

STATE OF ALABAMA
COUNTY OF BALDWIN

AMENDMENT TO THE DELCARATION OF CONDITIONS,
RESTRICTIONS AND PROTECTIVE COVENANTS
FOR AVALON SUBDIVISION

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:

2004 January -12 9:30AM

Instrument Number 783855 Pages 17
Recording 51.00 Mortgage
Deed Min Tax 5.00
Index DP

Archive 5.00
Adrian T. Johns, Judge of Probate

THIS AMENDMENT is made on this 10th day of December, 2003 to that certain document entitled,"Declaration of Conditions, Restrictions and Protective Covenants for Avalon Subdivision" which is recorded in Instrument No.719589 of the Probate Records of Baldwin County, Alabama.

Whereas, the undersigned are the owners of more than eighty (80%) of the lots in Avalon Subdivision as set forth on the plat of subdivision recorded on Slide 2104-A and as Instrument Number 710602 and additionally Avalon Phase 2 recorded in Slide 2136-A of the said Probate Court Records.

WHEREAS, the undersigned are desirous of amending the said document; and

NOW THEREFORE, the undersigned to hereby amend the said document as set forth below:

The Declaration of Conditions, Restrictions and Protective Covenants for Avalon Subdivision As recorded in Instrument No 719589 shall be declared to govern as the same Conditions, Restrictions and Protective Covenants for Avalon Subdivision. Phase 2. Said restrictions Attached as Exhibit "A". All lots in subdivision are subject to, held and shall be held, Conveyed, hypothecated, or encumbered, rented, used, occupied, and improved subject to the restrictions recorded in Instrument No 719589, which shall run with the land and shall be binding upon Developer and upon all parties having or acquiring any right, title or interest and to the real property or any part or parts thereof subject to such restrictions.

783855

EXCEPT AS HEREBY AMENDED, the said Declaration of Restrictions and Covenants shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the date and year first above written.

AVALON DEVELOPMENT LLC


WILLIAM RANCE REEHL, manager

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned notary public in and for said state and county, hereby certify that William Rance Reehl whose name as member/manager of Avalon Development LLC, a Limited Liability Company, is

signed to the foregoing instrument and who is known to me, acknowledge before me on this day that, being informed of the contents of the instrument, he, as such manager/member and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

Given under my hand and official seal on this 10th day of December, 2003.

Holly Ann Bayett
Notary Public
My commission expires: 11-2004



**DECLARATION OF CONDITIONS, RESTRICTIONS
AND PROTECTIVE COVENANTS
FOR
AVALON SUBDIVISION**

STATE OF ALABAMA :
 :
COUNTY OF BALDWIN :

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, AVALON DEVELOPMENT, LLC, an Alabama limited liability company (herein referred to as "Developer"), is the owner of all of the real property situate in and constituting the Avalon Subdivision (herein referred to as the "Subdivision"), located in Baldwin County, Alabama, as shown by the Plat of Subdivision recorded on Slide 2104-A and as Instrument Number 710602, in the office of the Judge of Probate of Baldwin County, Alabama; and

719589

WHEREAS, Developer desires to subject said property and each Lot, as defined herein, to be located in the Subdivision to and impose upon said Lots, as defined herein, mutual and beneficial restrictions, covenants, terms, conditions and limitations (herein for convenience sometimes referred to collectively as "Restrictions") for the benefit of all the Lots, as defined herein, in the said Subdivision, the future owners of said Lots, as defined herein, and any other party as may be specified herein;

NOW, THEREFORE, Developer does hereby proclaim, publish and declare that all of said Lots in the Subdivision (individually referred to as "Lot" and collectively "Lots") are subject to, held and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to the following Restrictions, which shall run with the land and shall be binding upon Developer and upon all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to such Restrictions, viz:

MOBIMANAGE_129766_1

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:
2003 April - 1 8:23AM
Instrument Number 719589 Pages 15
Recording 45.00 Mortgage
Deed Min Tax
Index DP 1.00
Archive 3.00
Adrian T. Johns, Judge of Probate

ARTICLE I

MUTUALITY OF BENEFIT AND OBLIGATION

1.1 The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said Lots in favor of each and all the other Lots therein, to create reciprocal rights between the respective owners of the Lots; and to create a privity of contract and estate between the respective owners of the Lots, their heirs, successors and assigns.

ARTICLE II

ARCHITECTURAL CONTROL COMMITTEE
AND REQUIREMENTS OF CONSTRUCTION

2.1 Concept. It is intended that the Subdivision development will be a residential community of high esteem and quality homes.

2.2 Architectural Control Committee. The Architectural Control Committee (herein referred to as the "Committee") shall be composed of not less than three (3) members and the membership of the Committee shall be composed of owners of Lots in the Subdivision. Provided, however, that (a) until eighty percent (80%) of the Lots have been sold by Developer and houses have been constructed on the Lots, or (b) until Developer elects to terminate its control of the Committee (whichever shall first occur), Developer shall have the exclusive right to appoint and dismiss the members of the Committee, including the right to limit membership to a single member. Upon termination of Developer's control of the Committee, Avalon Homeowner's Association, Inc., shall have the power exercised through a duly recorded written instrument, to change the membership of the Committee or to withdraw from or restore to the Committee any of its powers and duties. Neither the members of the Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the Committee may designate one or more representatives to act for it.

The primary authority of the Committee shall be to examine and approve or disapprove all initial and subsequent plans, including site plans, for construction of improvements on Lots within the Subdivision in accordance with the provisions of these covenants. The Committee shall have such other responsibilities, duties and authority as provided for herein, but the Committee shall not have any responsibility, duty, power or authority not provided for herein.

2.3 Plan Approval. The proposed construction or placement of any structure or improvement whatsoever to be erected on or moved upon or to any Lot, and the proposed location thereof on any Lot or Lots, the construction material, exterior paint and finishes, the roofs, landscaping, including any later changes or additions after initial approval thereof, and any subsequent exterior remodeling, reconstruction, alterations or additions thereto with respect to any Lot shall be subject to and shall require the approval in writing of the Committee before any work is commenced. Commencement of construction prior to the receipt of a letter of approval of the Committee, a copy of which must be signed by the owner of the Lot, and returned to the Committee for retention, is strictly prohibited.

2.4 Review Documents. One set of prints of the site plan and the drawings for all exterior elevations (hereinafter collectively referred to as "Plans") for each house or other structure proposed to be constructed on each Lot shall be submitted for review and approval or disapproval by the Committee. The scope of review by the Committee shall be limited to exterior aesthetics only and shall not include any responsibility or authority to review for structural soundness, interior design, compliance with building or zoning codes or standards, or any other similar or dissimilar factors. The Plans submitted to the Committee shall be retained by the Committee. The Plans shall be delivered to the Committee at least ten (10) days prior to the date construction is scheduled to commence. Each Plan must include the following:

2.4.1 All Plans for structures shall be not less than 1/8" = 1" scale.

2.4.2 All Plans must take into consideration the particular topographic and vegetative characteristics of the Lot or Lots involved.

2.4.3 All Plans must show the elevations of all sides of the proposed structure as such sides will appear after finished grading has been accomplished.

2.4.4 The site Plan shall show the footprint of all proposed structures (including the locations of the driveway and the sidewalk), setback lines, all trees over 6" in diameter as measured 2' above ground and the species thereof, fences, and underground trench locations at a scale of 1" = 20'. No tree may be cut or removed until the Plan and the site are approved.

2.4.5 All Plans must include a summary specifications list of proposed exterior materials, including samples of paint or other exterior materials which cannot be adequately described or with which the Committee may be unfamiliar.

2.5 Design Criteria, Structure.

2.5.1 The following types of exterior materials, among others, are acceptable, subject to final approval of the actual appearance of such materials by the Architectural Control Committee:

- (a) Brick.
- (b) Stucco.
- (c) Painted, stained or bleached wood siding.
- (d) Vinyl siding.
- (e) PFL Painted siding.
- (f) Natural-colored GAF Timberline shingles or shingles of equal quality and style, or if not, the alternative shingles must be approved by the Committee. White roofing of any material is not acceptable.
- (g) Paint, in soft tones (which shall not include, among other colors, any high gloss finishes, or pure red).

It is the intent of this criteria to discourage the practice of placing materials on the sides and back of a residence that are essentially different from the front elevation.

2.5.2 It is the requirement of Developer that sidewalks be constructed along the street right-of-way of each Lot in accordance with a uniform plan established by the Developer. Accordingly, each site Plan submitted to the Committee shall show the location and material to be used for construction of the sidewalk, all as required and approved by the Committee. Each owner shall construct or cause to be

constructed on his or her Lot the approved sidewalk (1) upon completion of the house on his or her Lot and before occupancy thereof, or (2) within eighteen (18) months from date of purchase of the Lot from Developer, whichever event shall first occur.

2.5.3 The residential structure must contain a garage or carport, which shall not have a flat roof and shall be in conformity with the general architecture of the primary residential building or structure.

2.5.4 No openings of garages or carports shall face the street on which the residence fronts.

2.5.5 Air-conditioning and heating units, blowers, towers, condensers or structures related thereto, when erected between the side of any building or structure and the side Lot line of the Lot on which said building or structure is located, shall be enclosed in conformity with the general architecture of the primary residential building or structure, or shielded by shrubbery. No window air-conditioning units shall be permitted on the front or sides of any residence so as to be visible from the front line of such Lot.

2.5.6 Underground electrical distribution facilities are required and no overhead electrical or similar wiring or lines shall be permitted.

2.5.7 All outside radio and T.V. antennas (including satellite dishes and other signal receiving/transmitting equipment) shall be installed in such a way as not to be visible from the front of the Lot and shall be placed on the back side of the roof.

2.5.8 No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

2.5.9 Driveway must be made of concrete, or if not, the alternative surface must be approved by the Committee.

2.5.10 Upon completion of the residential structure on the Lot, the owner shall, as soon as practicable and in any event before occupancy, cause sodded grass to be placed in the front yard of the Lot, on each side yard of the Lot, and any area in the rear of the Lot which is within twenty-five (25) feet of the rear of the dwelling house.

2.5.11 During construction, all vehicles including those delivering supplies, must enter the building site only on driveways approved by the Committee, and such vehicles must be parked on the building lot where the construction is under way so as not to unnecessarily damage trees.

2.5.12 All building debris, stumps, trees, etc., must be removed from each Lot by owner as often as necessary to keep the house and Lot attractive. Such debris shall not be dumped in any area of the Subdivision.

2.5.13 During construction, builder must keep homes and garages clean and yards cut.

2.5.14 There shall be no silver finish metal doors (including glass sliding doors) or silver finish metal windows of any kind; however, a factory painted or dark anodized finish metal may be used. The color of such finish must be approved by the Committee.

2.5.15 Chain link, wire, or metal fences of any type may not be used for any purpose unless approved by the Committee. All fences, including fences for backyards, swimming pools, dog pens, gardens, or for any other purpose, visible to a street must be wood privacy fencing and must be approved by the Committee prior to construction.

2.5.16 All proposed exterior redecorating, including painting, must be approved by the Committee.

2.5.17 No outside clothes lines shall be permitted.

2.5.18 Existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot.

2.6 Every dwelling house erected in the Subdivision is to be constructed by a contractor or builder on the Committee's approved contractor/builder list.

2.7 NEITHER THE COMMITTEE NOR ANY ARCHITECT OR AGENT THEREOF OR THE DEVELOPER SHALL BE RESPONSIBLE IN ANY WAY FOR ANY DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED IN ACCORDANCE WITH THE FOREGOING PROVISIONS, NOR FOR ANY STRUCTURAL OR OTHER DEFECTS IN ANY WORK

DONE ACCORDING TO SUCH PLANS AND SPECIFICATIONS. IT IS SPECIFICALLY AGREED THAT THE SCOPE OF REVIEW BY THE COMMITTEE SHALL BE LIMITED TO APPEARANCE ONLY AND SHALL NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

2.8 The Architectural Control Committee as initially constituted shall be composed of Rance Reehl, James R. Ray, John Allen, Jimmy Pickering and Ron Cuny. The address of such Committee shall be 24190 U.S. Highway 98, Fairhope, AL 36532.

ARTICLE III

EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

3.1 All Lots in the Subdivision shall be known and described as residential Lots and shall be used for single family residential purposes exclusively and no Lot shall be subdivided so as to increase the number of Lots in the Subdivision. No structure, except as otherwise provided, shall be erected, altered, placed or permitted to remain on any residential building Lot other than one detached single family residence dwelling not to exceed two and one-half stories in height (an attic or basement under the ground not to be considered a story for this purpose), and a private garage for not more than three (3) cars.

3.2 Every dwelling house erected in Unit One of the Subdivision, exclusive of one-story open porches, garages, carports and other unairconditioned, unfinished spaces, shall each have not less than 2,600 square feet of heated and air conditioned floor space. Every dwelling house erected in Unit 2 and Unit 3 in the Subdivision, exclusive of one-store open porches, garages, carports and other un-air conditioned, unfinished spaces, shall each have not less than 2,200 square feet of heated and air conditioned floor space. The first or main floor area of each such dwelling building, exclusive of one-story open porches, garages, carports and finished basements, shall be not less than 1,300 square feet in the case of a building or structure having more than one story. The ceiling height in any living area shall not be less than nine (9) feet on the first floor of the dwelling and eight (8) feet on the second floor of the dwelling.

3.3 No more than a single family unit shall occupy any dwelling house. Detached auxiliary buildings are not permitted without prior written approval of the Committee.

ARTICLE IV

GENERAL PROHIBITIONS AND REQUIREMENTS

4.1 It shall be the responsibility of each Lot owner to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such Lot which shall tend to decrease the beauty of the specific area or of the neighborhood as a whole.

4.2 All Lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such Lot or the accumulation of rubbish or debris thereon. In order to implement effective control of this covenant, Developer reserves for itself, its agents and the Committee the right, after ten (10) days' notice to any Lot owner, to enter upon any residential Lot with such equipment and devices as may be necessary for the purpose of mowing, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of Developer or the Committee detracts from the overall beauty and safety of the Subdivision. Such entrance upon such property for such purposes shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday and shall not be deemed a trespass nor shall it give rise to any other cause of action against the party taking such action. Developer or the Committee may charge the owner of a Lot a reasonable cost for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. The provisions of this paragraph shall not be construed as an obligation on the part of Developer or the Committee to mow, clear, cut or prune any vegetation on any Lot or to provide garbage or trash removal services.

4.3 Livestock, Poultry and Household Pets. No animals, livestock or poultry of any kind, other than household pets shall be kept or maintained on any part of any Lot. Dogs, cats and other household pets, not exceeding four (4), of which there shall be no more than two (2) dogs, may be kept upon any Lot, provided

they are not (i) kept, bred or maintained for any commercial use or purpose; or (ii) kept, bred or maintained in such a manner as, in the sole opinion of the Developer or the Committee, to create a nuisance.

4.4 No noxious, offensive or illegal activities shall be carried on upon any Lot nor shall anything be done on any Lot which might be or become an annoyance or nuisance to the neighborhood. No commercial activity shall be carried on any Lot.

4.5 No person, firm or corporation shall have any right of ingress or egress at any time upon the surface of any of the Lots herein described for the purpose of mining, drilling, exploring, operating or developing any of said Lots for oil, gas or other minerals, or for storing, handling, transporting and marketing the same therefrom.

4.6 No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and if kept outside the building, shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Committee as not to be visible from any road within sight distance of the Lot at any time.

4.7 All signs, billboards or advertising structures of any kind are prohibited except builder signs during construction or remodeling periods, and except one professional sign of not more than 3 square feet to advertise the property for sale during sales periods. No sign of any nature is permitted to be nailed or attached to trees.

4.8 No structure of a temporary character, such as a trailer, recreational vehicle, camper, tent or shack shall be used at any time as a residence either temporarily or permanently. There shall be no occupancy of any dwelling until the interior and exterior of the dwelling are completed and a certificate, or other satisfactory evidence, of completion is received by and approved by the Committee.

4.9 Any dwelling or other structure on any Lot in the Subdivision which may be destroyed in whole or in part for any reason must be rebuilt within one (1) year. All debris must be removed and the Lot restored to a slightly condition with reasonable promptness, provided that in no event shall such debris remain on any Lot longer than sixty (60) days.

4.10 No hedge, fence, wall or shrub planting of over four (4) feet in height shall be located on any Lot nearer to the front Lot line than the front of the dwelling on such Lot without the written approval of the Committee.

4.11 No house trailer or mobile home shall be permitted on any Lot at any time. No more than one camper, motor van or similar recreational vehicle, nor more than one boat and boat trailer may be stored on the Lot at any time, nor shall any such camper, motor van or other recreational vehicle or boat and boat trailer be permitted to be parked or stored on the front or side lawn of the Lot but shall be stored to the rear of the Lot as inconspicuously from the street as practicable. In addition, notwithstanding anything to the contrary herein, any camper, motor van or similar recreational vehicle or boat and boat trailer to be stored on any Lot must be approved by the Committee. Automobiles may not be parked on the front or side lawn of any Lot.

4.12 NO TREE HAVING A DIAMETER OF SIX (6) INCHES OR MORE (MEASURED FROM A POINT TWO FEET ABOVE GROUND LEVEL), NOR ANY FLOWERING TREES OR SHRUBS, SHALL BE REMOVED FROM ANY LOT AFTER COMPLETION OF CONSTRUCTION WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF THE COMMITTEE. The Committee is hereby authorized to come onto any Lot during reasonable hours for the purpose of inspecting or marking trees, and any such entry by the Committee or its agent(s) shall not be deemed a trespass or other wrongful act.

ARTICLE V

HOMEOWNERS ASSOCIATION

5.1 Upon recordation of these covenants and restrictions, Developer will cause Avalon Homeowner's Association, Inc. (hereinafter "Association") to be organized pursuant to the provisions of the Alabama Nonprofit Corporation Act, and each owner of each Lot in the Subdivision shall be obligated to join and become a part of said Association, and shall be required to pay the dues or assessments which may be established by said Association, and agrees to be bound by the rules, regulations and requirements established by said Association. The Association shall be responsible for operating and maintaining, among other things, the entrance way into the Subdivision and any perimeter walls or fences along any boundary of the Subdivision

and for operating and maintaining any and all flood control facilities, retention ponds or other similar structures or areas incident to flood control or prevention. The Association shall also provide or operate any security service that may be approved by the Association and shall provide and maintain such other services as may be determined to be necessary or desirable by the Association. THE DEVELOPER IS UNDER NO OBLIGATION TO PROVIDE SECURITY SERVICE OR TO ASSURE THAT SECURITY SERVICE IS PROVIDED BY OTHERS.

5.2 Each and ever Lot owner and future Lot owner, by acceptance of the deed of conveyance to such owner's Lot in the Subdivision, agrees to pay to the Association the charges and fees provided for any annual assessments or charges and special assessments from time to time fixed or established by the Association in accordance with the Articles of Incorporation and/or Bylaws of the Association. It is agreed that the regular and special assessments, together with interest and costs of collection, shall be charged against the Lot and constitute a continuing lien upon the Lot against which assessment is made, except that such lien shall be subordinate to prior recorded bona fide mortgages. The obligation for payment of each assessment, together with interest thereon and costs of collection thereof, shall be the personal obligation of the party owning such property at the time the assessment is made.

Notwithstanding anything to the contrary contained in this Section 5.2 of these Restrictions or elsewhere herein, the liens of any first mortgages placed upon any of said Lots in the Subdivision for the purpose of constructing a residence or other improvement thereon and recorded in accordance with the laws of the State of Alabama shall be, from the date of such recordation, superior to any and all liens provided for herein. The Developer or the Association, as the case may be, shall, if requested, execute further instruments to subordinate any and all liens provided for herein to such liens of first mortgages.

The Developer or the Association may, at their respective option, by appropriate written instrument recorded in accordance with the laws of the State of Alabama, subordinate or waive any and all liens provided for in these Restrictions.

5.3 It is the intention of the Developer that the Subdivision when completely developed will contain approximately one hundred eleven (111) Lots and each Lot owner will be expected to pay his or her

share of the cost of operating the Association, such share per Lot to be determined by dividing all assessments by the number of Lots as finally platted in the Subdivision.

ARTICLE VI

ENFORCEMENT

6.1 In the event of a violation or breach of any of these Restrictions, or any amendments hereto by any property owner, or family members of such owner, or agent of such owner, the other owner(s) of Lot(s), the Developer, the Committee, the Association or any other party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other sums, or to take all such courses of action at the same time, or to pursue such other legal remedy as they or any of them may deem appropriate. No delay or failure on the part of an aggrieved party to invoke an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation. Neither the Committee nor any member nor agent thereof nor Developer shall be responsible in any way for any delay or failure or refusal, with or without cause, by any or all of such entities, their successors and assigns, to enforce or seek to enforce any violation or breach of any of these Restrictions, or amendments thereto, or for the manner in which any such entity exercises, or for their failure or refusal to exercise, any right or authority herein granted whether discretionary or not.

ARTICLE VII

GRANTEE'S ACCEPTANCE AND BINDING EFFECT

7.1 The grantee of any Lot subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, shall be deemed to accept such deed or other contract upon and subject to each and all of these Restrictions and the agreements herein contained.

7.2 The covenants, terms, conditions, restrictions and limitations herein contained are to run with the land and shall inure to the benefit of and be binding upon each and every owner of interest in the Subdivision and all persons and parties claiming under them for a period of twenty (20) years subsequent to the date hereof, at which time the said covenants, restrictions and limitations shall be automatically extended for successive periods of ten (10) years each, unless by vote of a majority of the then owners of the Lots in the Subdivision taken no later than six (6) months following any such automatic extension date, it is agreed to terminate these Restrictions.

No Lot shall be conveyed, devised, leased or demised at any time hereafter except as being subject to the covenants, terms, conditions, restrictions and limitations herein contained and the obligation to observe and perform the same; and whether or not it be so expressed in the deeds or other instruments of conveyance of the property, the same shall be absolutely subject to the covenants, terms, conditions, restrictions and limitations herein contained, which shall run with and be appurtenant to the land and every part thereof, as fully as if expressly contained in proper and obligatory covenants or conditions in each and every contract and conveyance of, or concerning any part of the land or the improvements to be made thereon.

ARTICLE VIII

AMENDMENT, MODIFICATION OR ANNULMENT

8.1 The Developer expressly reserves unto itself the sole and unilateral right to amend, modify, change, cancel or annul such covenants, limitations and restrictions in whole or in part, at any time during the pendency or term of same as existing, or as may be amended, modified, changed, cancelled or annulled in accordance with the foregoing reservations. Such action on the part of the Developer is to be evidenced by an instrument executed by the Developer and recorded in the office of the Judge of Probate, Baldwin County, Alabama. It is expressly reserved and stipulated herein that such action as may be taken by Developer in accordance with the foregoing authority and power, may result in all or any part of any covenant, restriction or limitation as existing or as may be amended or changed, being either more or less restrictive or burdensome than the foregoing covenants, restrictions or limitations contained herein; provided, however, that no such

action on the part of the Developer shall place an additional restriction or limitation on a specific Lot previously conveyed by Developer, unless the then owner of same shall consent thereto by joining in said instrument, or by executing such other instrument as will properly evidence owner's consent, same being subsequently recorded as set forth hereinabove. It is further stipulated and reserved herein that the Developer may from time to time and at any time waive any or all or any part of the covenants, restrictions or limitations as set forth herein, and any such waiver shall not be deemed a precedent or otherwise binding on Developer with respect to future enforcement of such provision in other circumstances.

8.2 The rights reserved to the Developer as provided in Section 8.1 shall terminate at such time as eighty percent (80%) of the Lots have been sold by the Developer and houses have been constructed thereon. Thereafter, any one or all of the covenants, terms, conditions, restrictions and/or limitations herein set forth may be annulled, amended or modified at any time by an instrument executed by the owners in fee simple of not less than eighty percent (80%) of the Lots in the Subdivision, which said instrument shall be acknowledged by each of the persons signing the same and which shall be recorded in the office of the Judge of Probate of Baldwin County, Alabama; provided, however, that no annulment, amendment or modification shall place an additional burden or restriction or requirement on any Lot in the Subdivision, the owner of which does not join in said amending instrument.

ARTICLE IX

SEVERABILITY

9.1 Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Invalidation by any court of any restriction in this instrument shall in no way affect any of the other Restrictions, all of which shall remain in full force and effect.

ARTICLE X

CAPTIONS

10.1 The captions heading the various articles of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and vice versa, and the pronoun form shall be taken to mean or apply to the masculine, to the feminine or to the neuter, as the sense of the context may require.

IN WITNESS WHEREOF, AVALON DEVELOPMENT, LLC, an Alabama limited liability company has caused these restrictions to be executed by its undersigned Manager hereunto duly authorized, as of the 28th day of ^{March}~~April~~, 2003.

AVALON DEVELOPMENT, LLC

By Rance Reehl
RANCE REEHL
Its Manager

STATE OF ALABAMA:
COUNTY OF BALDWIN:

I, the undersigned Notary Public in and for said County in said State, hereby certify that Rance Reehl, whose name as Manager of AVALON DEVELOPMENT, 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 said instrument, he, as such Manager, and with full authority, executed the same voluntarily for and as the act of said corporation.

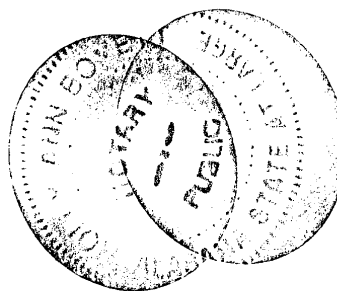
Given under my hand and notarial seal on this the 28th day of ^{March}~~April~~, 2003.

Holly Ann Bayett
Notary Public
My Commission Expires: 1-1-2004

[Seal]

This instrument is prepared by:

DAVID A. RYAN, ESQUIRE
Hand Arendall, L.L.C.
112 West Laurel Avenue
Foley, Alabama 36532



MOBIMANAGE_129766_1

PLEASE RETURN TO:
A T I Company
24180 US HWY. 98
Tomball, TX 77335

STATE OF ALABAMA
COUNTY OF BALDWIN

AMENDED AND RESTATED SECOND
AMENDMENT TO THE DECLARATION OF
CONDITIONS, RESTRICTIONS AND PROTECTIVE
COVENANTS FOR AVALON SUBDIVISION

THIS AMENDED AND RESTATED SECOND AMENDMENT TO THE DECLARATION OF CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR AVALON SUBDIVISION is made this 9th day of August, 2005, by **AVALON DEVELOPMENT, LLC** ("Covenantor").

RECITALS

WHEREAS, Covenantor is the owner of certain real property located in Baldwin County, State of Alabama, which is known as Avalon Phase 3 of the Avalon Subdivision which is evidenced by Slide 2220-D recorded in the office of the Judge of Probate of Baldwin County, Alabama, and as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, the said Property possesses significant ecological values of aesthetic and environmental benefit to the people of the State of Alabama and the United States as the property contains certain wetlands (the "Wetlands") as are more particularly shown on the portion of the proposed final plat of the proposed subdivision of the Property which is attached hereto as Exhibit "B" and made a part hereof; and

WHEREAS, in consideration of the issuance of Permit Number ALNW05-01694-A by the U.S. Army Corps of Engineers, Mobile District ("Corps" or "Mobile District," to include any successor agency) pursuant to Section 404 of the Clean Water Act and /or Section 10 of the Rivers and Harbors Act authorizing certain activities in waters of the United States, and in recognition of the continuing benefit to the property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Covenantor has agreed to perform certain mitigation and to place certain restrictive covenants on the Wetlands, in order that the Wetlands shall remain substantially in its natural condition forever;

WHEREAS, Covenantor caused to be filed as Instrument Number 905186 in the office of the Judge of Probate of Baldwin County, Alabama on July 13, 2005 an instrument known as the Second Amendment to the Declaration of Conditions, Restrictions and Protective covenants for Avalon Subdivision (the "Second amendment");

WHEREAS, Covenantor desires to amend and restate the Second Amendment by deleting the Second Amendment in its entirety and substituting in lieu thereof the following covenants:

914958

NOW THEREFORE, the Covenantor hereby amends and restates the Second Amendment by deleting the Second Amendment in its entirety and substituting in lieu thereof the following, and, furthermore, Covenantor hereby declares that the Wetlands shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns (they are included in the term, "Covenantor," below), lessees, or other occupiers and users.

1. **Prohibitions & Restrictions.**

- a. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and no alteration of the topography in any manner.
- b. **Waters and Wetlands.** There shall be no draining, dredging, damming, or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations.
- c. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.
- d. **Uses.** No agricultural, industrial, or commercial activity shall be undertaken or allowed.
- e. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
- f. **New Roads.** There shall be no construction of new roads or trails without the prior written approval of the Mobile District Engineer, including the manner in which they are constructed.
- g. **Use of Off Road Vehicles.** There shall be no use of off road vehicles, 4-wheel drive vehicles, all terrain vehicles or similar vehicles except on existing roads and trails and except as necessary to manage the Wetlands.
- h. **Utilities.** There shall be no construction or placement of utilities or related facilities without the prior approval of the Mobile District Engineer.
- i. **Pest Control.** There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Mobile District Engineer.
- j. **Other Prohibitions.** Any other use of, or activity on, the protected property which is or may become inconsistent with the purposes of this grant, the preservation of the protected property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

2. **Amendment.** After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and Covenantor. Amendment shall be allowed at the discretion of the Corps, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required at the time of amendment. There shall be no obligation to allow an amendment.

3. **Notice to Government.** Any permit application, or request for certification or modification, which may affect the Wetlands, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

4. **Reserved Rights.** It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Wetlands. These restrictive covenants are created solely for the protection of the Wetlands, and for the consideration and values set forth above. The Covenantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the conservation purposes of this covenant, that is to preserve the protected property substantially in its natural condition, and to protect its environmental systems. Notwithstanding the foregoing Restrictions, Covenantor reserves for itself, its heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to the Mobile District Engineer, except where expressly provided otherwise:

- a. **Landscape Management.** Landscaping by the Covenantor to prevent severe erosion or damage to the protected property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the protected property.
- b. **Wildlife and Forestry Management.** The Covenantor will naturally manage these lands to preserve and improve the existing forest and wildlife resources. Timber harvesting and management by Covenantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and/or management shall be carried out only after approval by the Mobile District Engineer.
- c. **Recreation.** Covenantor reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Wetlands. No written notice required.
- d. **Mineral Interests.** Covenantor specifically reserves a qualified mineral interest in subsurface oil, gas, or other minerals and the right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or

which otherwise interferes with the continuing natural condition of the protected property.

- e. **Road Maintenance.** Covenantor reserves the right to maintain existing roads or trails. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance or roadside ditches.
- f. **Other Reserved Rights.** Covenantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the conservation purposes of this covenant, the preservation of the protected property substantially in its natural condition, and the protection of its environmental systems.

5. **Compliance Inspections.** The Corps, and its authorized agents shall have the right to enter and go upon the lands of Covenantor, to inspect the Wetlands and take actions necessary to verify compliance with these restrictive covenants.

6. **Enforcement.** The Covenantor grants to the Corps and/or the U.S. Department of Justice, a discretionary right to enforce these restrictive covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. These enforcement rights are cumulative, in addition to, and shall not limit enforcement rights available under other provisions of law or equity, or under any permit or certification.

7. **Property Transfers.** Covenantor shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE: This Property Subject to Declaration of Restrictive Covenants Recorded as Instrument Number _____ in the Office of the Judge of Probate of Baldwin County, Alabama

8. **Marking of Wetlands.** The perimeter of the Wetlands shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

9. **Recording of Plat.** A plat depicting the boundaries of the Property subject to these restrictive covenants shall be recorded in the deed records office for each county in which the Property is situated prior to the recording of these restrictive covenants.

10. **Separability Provision.** Should any separable part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Covenantor has duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF:

Covenantor

AVALON DEVELOPMENT, LLC

Jane S. Johnson
Print Name: Jane S. Johnson
Holly Ann Boyett
Print Name: Holly Ann Boyett

By:

Rance Reehl
RANCE REEHL
Its Manager

STATE OF ALABAMA :
COUNTY OF BALDWIN :

I, the undersigned Notary Public in and for said County, in the said State, do hereby certify that Rance Reehl, whose name as Manager of Avalon Development, 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 said document, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official notarial seal this 9 day of August 2005.

[Signature]
NOTARY PUBLIC
My Commission Expires: 12-17-05

{SEAL}

This instrument prepared by and return to:

Steven C. Pearson, Esquire
Hand Arendall, L.L.C.
112 West Laurel Avenue
Foley, Alabama 36535
(251) 970-5511

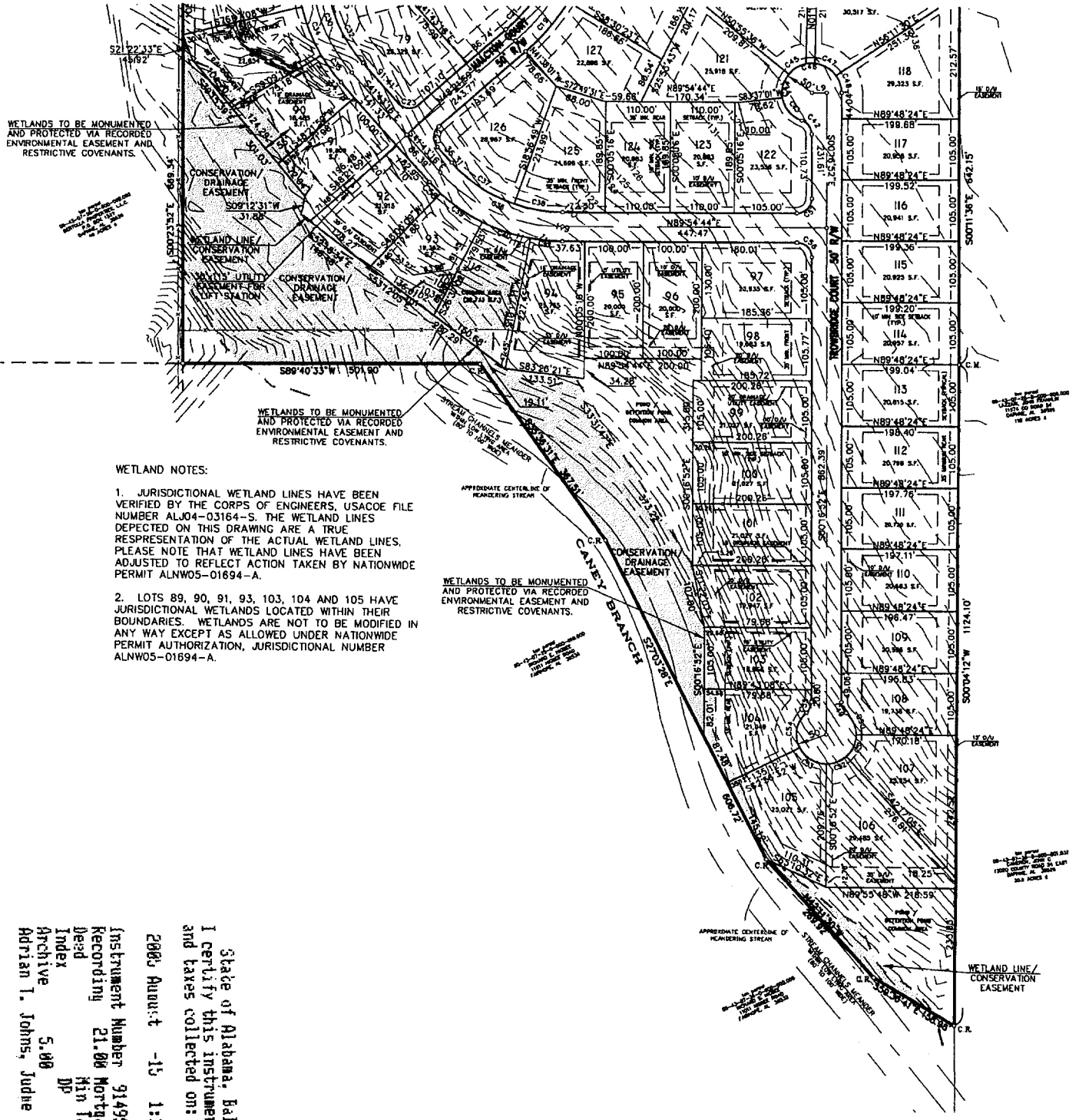


EXHIBIT A

DESCRIPTION:

Commence at a 3/8" diameter pin at the Northwest corner of the Southwest quarter of Section 25, Township 5 South, Range 2 East, Baldwin County, Alabama; Thence run N89°51'19"E, along the East-West half Section line of said Section 25, 1316.35 feet to the Northwest corner of Avalon Phase 1A, as recorded on slide 2104-A in the Office of the Judge of Probate of Baldwin County; Thence run S00°22'44"E, along the West line of said Avalon Phase 1A, 334.90 feet to the POINT OF BEGINNING; Thence run N89°52'33"E, 798.27 feet to a point; Thence run S00°02'53"E, 341.15 feet to a point; Thence run S77°22'07"W, 179.31 feet to a point; Thence N00°02'53"W, 5.22 feet to a point; Thence S89°57'07"W, 260.00 feet to a point; Thence S00°02'53"E, 99.47 feet to a point; Thence S25°14'51"E, 105.23 feet to a point; Thence S17°07'52"E, 136.43 feet to a point; Thence S00°02'53"E, 167.91 feet to a point; Thence S87°42'46"E, 209.67 feet to a point; Thence N86°50'56"E, 50.00 feet to a point; Thence N03°09'04"W, 25.94 feet to a point; Thence N87°16'09"E, 204.83 feet to a point; Thence N01°51'23"E, 91.87 feet to a point; Thence N33°25'18"E, 124.74 feet to a point; Thence S32°04'59"E, 247.81 feet to a point; Thence S60°52'36"E, 240.87 feet to a point; Thence S00°01'04"E, 45.65 feet to a point; Thence run S00°11'36"E, 642.15 feet to a point; Thence S00°04'12"W, 1124.10 feet to a point; Thence N59°36'41"W, 158.98 feet to a point; Thence N42°11'30"W, 269.92 feet to a point; Thence N27°03'28"W, 606.72 feet to a point; Thence run N35°36'31"W, 367.51 feet to a point; Thence S89°40'33"W, 501.90 feet to a point; Thence N00°23'52"W, 669.34 feet to a point; Thence S89°44'11"W, 7.66 feet to a point; Thence N00°06'44"W, 663.59 feet to a point; Thence N00°22'44"W, 330.10 feet to the POINT OF BEGINNING.

EXHIBIT B



WETLAND NOTES:

- JURISDICTIONAL WETLAND LINES HAVE BEEN VERIFIED BY THE CORPS OF ENGINEERS, USACOE FILE NUMBER ALJ04-03164-S. THE WETLAND LINES DEPICTED ON THIS DRAWING ARE A TRUE REPRESENTATION OF THE ACTUAL WETLAND LINES. PLEASE NOTE THAT WETLAND LINES HAVE BEEN ADJUSTED TO REFLECT ACTION TAKEN BY NATIONWIDE PERMIT ALNW05-01694-A.
- LOTS 89, 90, 91, 93, 103, 104 AND 105 HAVE JURISDICTIONAL WETLANDS LOCATED WITHIN THEIR BOUNDARIES. WETLANDS ARE NOT TO BE MODIFIED IN ANY WAY EXCEPT AS ALLOWED UNDER NATIONWIDE PERMIT AUTHORIZATION, JURISDICTIONAL NUMBER ALNW05-01694-A.

State of Alabama, Baldwin County
 I certify this instrument was filed
 and taxes collected on:

2001 Amount -15 1:14PM

Instrument Number 914958 Pages 7
 Recording 21.00 Mortgage
 Dead 0.00 Min Tax
 Index 0.00 DP
 Archive 5.00
 Adrian T. Johns, Judge of Probate