigns, by acceptance of a deed to such Lot, for each such Owner, all Occupants and the Guests of all Occupants of such Owner's Lot and their respective heirs, executors, personal representatives, successors and assigns, do hereby:

(i) Irrevocably and unconditionally waive, release and forever discharge the Released Parties and their respective officers, directors, members, managers, partners, agents, representatives, the holders of any ownership or financial interest in the foregoing entities, 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 or use of the Pool Facilities by any Occupant (or any Guest of any such Occupant) or any of their respective heirs, executors, personal representatives, administrators, successors and assigns; and

(ii) Acknowledge and agree that: (1) none of the Released Parties 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 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 Pool Facilities; (2) the use of the Pool Facilities by any such Occupant (or the Guests of any such Occupant) of any Lot shall be at the sole risk and expense of the person or entity using the Pool Facilities; and (3) the Pool Facilities, as with any other body of water, pose a potential threat of life-threatening harm and each Occupant (and their respective Guests) and their respective heirs, executors, personal representatives, administrators, successors and assigns should exercise utmost care and safety precautions in and around the Pool Facilities.



3. **Obligations to Pay Amenity Fee and Annual Amenity Assessments.**

(a) At the closing of the purchase by each First Purchaser of a completed Dwelling on any Lot, such First Purchaser and each subsequent Owner of such Lot shall be obligated to pay to Lake Wilborn Association an Amenity Fee in such amounts as may be determined (and changed) from time to time by Lake Wilborn Association, which Amenity Fees shall be utilized by Lake Wilborn Association to pay for the costs to construct all Club Facilities owned or operated by Lake Wilborn Association. The Amenity Fee charged by Lake Wilborn Association to the First Purchaser may be greater than or less than the fee charged to any subsequent Owners of such Lot. The amount of the Amenity Fee shall be determined (and shall be subject to change from time to time) by Lake Wilborn Association, in its sole and absolute discretion; provided, however, that in no event shall the Amenity Fee charged to any Owner be more than the amenity fee assessed or charged by Lake Wilborn Association to the owners of the real property subject to the Lake Wilborn Declaration.

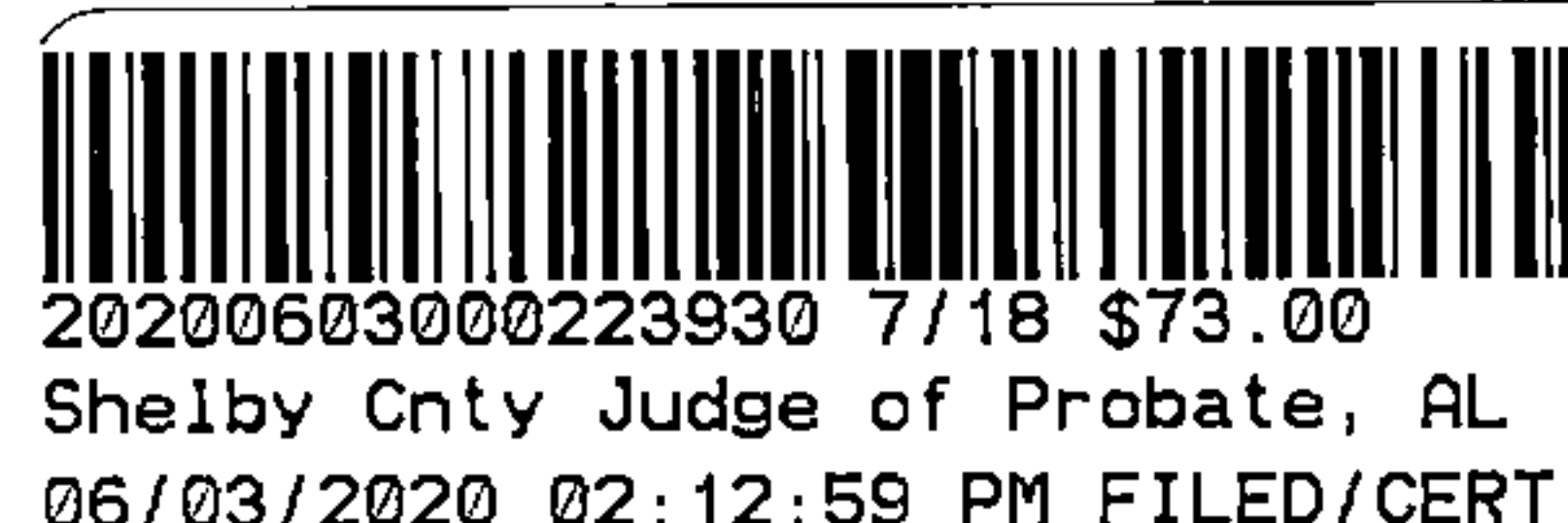
(b) From and after the closing of the purchase by each First Purchaser of a completed Dwelling on any Lot, such First Purchaser and each subsequent Owner of such Lot shall be obligated to pay to Lake Wilborn Association the Annual Amenity Assessments applicable to such Owner's Lot, which Annual Amenity Assessments shall be payable in advance each year in accordance with billing instructions to be provided by Lake Wilborn Association to each Owner, subject to proration for the remainder of the calendar year in which the First Purchaser purchased the completed Dwelling on such Lot.

(c) To the extent any Additional Property or Other Property is added to the provisions of this Agreement, (i) the Amenity Fee shall be payable by the Owner of each Lot in accordance with the provisions of Paragraph 3(a) above and (ii) Annual Amenity Assessments shall be payable by the Owner of each Lot in accordance with the provisions of Paragraph 3(b) above. Assessments for Lots within any portion of the Additional Property or Other Property hereafter submitted to the terms of this Agreement shall commence with respect to each such Lot within the Additional Property or the Other Property on the day on which such the completed Dwelling on such Lot is purchased by the First Purchaser of such Lot, subject to proration for the calendar year in which the First Purchaser purchased the completed Dwelling on such Lot.

(d) The obligation of each Owner of a Lot to pay Amenity Fees and Annual Amenity Assessments shall be enforceable by Lake Wilborn Association in the manner set forth in Paragraph 5 below.

(e) Lake Wilborn Association may elect to suspend the collection of Amenity Fees at any time.

(f) The obligations of all Owners to pay Assessments 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 or the Occupants of such Owner's Lot or Dwelling do not utilize any of the Pool Facilities.



(g) To the extent Lake Wilborn Association and the homeowners' association established for the Abingdon by the River Property mutually agree, such homeowners' association may collect the Annual Assessment Amount and Amenity Fee from each Owner of the Abingdon by the River Property (beginning with each First Purchaser) and remit the same to Lake Wilborn Association.

(h) 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 Abingdon by the River Property or any other cause or reason of any nature, including, without limitation, non-use of the Pool Facilities.

4. **Individual Assessments.** Lake Wilborn 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) 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 Lake Wilborn Association to repair or replace any of the Club Facilities or any personal property situated thereon which was damaged or destroyed by the acts or omissions of any Occupant or Guest of the Lot or Dwelling of such Owner pursuant to the provisions of Paragraph 2(c) above and (b) any costs, charges or other amounts payable by any Owner for any special services which Lake Wilborn Association and such Owner may have contracted for which have been or will be provided to such Owner by Lake Wilborn Association. The Individual Assessments provided for in this Paragraph 4 shall be levied by Lake Wilborn Association and the amount and due date of such Individual Assessment shall be specified by Lake Wilborn Association in a notice to such Owner, which due date shall, except as provided in Paragraph 5(c) below, be no earlier than 30 days from the date of such notice or billing invoice for such Individual Assessment.

5. **Creation of Lien and Enforcement Rights.**

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to Lake Wilborn Association all Assessments provided for herein. Lake Wilborn 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 Amenity 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 Lake Wilborn 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 Lake Wilborn Association, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot or Building. 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 Lake Wilborn 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 Lake Wilborn Association. The lien and equitable charge upon each Lot or Building 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 Lake Wilborn 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, Lake Wilborn Association, acting through its Lake Wilborn Association or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

(i) Lake Wilborn 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 Lake Wilborn Association in collecting such unpaid Assessments; and/or

(ii) Lake Wilborn Association may enforce the lien created pursuant to Paragraphs 5(a) and 5(c) hereof in the manner hereinafter provided; and/or

(iii) Lake Wilborn Association may suspend the privileges of the Occupants and Guests of such Owner's Lot to use the Pool Facilities as provided in Paragraph 5(d) below.

(c) There is hereby created a continuing lien on each Lot, with power of sale, in favor of Lake Wilborn Association, which secures the payment to Lake Wilborn Association of any and all Assessments levied against or upon such Lot or Building, 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 Lake Wilborn 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, Lake Wilborn Association, through any member of the board of directors of Lake Wilborn Association 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, Lake Wilborn Association shall give written notice (the "Lien Notice") to such defaulting Owner in the manner set forth in Paragraph 9 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), Lake Wilborn 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 of directors of Lake Wilborn Association or any officer or authorized representative thereof having personal knowledge of the facts, contain the following information and be recorded in the Probate Office:

- (1) The name of Lake Wilborn 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 Lake Wilborn Association pursuant to this Agreement and is claimed against such Lot in an amount equal to that stated therein.

The lien provided for herein shall be in favor of Lake Wilborn 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. Lake Wilborn 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, shall be deemed to (1) grant to and vest in Lake Wilborn Association and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in Lake Wilborn 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, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of

limitations which may be applicable to the commencement of any such suit or action for foreclosure.

(d) In addition to the other rights and remedies provided herein, in the event any Owner fails to pay any Assessments within 30 days from the statement billing date for such Assessments, then Lake Wilborn Association shall have the right to suspend the privileges of such Owner, his or her Occupants, and the Guests of such Occupants from using the Pool Facilities.

6. **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 Lake Wilborn Association pursuant to Paragraph 5(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 Lake Wilborn Association pursuant to Paragraph 5(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 Lake Wilborn Association and Lake Wilborn 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.

7. **Certificates.** Lake Wilborn 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 Lake Wilborn Association, 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. **Addition of Other Property.**

(a) Subject to the remaining terms and provisions of this Paragraph 8 and Paragraph 8(b) below, SB Dev, with the written consent of Lake Wilborn Association, reserves the right, in its sole and absolute discretion, at any time and from time to time, to add and submit any Other Property to the provisions of this Agreement and, to the extent any Other Property is specifically submitted to the terms and provisions of this Agreement by Flemming Partners, LLC (with the written consent of Lake Wilborn Association), then any such Other Property shall constitute part of the Abingdon by the River Property. Subject to the provisions of Paragraph 8(b) below, any Other Property may be submitted to the provisions of this Agreement by an instrument executed by **both** Flemming Partners, LLC and Lake Wilborn Association in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Agreement (which need not be consented Other Property to or approved by

any Owner or Occupant but must be consented to by the then owner of such) and shall (i) refer to this Agreement and the recording information in the Probate Office for this Agreement, (ii) contain a statement that such Other Property is conveyed or subject to the provisions of this Agreement or only specified portions thereof, (iii) contain a legal description of such Other Property and (iv) state such other or different covenants, conditions and restrictions as Flemming Partners, LLC and Lake Wilborn Association, each in their sole discretion, may specify with respect to such Other Property. Subject to the provisions of Paragraph 8(b) below, in no event shall either or Lake Wilborn Association be obligated to submit any Other Property to the provisions of this Agreement or to impose any of the covenants, conditions or restrictions set forth in this Agreement upon any real property owned by either of them situated adjacent to or in close proximity with the Abingdon by the River Property. Notwithstanding anything provided in this Agreement to the contrary (but subject to the provisions of Paragraph 8(b) below), (1) the provisions of this Paragraph 8 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of both Flemming Partners, LLC and Lake Wilborn Association, (2) the rights reserved by Flemming Partners, LLC and Lake Wilborn Association to add Other Property to this Agreement pursuant to this Paragraph 8 shall not be deemed to inure to the benefit of any transferee or purchaser of any of the Abingdon by the River Property or the Additional Property or any of the Other Property owned by unless **both** Flemming Partners, LLC and Lake Wilborn Association, each in their sole discretion, consent to the transfer and conveyance to such transferee or purchaser the rights reserved herein by express reference to this Paragraph 8 of this Agreement and (3) if Flemming Partners, LLC and Lake Wilborn Association elect to add any Other Property to this Agreement, then Agreement may be amended solely by and Lake Wilborn Association in accordance with the provisions of this Paragraph 8(a) without any requirement that the consent or approval of any Owner, Occupant or Mortgagee be obtained.

(b) Notwithstanding anything provided in this Agreement to the contrary, (i) all Abingdon by the River Property shall be subject to all of the terms and provisions of this Agreement and (ii) at such time as the Abingdon by the River Declaration is amended to subject, submit or add any Additional Property to the terms and provisions of the Abingdon by the River Declaration, then (1) such Additional Property shall automatically become subject to all of the terms and provisions of this Agreement without any requirement that this Agreement be amended or modified and (2) the provisions of Paragraph 8(a) above shall not be applicable to the addition of any such Additional Property to the terms and provisions of this Agreement.

9. **Notices.** Each Owner shall be obligated to furnish to Lake Wilborn Association, in writing, the address, if other than the Lot of such Owner, to which any notice to such Owner under this Agreement 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 Lake Wilborn 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 Paragraph 5(c) above, all notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Agreement 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 Lake Wilborn 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 Lake Wilborn 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 Lake Wilborn Association, which notice shall be deemed to have been given upon transmission of such electronic mail by Lake Wilborn Association. All notices to Lake Wilborn Association shall be delivered or sent to the following address:

Lake Wilborn Residential Association, Inc.
3545 Market Street
Hoover, Alabama 35226
Attention: Mr. Jonathan Belcher

or to such other address as Lake Wilborn Association may from time to time specify in a notice to the Owners. All notices to Flemming Partners, LLC shall be sent or delivered to Flemming Partners, LLC at the above address of Lake Wilborn Association or to such other address as Flemming Partners, LLC may notify Lake Wilborn Association.

10. **Successors and Assigns.** The terms and provisions of this Agreement are intended to touch and concern the Abingdon by the River Property and shall run with title to the Abingdon by the River Property, shall be perpetual (except as otherwise provided to the contrary in this Agreement), and shall be binding upon, and inure to the benefit of, each Owner, Occupant, Mortgagee and their respective heirs, executors, personal representatives, successors and assigns.

11. **Amendments.** This Agreement may not be amended or modified except by an instrument in writing executed by both (a) Lake Wilborn Association and (b) fifty-one percent (51%) of the Owners of all Lots within the Abingdon by the River Property.

12. **Miscellaneous.**

(a) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and undertakings of the parties relating to the subject matter of this Agreement.

(b) The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms or provisions hereof.

(c) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.

(d) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement 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 of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

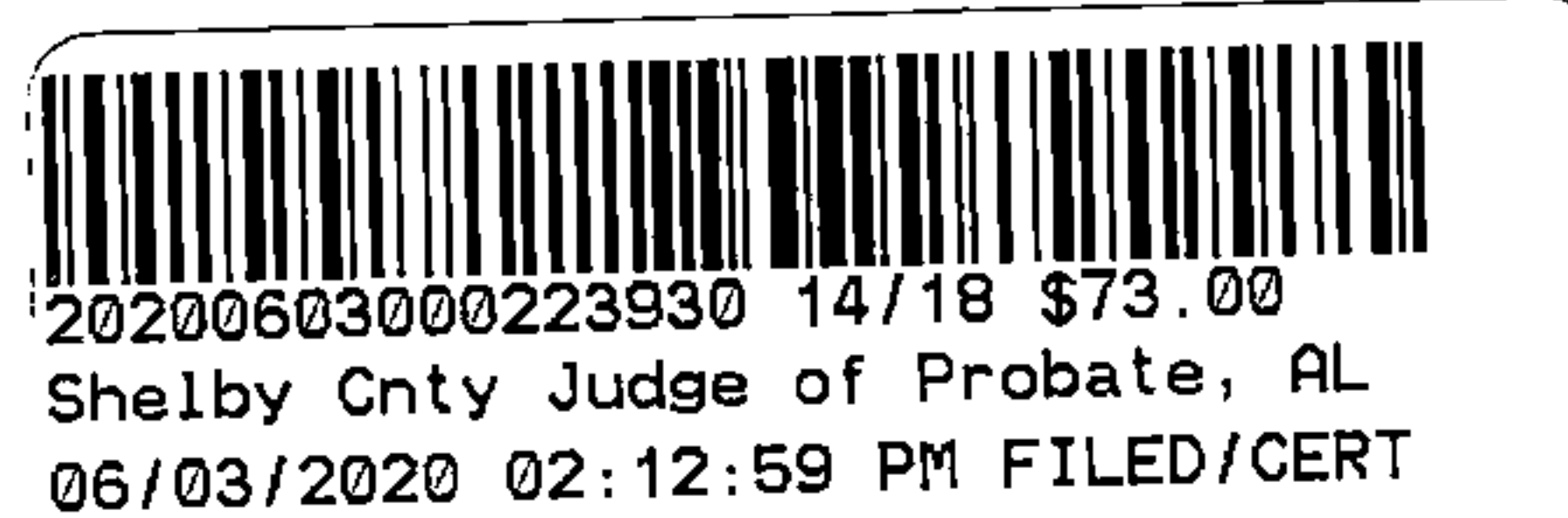
(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(f) Time is of the essence in the payment and performance by each Owner of such Owner's obligations under this Agreement.

(g) No delay or omission in the exercise of any right accruing upon any default by any party hereto shall impair the rights of any other party hereto or be construed to be a waiver thereof by either party, and every such right may be exercised at any time during the continuance of such default. A waiver of a breach of, or a default in, any of the terms and conditions of the Agreement shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement.

(h) Nothing contained in this Agreement and no action by the parties hereto will be deemed or construed to create the relationship of principal and agent, or a partnership, joint venture or any association between the parties hereto.

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



IN WITNESS WHEREOF, Lake Wilborn Association and Flemming Partners, LLC have executed this Agreement on the date stated above.

LAKE WILBORN RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation

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

STATE OF ALABAMA }

COUNTY OF JEFFERSON }

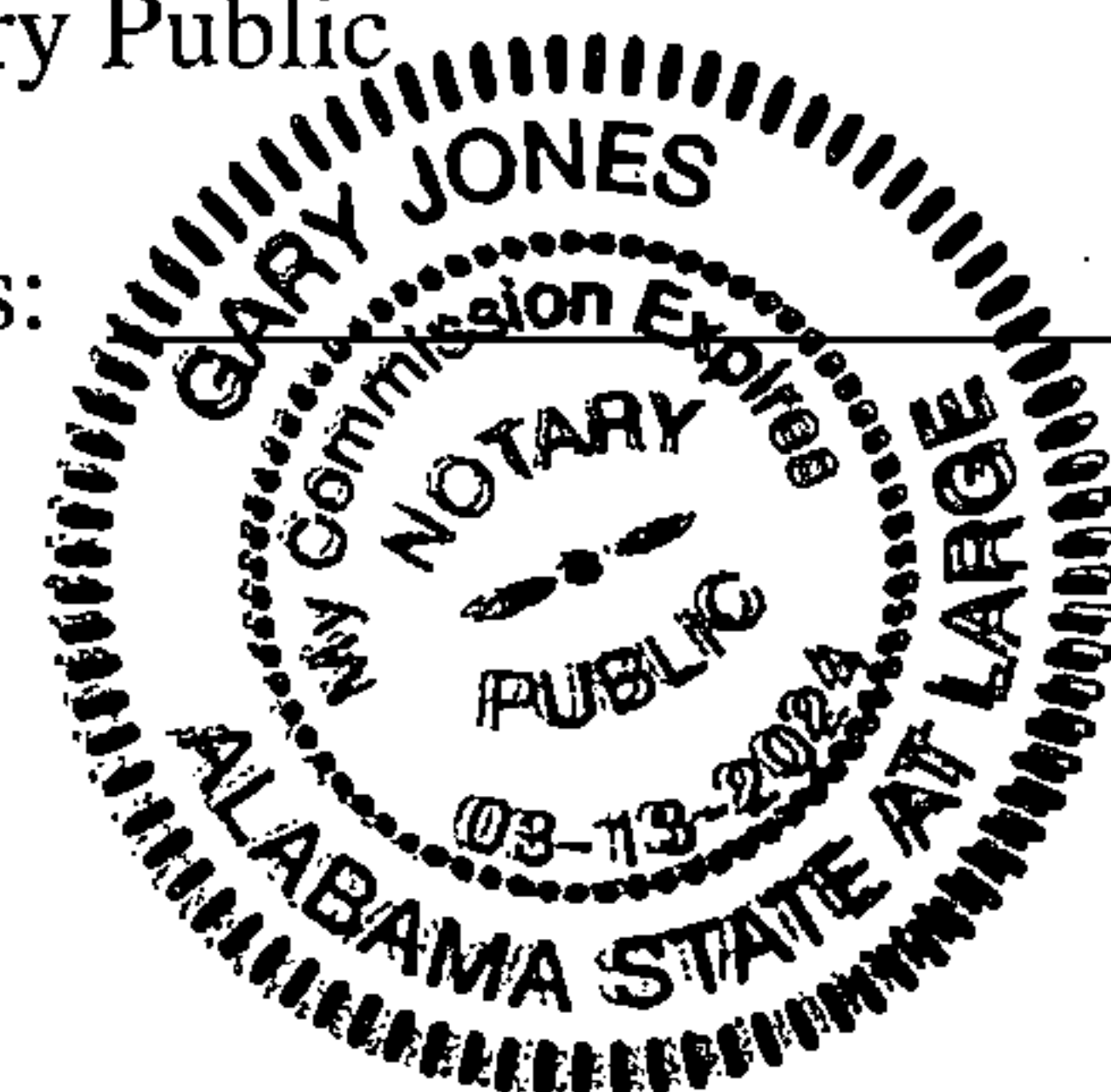
I, the undersigned Notary Public in and for said County, in said State, hereby certify that SCOTT ROHRER, whose name as VP SALES/ MARKETING of LAKE WILBORN RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of this instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of the aforesaid nonprofit corporation.

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

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires:



20200603000223930 15/18 \$73.00
Shelby Cnty Judge of Probate, AL
06/03/2020 02:12:59 PM FILED/CERT

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 Notary Public in and for said County, in said State, hereby certify that
SCOTT ROHRER, whose name as VP MARKETING SALES
of FLEMMING PARTNERS, LLC, an Alabama limited liability company, 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 this instrument, he as such officer and with full authority, executed the
same voluntarily for and as the act of aforesaid corporation.

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

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

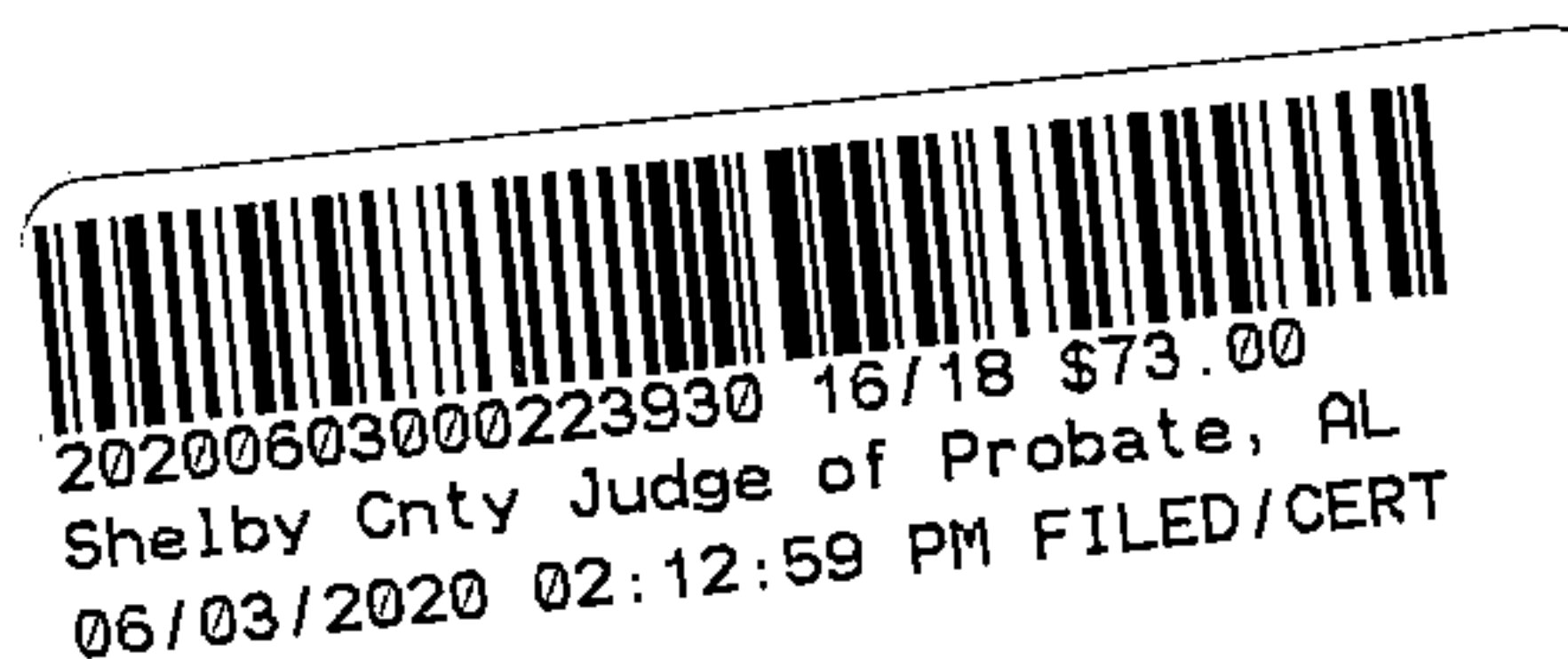
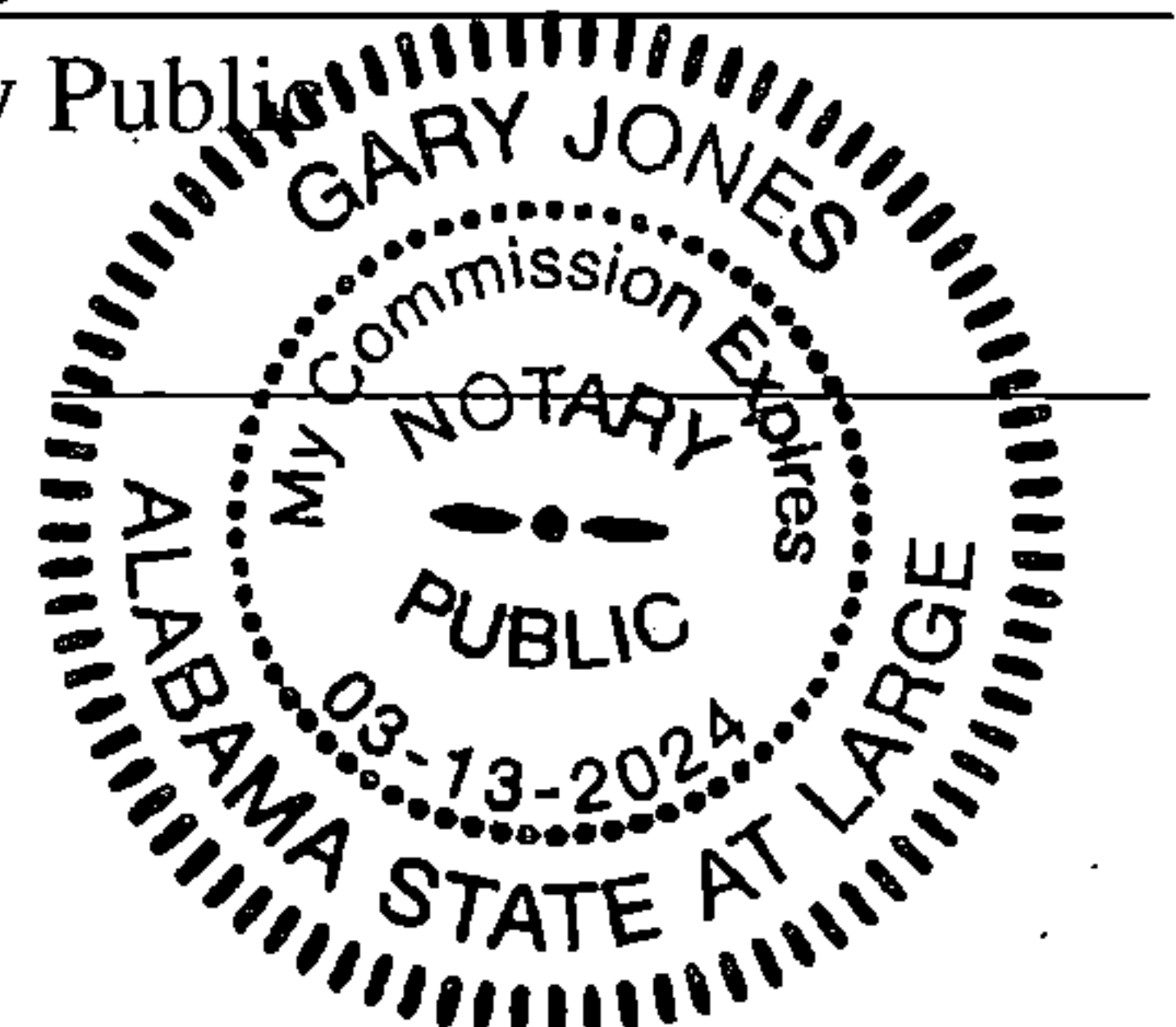


EXHIBIT A

Legal Description of Abingdon by the River Property

All lots shown on Final Subdivision Plat of Abingdon by the River Phase1 as recorded in the Office of the Judge of Probate for Shelby County, Alabama in Map Book 52, Page 66.

