

## SPACE ABOVE RESERVED FOR RECORDING PURPOSES

UPON RECORDING, PLEASE RETURN TO:

FINGER, MELNICK, BROOKS &amp; LABRUCE, P.A.

Attn: E. Richardson LaBruce

Post Office Box 24005

Hilton Head Island, South Carolina 29925

PREPARED WITHOUT BENEFIT OF TITLE EXAMINATION BY:

FINGER, MELNICK, BROOKS &amp; LABRUCE, P.A.

Attn: E. Richardson LaBruce

Post Office Box 24005

Hilton Head Island, South Carolina 29925

STATE OF SOUTH CAROLINA )

)

**MULTI-USE PATHWAY****EASEMENT AGREEMENT**

(Heritage at New Riverside)

COUNTY OF BEAUFORT )

)

Tax Map No. R614-035-000-1004-0000

THIS MULTI-USE PATHWAY EASEMENT AGREEMENT (the "*Agreement*") is made effective as of this 14<sup>th</sup> day of FEBRUARY, 2023 (the "*Effective Date*"), by and between the **TOWN OF BLUFFTON**, a South Carolina municipal corporation (the "*Town*" and/or the "*Grantee*") and **HERITAGE AT NEW RIVERSIDE COMMUNITY ASSOCIATION, INC.**, a South Carolina nonprofit corporation (the "*Owner*" and/or "*Grantor*").

## WITNESSETH

WHEREAS, the Grantee seeks to acquire certain easement interests over portions of certain real property located in Heritage at New Riverside and owned by the Owner for a public purpose, more particularly, for the completion of improvements to the existing and publicly accessible New River Linear Trail (the "*Project*"); and,

WHEREAS, in order to proceed with the Project, the Grantee intends to acquire permanent construction easements interests over certain real property located in Heritage at New Riverside, which parcel is more thoroughly defined on **EXHIBIT "A"** hereto, which by reference is fully incorporated herein (collectively, the "*Property*"); and,

WHEREAS, the Grantee desires to acquire a NINE HUNDRED FIFTY-NINE AND FOUR ONE HUNDREDTHS (959.04 SQ. FT.) SQUARE FOOT permanent easement interest over the Property as is more specifically shown, described, and designated on **EXHIBIT "B"** attached hereto, which by reference is fully incorporated herein (collectively, the "*Easement Areas*"); and,

WHEREAS, the Grantor desires to show its support for the Project by conveying the requisite easements over the Easement Areas to the Grantee, as more fully set forth herein; and,

WHEREAS, the Parties desire to execute this Agreement to clarify and/or set forth the scope of the easements granted to the Grantee.

## AGREEMENT

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, subject to the terms and conditions set forth herein, Grantor, for **TEN AND NO/100 (\$10.00) DOLLARS** and no other consideration, the receipt and sufficiency of which are hereby acknowledged, hereby declares, grants, bargains, sells, aligns, conveys, imposes, donates, and confirms unto the Grantee, its successors, successors-in-title and assigns, and Grantee's contractors, tenants, invitees, customers, agents, and employees such non-exclusive, perpetual, commercial, and transmissible easements and rights-of-way, over, under, across, through, and upon the Easement Areas, for the benefit of the Grantee for the following purposes and as more fully set forth herein, *to wit*:

1. **Incorporation of Recitals.** The above recitals and attached exhibit(s) are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of this Agreement.

2. **Consideration and Acknowledgement of Just Compensation.** Grantor desires and agrees to donate and convey the easements over the Easement Areas to Grantee for charitable or public uses and purposes and for no monetary consideration. Further, Grantor acknowledges that Grantor has been fully informed of Grantor's right to receive just compensation for the easements, pursuant to the United States Constitution, the South Carolina Constitution and the South Carolina Eminent Domain Act (S.C. Code Ann. § 28-2-370). Grantor does acknowledge and agrees that Grantor willingly and voluntarily waives any right to receive just compensation for the easements over the Easement Areas granted to the Town herein and chooses to donate the same for the benefit of the Project.

3. **Permanent Easements.** Subject to the provisions of this Easement Agreement, the Grantor hereby grants and conveys to the Grantee a non-exclusive, perpetual, commercial, transmissible, and irrevocable easements to construct, operate and maintain certain streetscape improvements, including but not limited to the right, privilege and authority, from time to time, to enter upon, construct, extend, inspect, operate, replace, relocate, repair, and perpetually maintain upon, over, along, across, through, and under the Easement Areas such (a) lights, fixtures, poles, support infrastructure, communications infrastructure, conduits, wiring, meters, boxes, enclosures, transformers, hand-holes, transformer enclosures, connection boxes and/or other subsurface or above-ground lighting and electric utility improvements (the "*Utility Improvements*"), (b) sidewalk, paver, pathway, parking, pedestrian bridge, crosswalk, crosswalk signals, emergency telephone or computer systems, walkway furniture, planters, irrigation lines, and/or other walkway improvements (the "*Sidewalk Improvements*"), and (c) drains, embankments, ditches, culverts, flumes, pipes and any other improvements used or useful in the collection, conveyance, testing and drainage of surface and storm water runoff (the "*Drainage Improvements*")(with the Utility Improvements, the Sidewalk Improvements, and the Drainage Improvements collectively, the "*Improvements*"), together with the right of ingress, egress, and access to and from and across and upon those portions of the Property immediately adjacent to the Easement Areas as may be necessary or convenient for the purposes connected therewith. Together with the right, from time to time, to install any or all of the Improvements in the Easement Areas near the easement/lot lines provided, however, any damage to the property of Grantor caused by the Grantee in the exercise of its rights hereunder shall be repaired by Grantee at its cost and expense. The parties to this Agreement agree that Grantee shall be responsible for patching any asphalt, concrete or other all-weather surface disturbed by Grantee for repair or maintenance purposes. The Grantee and its contractors, agents and employees (collectively and together with Grantee, the "*Grantee Parties*") shall operate on the Easement Areas in a safe and workmanlike manner, in accordance with generally accepted construction practices in the State of

South Carolina, in accordance with all applicable federal, State and local laws and regulations, and in compliance with all requisite permits. Additionally, in no event shall any of the Grantee Parties materially interfere with vehicular and/or pedestrian access to and from the Property and the public thoroughfare abutting thereto and/or the business operations being conducted on the Property or otherwise utilize any Property outside of the Easement Areas, except as otherwise provided herein.

Further, the Grantor shall grant and hereby grants and conveys to Grantee, its heirs, legal representatives, tenants, employees, agents, invitees, customers, successors and assigns, and any other persons whomsoever claiming under or through said parties, including but not limited to the general public (herein collectively, the "*Public*"), upon the completion of the Improvements in the Easement Areas in accordance with the Project's final construction plans, a perpetual, irrevocable, non-exclusive, ingress, egress, regress, pedestrian and vehicular access easement in, under, upon, about, over, across and through the Sidewalk Improvements now existing or hereafter constructed in the Easement Areas. The Public may use the Easement Areas for (i) ingress, egress, regress and access; (ii) the perpetual, non-exclusive and irrevocable right to use the Sidewalk Improvements now existing or hereafter constructed in the Easement Areas for the purposes of pedestrian circulation; (iii) the perpetual, non-exclusive and irrevocable right to use the parking facilities now existing or hereafter constructed in the Easement Areas for the purposes of parking vehicles; and, (iv) all other purposes reasonably necessary for the Public's use and enjoyment of the Sidewalk Improvements; provided, however, the Town may, in its reasonable discretion, establish certain rules, restrictions and regulations over the Public's use of and access to the Easement Areas and Sidewalk Improvements as determined in the sole discretion of the Town.

4. *Intentionally Omitted.*

5. **Town Council Approval.** Notwithstanding anything in this Easement Agreement to the contrary, pursuant to Section 5-7-260 of the South Carolina Code of Laws, 1976, as amended, and Sections 2-13 and 2-19 of the Code of Ordinances for the Town of Bluffton, South Carolina, the Grantor acknowledges and agrees that the Town, as a South Carolina municipal corporation, may only acquire interests in real property through the adoption of a written resolution of the Bluffton Town Council at a duly held public meeting of Town Council.

6. **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing, signed by each party.

7. **Construction of Agreement.** Each party acknowledges that it has participated in the negotiation and drafting of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto or thereto by any court by reason of such party having or being deemed to have structured, dictated, or drafted any provision in the Agreement.

8. **Successors and Assigns.** All provisions of this Agreement shall run with the land and bind and inure to the benefit of each party and each party's respective heirs, executors, legal representatives, successors, successors in title and assigns. The words "Grantor" and "Grantee" shall include their heirs, executors, administrators, successors, and assigns, as the case may be.

9. **Merger Provision.** This Agreement contains the entire agreement between the parties with respect to the issues set forth herein. All other discussions, proposals, agreements or offers are merged into this Agreement.

10. **Continuation of Other Easements.** Nothing within this Agreement shall be deemed to nor shall operate to extinguish any other easements held or possessed by the Grantee, either individually or collectively, on the Property.

11. **Acknowledgment.** The Town acknowledges and agrees that no new boundary or property lines are created by the easements conveyed hereunder and therefore the setbacks and buffers, if any, required by applicable municipal zoning and development ordinances, including the Town's Unified Development Ordinance shall continue to extend through the Easement Areas to the boundary line of the Property and adjacent right-of-ways. Further, that the grant of these easements and the Improvements in the Easement Areas shall not serve to reduce any density available or existing on the Property prior to the date of this Agreement.

TO HAVE AND TO HOLD, subject to the conditions and limitations set forth above, all and singular, the rights, privileges and easements aforesaid unto the Grantee, its successors and assigns, forever.

GRANTOR HEREBY COVENANTS with the Grantee that Grantor is lawfully seized and possessed of the Property or, in the alternative, holds non-exclusive easement rights for the purposes of access, utilities and the like thereto, and that Grantor has good lawful right to convey the easements conveyed herein, or any part thereof, and that Grantor will forever warrant and forever defend the title thereto against the lawful claims of Grantor's successors, heirs and assigns.

*[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibit(s) to Follow.]*

WITNESS Grantor's Hand and Seal this 9<sup>th</sup> day of FEBRUARY, 2023.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

Jessica Mata  
(Signature of First Witness)

Christina K Biola  
(Signature of Second Witness or Notary Public)

**GRANTOR(S):**

HERITAGE AT NEW RIVERSIDE COMMUNITY  
ASSOCIATION, INC, a South Carolina  
nonprofit corporation

[Signature] (L.S.)

BY: LAMAR SMITH

ITS: PRESIDENT

[Signature] (L.S.)

ATTEST: ASHLEY C DURRENCE

ITS: SECRETARY

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

**ACKNOWLEDGMENT**

I HEREBY CERTIFY that on this 9<sup>th</sup> day of FEBRUARY, 2023, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared LAMAR SMITH as PRESIDENT and with ASHLEY DURRENCE as SECRETARY, respectively, of HERITAGE AT NEW RIVERSIDE COMMUNITY ASSOCIATION, INC, a South Carolina nonprofit corporation, known or satisfactorily proven to be the persons whose names are subscribed to the within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Jennifer M. McCordle (SEAL)  
(Signature of Notary Public)

Notary Printed Name: Jennifer M. McCordle


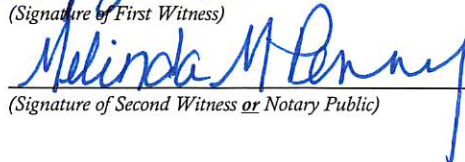
Notary Public for the State of South Carolina

My Commission Expires: 3-29-2026



WITNESS Grantee's Hand and Seal this 14 day of February, 2023.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

  
(Signature of First Witness)  
  
(Signature of Second Witness or Notary Public)

**GRANTEE:**

TOWN OF BLUFFTON, a South Carolina  
municipal corporation

 (L.S.)  
Name: STEPHEN STEESE, ICMA-CM  
Title: TOWN MANAGER

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT        )

# ACKNOWLEDGMENT

I HEREBY CERTIFY that on this 14 day of February, 2023,  
before me, the undersigned Notary Public of the State and County aforesaid, personally appeared  
STEPHEN STEESE as TOWN MANAGER for the TOWN OF BLUFFTON, a South Carolina municipal  
corporation, known or satisfactorily proven to me to be the person whose name is subscribed to the  
within instrument, who, on behalf of the corporation, acknowledged the execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year  
last above mentioned.

 (SEAL)  
(Signature of Notary Public)

Notary Printed Name: Melinda M. Penny  
Notary Public for the State of South Carolina  
My Commission Expires: 3-28-2032

f:\client\b\bluffton\heritage at new riverside\pedestrian and access easement\donation easement heritage at new riverside (fab draft).docx

**EXHIBIT "A"**  
**(Property Description)**

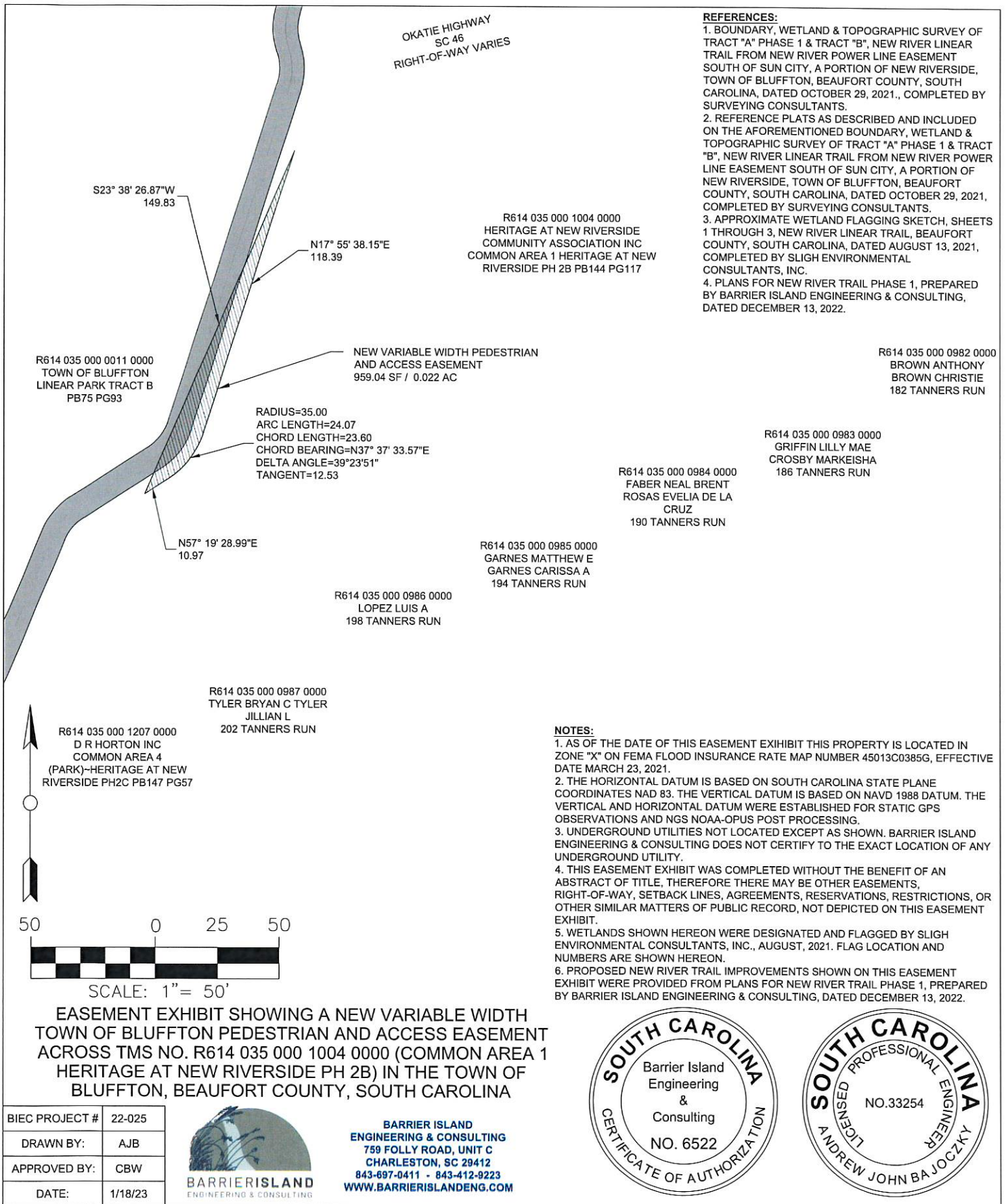
ALL that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, and being known as **Common Area 1**, as shown and described on that certain plat entitled, "*Phase 2B, The Heritage at New Riverside, Town of Bluffton, Beaufort County, South Carolina*," dated May 16, 2016, prepared by Robert K. Morgan, III, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on July 20, 2016, in Plat Book 144 at Page 117. For a more complete description as to said parcel as to distances, metes, courses, and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to Grantor herein by deed of D.R. Horton, Inc., dated September 8, 2021, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 4065 at Page 2551.

Tax Map No. R614-035-000-1004-0000

# EXHIBIT "B" (Easement Areas)

Exhibit A



**AFFIDAVIT OF TRUE CONSIDERATION AND  
CLAIM FOR EXEMPTION FROM:**

STATE RECORDING FEE - S.C. CODE OF LAWS SECTION 12-24-40;  
APPLICABLE COUNTY & MUNICIPAL TRANSFER FEE ORDINANCES

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

PERSONALLY appeared before the undersigned, who is duly sworn, deposes and says that the following is a true and correct statement concerning the CONSIDERATION for the conveyance set forth below, and concerning any EXEMPTION claimed under the laws of the State of South Carolina, County of Beaufort.

GRANTOR: HERITAGE AT NEW RIVERSIDE COMMUNITY ASSOCIATION, INC.

GRANTEE: THE TOWN OF BLUFFTON

GRANTEE MAILING ADDRESS: 20 Bridge Street, Bluffton, SC 29910

DATE OF CONVEYANCE:

**TRUE CONSIDERATION:** \$10.00

TAX DISTRICT/MAP/PARCEL NO: R614-035-000-1004-000

**STATE RECORDING FEE EXEMPTION:** This transfer is exempt from the statutory Recording Fee required by the State of South Carolina in accordance with Section 12-24-40(2) transferring realty subject to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts.

TRANSFER FEE EXEMPTION (if applicable): This transfer is exempt – transferring realty to state government agency.

Signed:

Print Name: E. Richardson LaBruce  
Capacity: Finger, Melnick, Brooks & LaBruce, P.A.  
Attorney for Town

Sworn to and subscribed before me on  
this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Notary Public of South Carolina  
My commission expires:

ROD OFFICE USE ONLY

State Stamps Collected: \$ \_\_\_\_\_  
Transfer Fee Collected: \$ \_\_\_\_\_

Recording Date: \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_