

STATE OF ALABAMA)

SHELBY COUNTY)

FIRST AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS;
QUITCLAIM DEED;
AND AGREEMENTS

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS; QUITCLAIM DEED; AND AGREEMENTS (the "Amendment") is made this 2d day of June, 1998, by and between Hollybrook Lake Corporation, a corporation ("HLC"); Sidney W. Smyer, Jr., a married man ("SWS,Jr."), Astrid M. Smyer, a married woman, Harald L. Smyer, a married man, Mary T. Smyer, a married woman, Ingrid Frances Smyer, an unmarried woman, and Sidney W. Smyer, III, an unmarried man ("SWS,III"), (hereinafter collectively referred to as the "Smyers"); and Ann J. Shaw, John E. Guess and SouthTrust Bank, N.A., as Trustees under the Will of Henry P. Johnson, deceased ("Shaw").

RECITALS:

WHEREAS, on or about June 2, 1998, HLC, the Smyers and Shaw made and entered into the Declaration of Covenants and Restrictions; Quitclaim Deed; and Agreements (the "Agreement") pertaining to certain parcels of real property situated in Shelby County, Alabama which are within the Hollybrook Development or adjacent thereto; and

WHEREAS, unless otherwise specifically and expressly defined herein, all capitalized terms shall have the meanings given to them in the Agreement; and

WHEREAS, the fourth Recital on the first page of the Agreement states that "Shaw is the owner of two parcels of real estate of approximately twenty (20) acres and ten acres, more or less, adjoining Hollybrook Lake, which are roughly identified as Parcels IV and VI on Exhibit 'A'" thereto; and

WHEREAS, Section 7 of the Agreement provides for the conveyance of Shaw's Parcel VI to HLC and the parties desire to hereby acknowledge the deletion of Section 7 and Section 8.A(6) so that Shaw is not obligated to convey Parcel VI to HLC; and

WHEREAS, the parties further desire to amend the Agreement so that Shaw's Parcels IV and VI are combined into one thirty (30) acre parcel, more or less, to be known as Parcel IV; and

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WHEREAS, the parties further desire to amend the Agreement to insert into the Agreement a paragraph to be designated as Section 2.C(1) and to renumber the succeeding paragraphs of Section 2.C accordingly.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration in hand paid by the undersigned to each other, the receipt and sufficiency of which are separately and severally acknowledged, the undersigned agree as follows:

1. DELETION OF SECTION 7 AND SECTION 8.A(6). The parties hereto acknowledge and agree that Section 7 and Section 8.A(6) of the Agreement are hereby deleted and Shaw shall be under no obligation to convey to HLC the ten (10) acre parcel of real property known in the Agreement as Parcel VI or to satisfy any obligation related to such conveyance as set forth in Section 7.

2. COMBINATION OF PARCELS IV AND VI. As referenced hereinabove, the Agreement states that Shaw is the owner of two parcels of real estate of approximately twenty (20) acres and ten (10) acres, more or less, adjoining Hollybrook Lake, which are roughly identified as Parcels IV and VI on Exhibit "A" to the Agreement. The parties hereby amend the Agreement in order to combine such twenty (20) acre and ten (10) acre parcels into one thirty (30) acre parcel. Any reference to the ten (10) acre parcel known as Parcel VI is hereby deleted and such ten (10) acre parcel that was known as Parcel VI shall be included within the term "Parcel IV". Accordingly, "Parcel IV" shall consist of approximately thirty (30) acres, more or less, adjoining Hollybrook Lake, which is roughly identified as Parcels IV and VI on Exhibit "A" to the Agreement. Any and all terms and provisions in the Agreement pertaining to Shaw's Parcel IV shall be deemed to refer to such thirty (30) acre parcel, more or less, which thirty (30) acres shall include the ten (10) acres previously known as Parcel VI.

3. AMENDMENT TO SECTION 9. Pursuant to Section 9 of the Agreement, the Smyers retained a right of way thirty (30) feet in width running across the eastern toe of Hollybrook dam. The parties hereby acknowledge and agree that such provision shall be amended so that said right of way retained by the Smyers is sixty (60) feet in width rather than thirty (30) feet in width.

4. INSERTION OF SECTION 2.C(1). The following is to be inserted into the Agreement as Section 2.C(1):

"(1) To the record owners of that part of the "Adjacent Acreage" (which is defined in Section 9 below) that is hereafter referred to as the "Smyer Children's Parcel", and which is hereby defined as,

That part of that certain real estate conveyed to Harold (sic) Lassen Smyer by corrected deed recorded in Book 301, Page 881, in the Probate Court of Shelby County, Alabama, and that certain real estate conveyed to Ingrid Frances Smyer by deed recorded in Book 296, Page 854, in said Probate Court, bounded roughly on the north by the

"duck swamp" described in said conveyances, and on the South by the 950-foot contour line lying at the base of Double Oak Mountain, as the same is depicted upon topographical maps published by the U.S. Geological Survey, containing a combined total of 150 acres, more or less,

upon the following terms and conditions, with the express condition that none of the provisions hereof granting an easement for the activities and uses described below shall be construed as permitting the owners of the Smyer Children's Parcel to improve or upgrade, or to cause the improvement or upgrade of the Hollybrook Lake Road:

(a) **Personal Use.** Except as otherwise provided in this Section 2 .C(1), the respective owners of the Smyer Children's Parcel shall have a personal right of ingress and egress to the Smyer Children's Parcel for historic uses.

(b) **Subdivision and/or Improvement.**

(i) The owners of the Smyer Children's Parcel shall have the right to use Hollybrook Lake Road for ingress to and egress from no more than four separate tracts within the Smyer Children's Parcel, upon each of which no more than one single family residence may be constructed. However, no such construction shall commence upon any two of those tracts (the selection of which shall be in the Smyers' discretion) prior to five years after this Agreement is fully executed and placed upon public record, and upon the remaining two tracts, prior to ten years after such execution and recordation.

(ii) Upon the commencement of construction of any permanent improvement upon each of the said four tracts, the owner thereof shall pay to HLC an impact fee of \$7,500.00, as well as the cost of any damage to the Hollybrook Lake Road occasioned by construction, and shall thereafter pay his/her/its annual prorated share of HLC's assessments for the maintenance of the road, spillway bridge, dam and gate. All of these fees and assessments shall be liens upon the respective tracts, which shall run with and be a charge upon the land, and be binding upon the owners of the respective tracts, their heirs, personal representatives, successors and assigns, until fully paid. Upon full payment of the charges and assessments herein described, HLC shall cause to be recorded a properly executed instrument releasing the appropriate tract from the operation of the lien herein granted.

(iii) The owners of the tracts comprising the Smyer Children's Parcel shall abide by all rules and regulations adopted from time to time by Hollybrook Lake Corporation governing the use of Hollybrook Lake Road by its shareholders.

(c) **Prohibited Uses.**

(i) The owners of the tracts lying within the Smyer Children's Parcel may not use the Hollybrook Lake Road for ingress to or egress from any other real estate.

(ii) The Hollybrook Lake Road shall not be used for the purpose of logging the Smyer Children's Parcel; however, the owners of that Parcel shall have the right to use for that purpose the 60-foot right of way across the eastern toe (the lowest elevation of the Hollybrook dam adjacent to the swamp) reserved by the Smyers in Section 9 of the Agreement, as amended hereby. Logging shall be restricted to the months of July, August and September, and the owners of the Smyer Children's Parcel shall give HLC two weeks written notice prior to the commencement of any logging activities thereon.

(iii) The owners of the tracts comprising the Smyer Children's Parcel shall not use Hollybrook Lake Road for horseback riding, "four-wheeling", "dirt-biking" or similar recreational transportation, it being the intention of the parties that the purpose of Hollybrook Lake Road shall be restricted to vehicular and pedestrian ingress to and egress from the real estate specifically described in this Agreement only; provided, however, that the aforesaid 60-foot right of way across the toe of the dam may be used for such recreational transportation.

(d) **Termination of Easement.** If, at any time in the future: (i) a new road is constructed upon and across land now owned by the Smyers to provide ingress to and egress from a public road to any property that adjoins and is within 500 feet \pm of the Smyer Children's Parcel, then that new road, and/or the New Access Road constructed upon the 60-foot right of way across the eastern toe of the Hollybrook dam, shall become the only means of ingress to and egress from all of the tracts within the Smyer Children's Parcel; or (ii) any part of the Smyer Children's Parcel is subdivided into more tracts than, and in a manner not specifically permitted by this Section 2.C(1); or (iii) if the owners of any of the tracts within the Smyer Children's Parcel undertake any activities for which any governmental agency having jurisdiction requires an upgrade or improvement of the Hollybrook Lake Road; then, in any or all of such events the easements hereby granted with regard to the Hollybrook Lake Road shall permanently terminate, and HLC shall have the right to erect permanent barriers denying access to the Smyer Children's Parcel by means of the Hollybrook Lake Road.

(e) **Agreements Run With the Land.** The provisions of this Section 2.C(1) shall be covenants running with the land contained within the Smyer Children's Parcel, binding upon the owners thereof and upon their respective heirs, personal representatives, successors and assigns, and inuring to the benefit of HLC; **provided, however,** that in the event that ingress to and egress from the Smyer Children's Parcel by means of the Hollybrook Lake Road is terminated for any cause described herein, then all of these covenants **except those relating to logging and recreational use** shall also terminate."

The paragraphs designated in the Agreement as Sections 2.C(1), 2.C(2), 2.C(3) and 2.C(4) are hereby renumbered as Sections 2.C(2), 2.C(3), 2.C(4) and 2.C(5) respectively.

5. MISCELLANEOUS.

A. **SEVERABILITY.** If any provision of this Amendment or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by a

court of competent jurisdiction, the remainder of this Amendment 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 shall be valid and enforceable to the fullest extent permitted by law.

B. **BINDING EFFECT.** The terms and provisions of this Amendment shall be binding upon each party hereto and the respective heirs, executors, administrators, personal representatives, successors and assigns of each party hereto, and shall inure to the benefit of HLC and its successors and assigns.

C. **INTERPRETATION.** This Amendment shall be construed under and in accordance with the laws of the State of Alabama.

D. **FURTHER ASSURANCES.** Each party hereto covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by any other party hereto for the purpose of or in connection with consummating any of the transactions and matters herein.

E. **COUNTERPARTS.** This Amendment may be executed in a number of counterparts, all of which together shall for all purposes constitute one agreement.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals this 2d day of June, 1998.

Witness:



Sidney W. Smyer, Jr.



Astrid M. Smyer



Sidney W. Smyer, III



Harald L. Smyer



Mary T. Smyer

This instrument is executed by SouthTrust Bank, National Association solely in the representative capacity named herein, and neither this instrument nor anything herein contained shall be construed as creating any indebtedness or obligation on the part of SouthTrust Bank, National Association in its individual or corporate capacity. It is understood that SouthTrust Bank, National Association is not a party hereto in its individual or corporate capacity and shall not be liable herein on any account whatsoever.

Glenn A. Bushay

Ingrid Frances Smyer

Trustees Under the Will of Henry P. Johnson,
deceased:

Ann J. Shaw

Ann J. Shaw

John E. Guess

John E. Guess

SouthTrust Bank, N.A.

SouthTrust Bank, N.A.

DOUGLAS C. BELL
SENIOR VICE PRESIDENT

Hollybrook Lake Corporation

By: Nancy Brower

Nancy Brower
Its President

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Sidney W. Smyer, Jr., a married man, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 6th day of May, 1998.

[SEAL]

Mary Paulette Johnson
Notary Public

My Commission Expires:

7/24/2001

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Astrid M. Smyer, a married woman, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 18th day of May, 1998.

[SEAL]

Mary P. Thornton
Notary Public

My Commission Expires:

5/24/99

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Sidney W. Smyer, III, an unmarried man, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 18th day of May, 1998.

[SEAL]

Mary P. Thornton
Notary Public

My Commission Expires:

5/24/99

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Harald L. Smyer, a married man, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 18th day of May, 1998.

[SEAL]

Mary P. Thornton
Notary Public

My Commission Expires:

5/24/99

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Mary T. Smyer, a married woman, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 18th day of May, 1998.

[SEAL]

Mary P. Thornton
Notary Public

My Commission Expires:

5/24/99

Massachusetts
STATE OF ~~ALABAMA~~)
Suffolk COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Ingrid Frances Smyer, an unmarried woman, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 20 day of May, 1998.

[SEAL]

Stephen Jak
Notary Public

My Commission Expires:

9/11/03

South Carolina
STATE OF ~~ALABAMA~~)
Beaufort COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Ann J. Shaw, as Trustee of Trust B created under ITEM THREE (b) of the Will of Henry P. Johnson, deceased, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date, in her capacity as Trustee as aforesaid and with full authority thereto.

Given under my hand and seal of office this 30 day of April, 1998.

[SEAL]

Glenn Bushong
Notary Public

My Commission Expires:

March 20, 2005

STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that John E. Guess, as Trustee of Trust B created under ITEM THREE (b) of the Will of Henry P. Johnson, deceased, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he

executed the same voluntarily on the day the same bears date, in his capacity as Trustee as aforesaid and with full authority thereto.

Given under my hand and seal of office this 15th day of May, 1998.

[SEAL]

Diana S. Knight
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES NOVEMBER 4, 1998

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Douglas C. Bell, as Senior Vice Pres of SouthTrust Bank, N.A., a banking corporation, acting in its capacity as Trustee of Trust B created under ITEM THREE (b) of the Will of Henry P. Johnson, deceased, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he executed the same voluntarily on the day the same bears date for and as the act of said Bank acting in its capacity as Trustee as aforesaid and with full authority thereto.

Given under my hand and seal of office this 27 day of May, 1998.

[SEAL]

Kelly A. Moner
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES MAY 11, 1999.

STATE OF ALABAMA)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Nancy Brower, whose name as President of Hollybrook Lake Corporation, an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date for and as the act of said corporation.

Given under my hand and seal of office this 2d day of June, 1998.

[SEAL]

Mary P. Thornton
Notary Public

My Commission Expires:

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