

This instrument prepared by  
and upon recording return to  
Jerome K. Lanning  
Butler Snow LLP  
One Federal Place  
1819 Fifth Avenue North, Suite 1000  
Birmingham, Alabama 35203  
(205) 297-2200

STATE OF ALABAMA     )

COUNTY OF SHELBY     )

**DECLARATION OF PROTECTIVE COVENANTS**

**THIS DECLARATION OF PROTECTIVE COVENANTS (“Covenants”)** is made by **S.W. SMYER JR., HARALD L. SMYER and INGRID FRANCES SMYER** (collectively the “Smyers”) as of the 15<sup>TH</sup> day of OCTOBER, 2015.

**RECITALS**

**WHEREAS**, the Smyers, as “Sellers”, entered into a Third Amended and Restated Purchase and Sale Agreement as of the 31st day of July, 2015, as amended by the Amendment to Third Amended and Restated Purchase and Sale Agreement dated as of August 31, 2015, with the Freshwater Land Trust, as “Purchaser” (the “Purchase Agreement”), providing for the sale by the Smyers to the Land Trust of their “Ridge Property” (that term, and other capitalized terms used herein not otherwise defined shall have the meaning provided for in the Purchase Agreement); and

**WHEREAS**, the Purchase Agreement provides, in Section 20 thereof, that the Sellers agree that their Adjacent Property shall be governed by a protective covenant to restrict the development of any building, structure or other improvements within 100 feet of the boundary of the Ridge Property (the “Adjacent Property Covenant” restated as the Covenants herein); and

**WHEREAS**, the Ridge Property is described in Exhibit “A”, and the Smyers Adjacent Property is depicted on Exhibit “B”, each attached hereto and incorporated herein by reference; and

**WHEREAS**, the Smyers have agreed to execute these Covenants to evidence the development restrictions applicable to the portion of their Adjacent Property which lies within 100 feet of the boundary of the Ridge Property, and to agree that should any of the Adjacent Property be transferred or conveyed, that the instrument effecting such conveyance will contain a notice setting forth this restriction.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged by the Smyers, the Smyers hereby covenant and agree as follows:

1. Covenants. The Smyers hereby declare and impose protective covenants on their Adjacent Property to restrict the development of any building, structure or other improvement within 100 feet of the Boundary of the Ridge Property (the "Covenants"), and agree that should any of their Adjacent Property affected by the Covenants be transferred or conveyed by them, that the instrument effecting such conveyance should contain a reference to the Covenants.
2. Beneficiary. The Land Trust shall be the beneficiary of the Covenants, and in the event of a breach or violation thereof shall have the right, but not the obligation, to bring an action at law or equity to enforce the same; provided, however, that it shall have first given written notice to the owner(s) of the Adjacent Property, with a reasonable opportunity on such owner's part to correct or cure any violation of the Covenants. In conjunction with any such legal proceeding, the prevailing party may be awarded its costs, including reasonable attorneys fees.
3. Successors; Duration. The restrictions provided for in these Covenants shall run with, burden, touch and concern the Adjacent Property, and shall run with the land, and be binding upon the Smyers, and their heirs, successors and assigns as owners of the Adjacent Property, and shall inure to the benefit of the Land Trust, and its successors and assigns, as owners of the Ridge Property in perpetuity.
4. Waivers. No delay or omission in exercising any right accruing under provisions of these Covenants shall impair any such right or be construed to be a waiver thereof.
5. Modification. These Covenants may be modified or amended by the Smyers (or the then owners of the Adjacent Property), by an agreement in writing with (i) the written consent of the Land Trust, and (ii) the filing of an amendment to these Covenants to such effect in the real property records of Shelby County, Alabama.
6. Captions. The captions contained in these Covenants are for convenience only, and do not constitute part of the provisions hereof.
7. Governing Law. These Covenants shall be construed and enforced in accordance with, and governed by, the laws of the State of Alabama.
8. Notices. All notices required to be given hereunder shall be in writing and delivered personally or given by United States Mail and addressed as follows:
  - (a) To Purchaser: Freshwater Land Trust  
c/o Wendy Jackson, Executive Director



2308 First Avenue North  
Birmingham, AL 35203

with a copy to (which shall not constitute notice):

Angie Godwin McEwen  
Butler Snow LLP  
One Federal Place  
1819 Fifth Avenue North, Suite 1000  
Birmingham, AL 35203


(b) To Sellers: S. W. Smyer, Jr.  
2780 Smyer Circle  
Vestavia Hills, AL 35216

Harald L. Smyer  
5681 Oak Grove Avenue  
Oakland, CA 94618

Ingrid Frances Smyer  
350 Revere Beach Boulevard  
#55 West  
Revere, MA 01251


Each such mailed notice shall be deemed to have been given to, or served upon, the party to which addressed either upon delivery if by hand or on the date two days following the date the same is deposited in the United States registered or certified Mail, return receipt requested, postage prepaid, properly addressed in the manner above provided. Each such delivered notice or communication shall be deemed to have been given to or served upon the party to which delivered, upon delivery to such party at the addresses provided above. Any party hereto may change its address for the service of notice hereunder by providing written notice of said change to the other party hereunder, in the manner above specified, ten (10) days prior to the effective date of said change.

**[SIGNATURES ON FOLLOWING PAGES]**

  
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**IN WITNESS WHEREOF**, the Smyers have caused this Declaration of Protective Covenants to be effective as of the date first above written.

SMYERS:

  
\_\_\_\_\_  
S. W. Smyer, Jr.

STATE OF ALABAMA           )  
  )  
COUNTY OF JEFFERSON    )

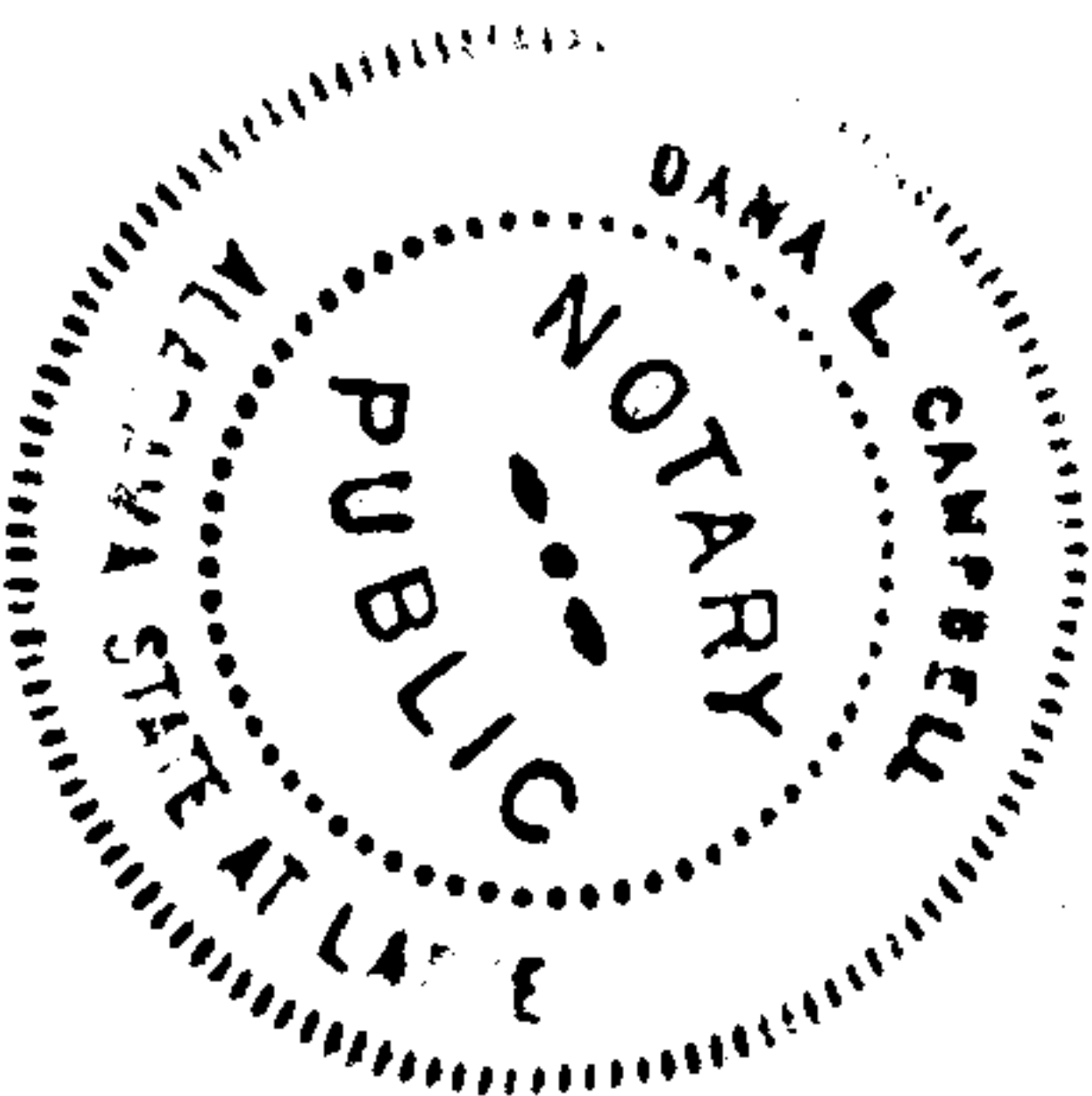
I, the undersigned, a notary public in and for said county in said state, hereby certify that **S. W. Smyer, Jr.**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same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

GIVEN under my hand and official seal this 5<sup>th</sup> day of October, 2015.


Dana L. Campbell

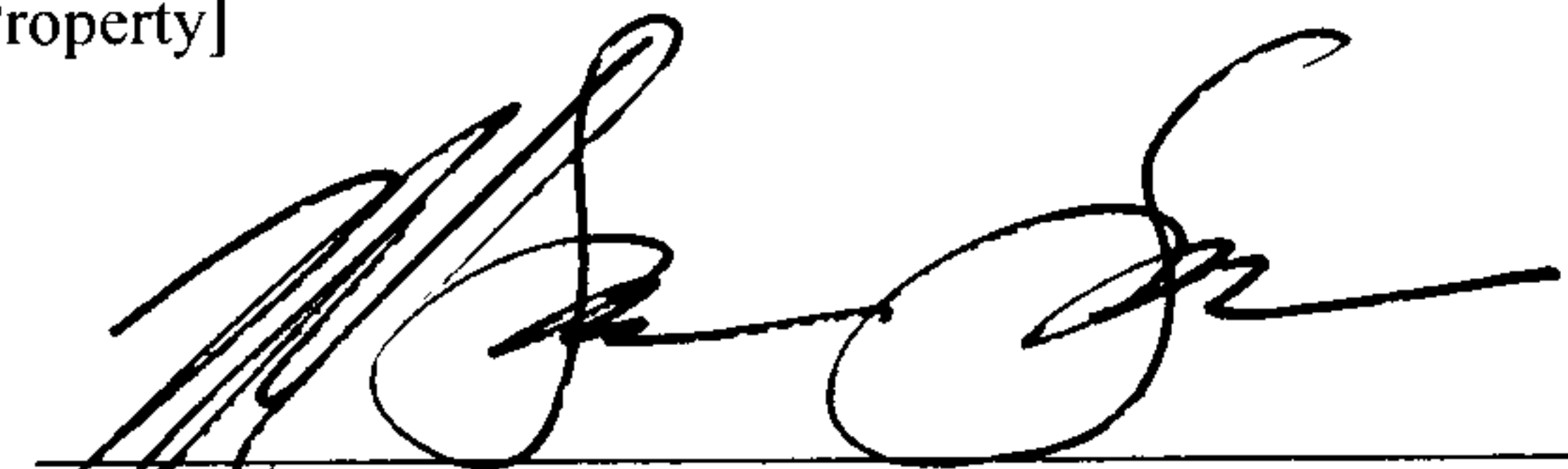
Notary Public

My Commission Expires: May 10, 2017



**[SIGNATURES CONTINUE ON FOLLOWING PAGES]**

  
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Harald L. Smyer

### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

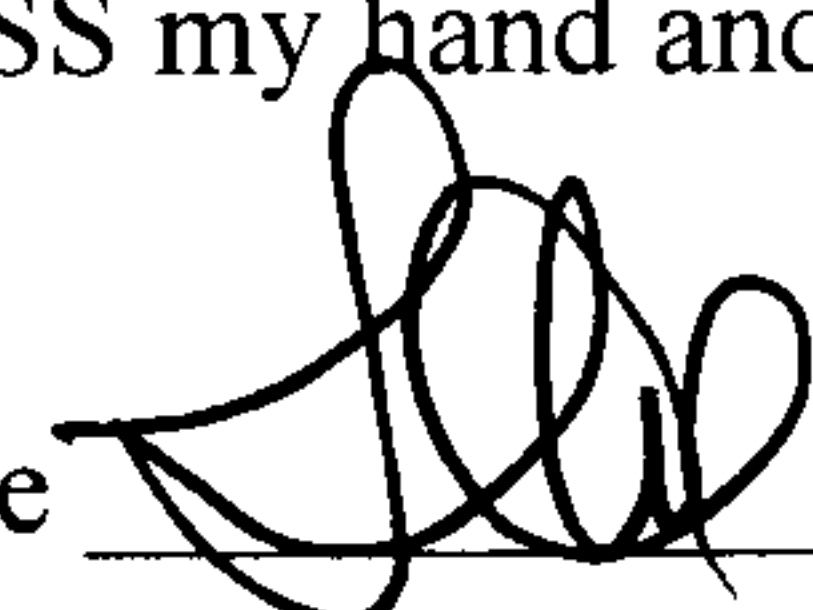
State of California )  
County of Alameda )

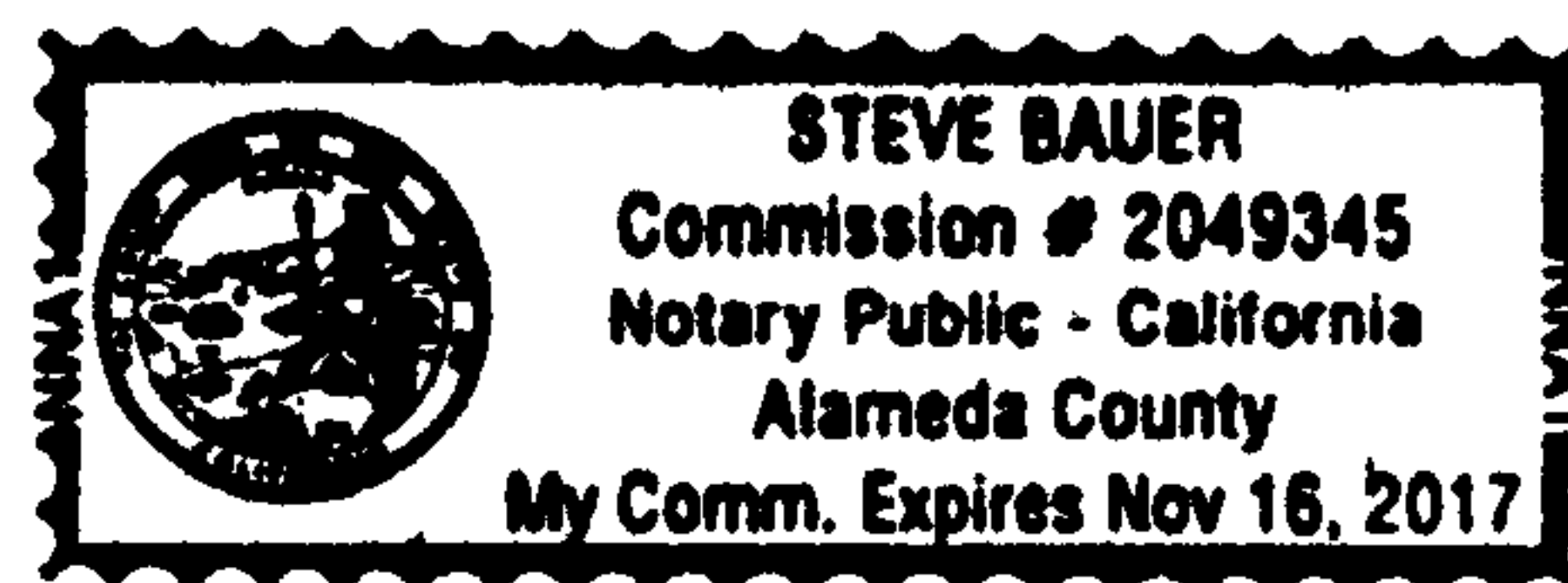
On 10/06/2015, before me, Steve Bauer, Notary  
(insert name and title of the officer)

personally appeared **Harald L. Smyer**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.


I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

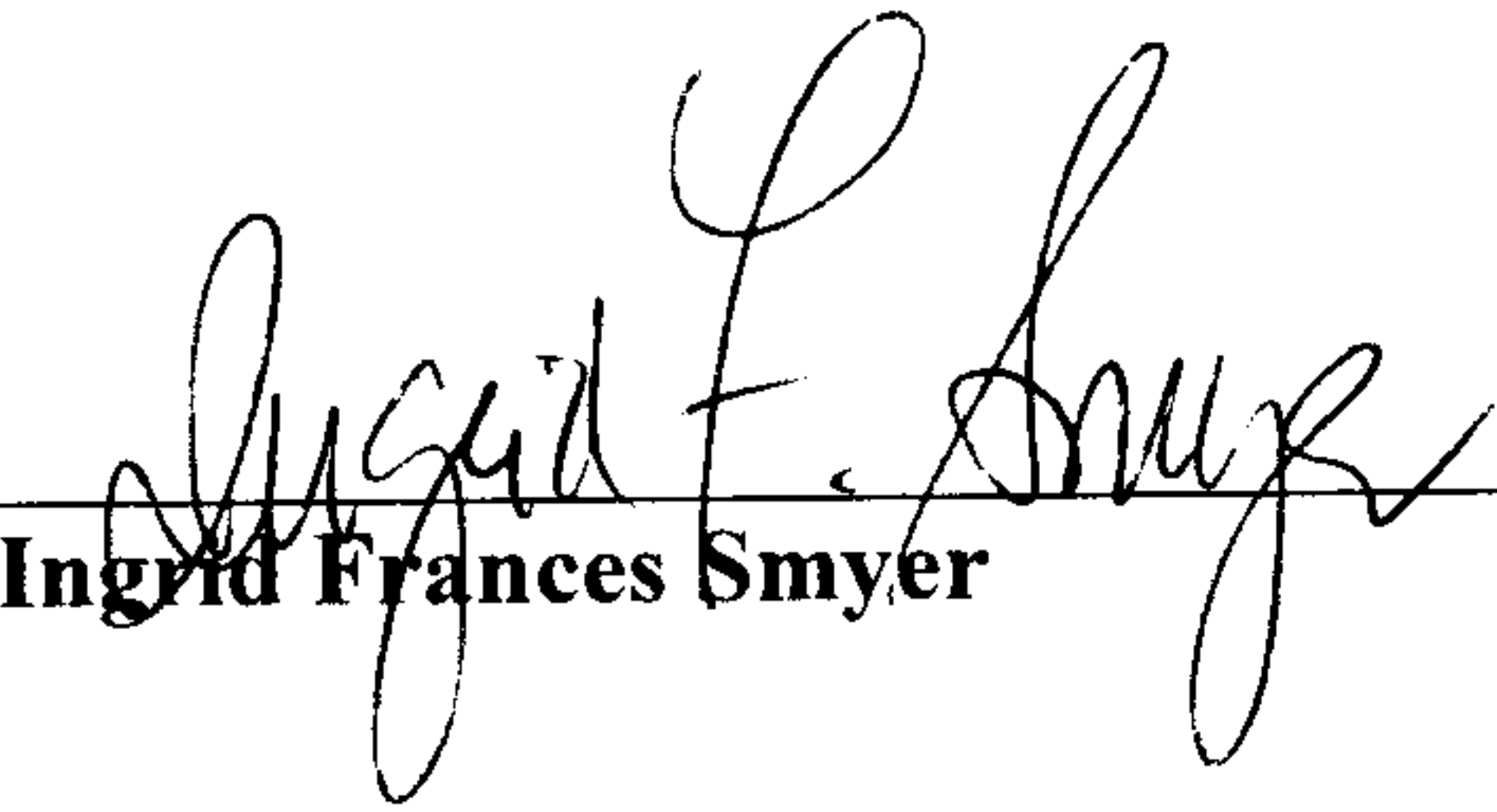
WITNESS my hand and official seal.

Signature  (SEAL)



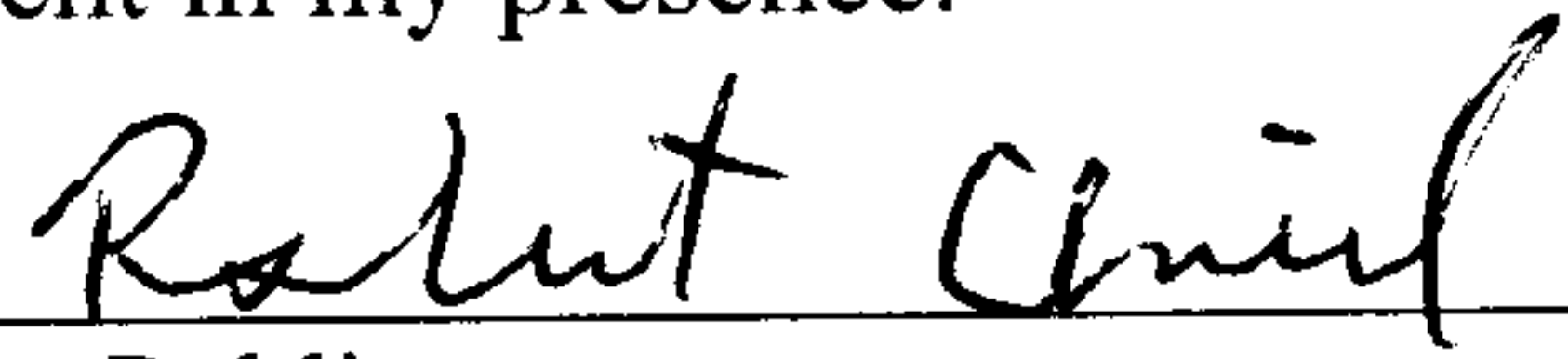
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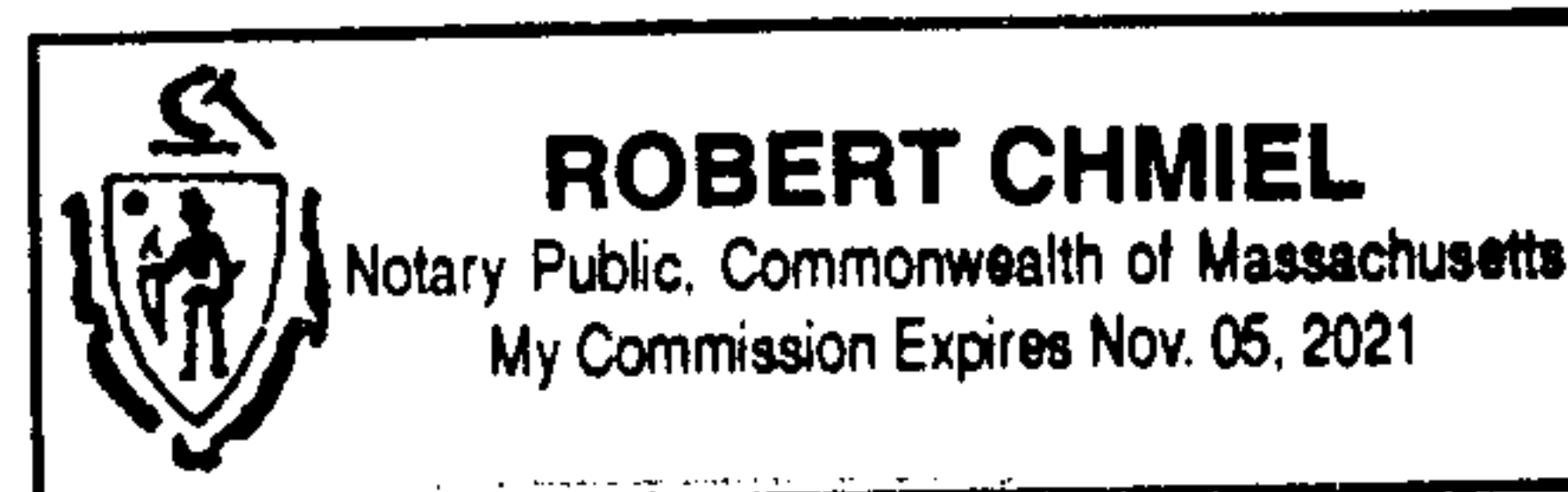
  
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Ingrid Frances Smyer

STATE OF MASSACHUSETTS      )  
COUNTY OF Suffolk      )

On this 7 day of October, 2015, before me, the undersigned notary public, personally appeared **Ingrid Frances Smyer**, proved to me through satisfactory evidence of identification, which were Driver License, to be the person whose name is signed on the preceding or attached document in my presence.

  
Notary Public  
My Commission Expires: 11/05/2021



  
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## **EXHIBIT "A"**

### **Ridge Property**

The following parcel of real property located in Shelby County, Alabama:

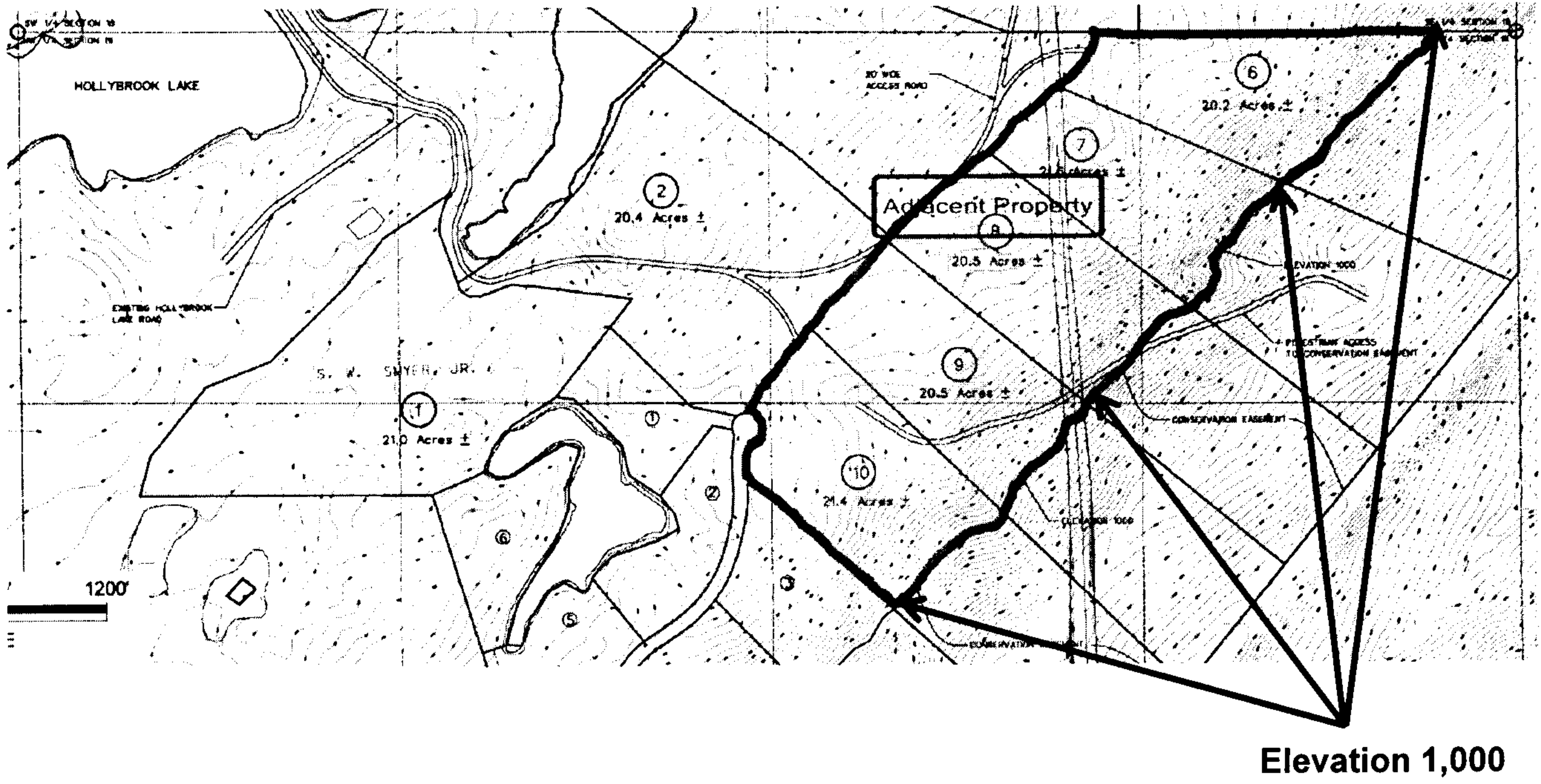
A parcel of land situated in the North 1/2 of Section 25, Township 18 South, Range 1 West, the Northwest 1/4 of Section 30, Township 18 South, Range 1 East and Section 19, Township 18 South, Range 1 East, Shelby County, Alabama being more particularly described as follows:

Begin at the point of intersection of the South line of the North 1/2 of Section 25, Township 18 South, Range 1 West, Shelby County, Alabama and the Southeasterly line of Lot 24, Stonegate Realty Phase One as recorded in Map Book 29, Page 4 in the office of the Judge of Probate of Shelby County, Alabama and run in a Northeasterly direction along the Southeasterly line of Lots 24, 25, 26 and Lot 27, Stonegate Realty Phase One as recorded in Map Book 29, Page 4, Lots 28-A, 29-C, 30-A and Lot 35-A, Stonegate Realty Phase 2 Resubdivision of Lots 28-30, 35 as recorded in Map Book 32, Page 107, Lot 36, Stonegate Realty Phase 2 as recorded in Map Book 31, Page 28, Lots 56, 57, 58, 59 and Lot 60, Stonegate Realty Phase 3 as recorded in Map Book 33, Page 122, Lot 61-A, Resurvey of Lots 61 & 62 Stonegate Realty Phase 3 as recorded in Map Book 34, Page 110, Lots 63, 64 and Lot 65, Stonegate Realty Phase 3 as recorded in Map Book 33, Page 122 all being recorded in the office of the Judge of Probate of Shelby County, Alabama, for a distance of 7467 feet, more or less, to the Easternmost corner of said Lot 65; thence in a Northeasterly direction along the meanders of Elevation 1000 approximately 3793 feet, more or less, to a point on the North line of Section 19, Township 18 South, Range 1 East, Shelby County, Alabama; thence in an Easterly direction along said North line approximately 271 feet, more or less, to the Northeast corner of said Section 19, Township 18 South, Range 1 East, Shelby County, Alabama; thence in a Southerly direction along the East line of Section 19, Township 18 South, Range 1 East, Shelby County, Alabama approximately 859 feet, more or less, to the center of an Old Woods Road on the crest of Double Oak Mountain; thence in a Southwesterly direction along the meanders of the center of the Old Woods Road on the crest of Double Oak Mountain approximately 9482 feet, more or less, to a point on the South line of the North 1/2 Section 25, Township 18 South, Range 1 West, Shelby County, Alabama; thence in a Westerly direction along the South line of the North 1/2 of Section 25, Township 18 South, Range 1 West, Shelby County, Alabama approximately 1734 feet, more or less, to the Point of Beginning.

  
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## EXHIBIT "B"

### Adjacent Property



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