


STATE OF ALABAMA     )  
SHELBY COUNTY         )

  
20160502000143660 1/12 \$50.00  
Shelby Cnty Judge of Probate, AL  
05/02/2016 10:11:44 AM FILED/CERT

This instrument prepared by  
and record and return to:  
Jerome K. Lanning, Esq.  
Butler Snow LLP  
One Federal Place, Suite 1000  
1819 Fifth Avenue North  
Birmingham, AL 35203

**THIRD AMENDMENT TO DECLARATION  
OF COVENANTS AND RESTRICTIONS;  
QUITCLAIM DEED; AND AGREEMENTS**

**THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS; QUITCLAIM DEED; AND AGREEMENTS**, (the “Third Amendment”) is made and entered into as of the 22<sup>nd</sup> day of Dec., 2015, by and between Sidney W. Smyer, Jr. (“Billy”); Harald L. Smyer and Mary T. Smyer, husband and wife (together referred to as “Hal” herein); Ingrid Frances Smyer, an unmarried woman (“Fran”); Sidney W. Smyer, III, an unmarried man (“Sid”); and Hollybrook Lake Corporation (“HLC”). Billy, Hal, Fran and Sid are sometimes collectively referred to in this Third Amendment as the “Smyers”, while the Smyers and HLC are sometimes collectively referred to as the “Parties”. Richard G. Edge, and Andrew N. A. Edge and spouse Elizabeth P. Edge (collectively the “Edges” herein), join in the execution of this Third Amendment for the sole and limited purpose set forth in the Consent and Joinder appended to this Third Amendment.

**RECITALS**

The Parties were among the parties to a Declaration dated June 2, 1998, and recorded in Instrument Number 1998-20485 in the Probate Office of Shelby County, Alabama (the “Original Agreement”) pertaining to certain parcels of real property situated in Shelby County, Alabama, which are within or adjacent to the Hollybrook Development; and

All of the parties to the Original Agreement also entered into a first amendment to the Original Agreement, also dated June 2, 1998, as recorded in Instrument Number 1998-20486 in said Probate Office (the “First Amendment”); and

All of the parties to the Original Agreement and the First Amendment also entered into a second amendment to the Original Agreement dated as of August 28, 2014, as recorded in Instrument Number 20141023000336140 in said Probate Office (the “Second Amendment”); unless otherwise defined herein, all capitalized terms in this Third Amendment shall have the meaning provided for in the Original Agreement, as amended by the First and Second Amendments.

The Original Agreement, as amended by the First Amendment and Second Amendment may be referred to herein as the “Agreement”; and

Following the execution of the Second Amendment, the Smyer parties Billy, Hal and Fran, and the Land Trust, entered into a “Third Amended and Restated Purchase and Sale

Agreement” (the “Purchase and Sale Agreement”) which provided for (a) a purchase of their entire fee simple interest in their approximately two hundred forty-six (246) acre Ridge Property (in lieu of the Conservation Easement interest in the Ridge Property described in the Second Amendment), and (b) an extension of the closing date for the Ridge Property purchase until a date on or before October 16, 2015; and

The parties hereto desire to amend Section 4 of the Second Amendment and its conforming sections to (a) substitute the term “Fee Interest” for Conservation Easement, throughout, to (b) substitute the terms “not later than October 16, 2015” for the Closing Date reference in Section 4, and (c) to amend the form of Certificate referred to in that Section and the attached Exhibit G to the Second Amendment to make conforming changes to the form of that Certificate; and

The parties to this Third Agreement further desire to ratify and confirm all terms of the Agreement as hereby amended.

**NOW, THEREFORE**, the parties to this Third Amendment stipulate and agree to the following amendments to the terms of the Agreement.

#### **AGREEMENT**

1. **Section 4 of the Second Amendment:** Section 4 of the Second Amendment is hereby amended and restated in its entirety to read as follows:

“4. Condition of this Second Amendment to the Agreement. All of the terms and conditions provided for in this Second Amendment are subject to the express condition precedent of the closing of the sale by the Smyers of their Fee Interest in the Ridge Property to the Land Trust (the “Closing”) on or before October 16, 2015 (the “Closing Date”). The Closing Date may be extended through the mutual written agreement of Billy, Hal, Fran, and the Land Trust to a date not later than November 16, 2015. The Smyers shall notify HLC immediately following Closing of the sale of the Ridge Property, and execute and deliver to HLC a certificate in the form attached as Exhibit “G” confirming the sale and the satisfaction of that condition to the performance of the Parties’ obligations under this Second Amendment (the “Certificate”). The Smyers collectively stipulate and agree that this Certificate may be executed by either Billy or Hal, and that the execution of the Certificate by either or both of them shall be binding upon all Smyers.”

2. **Certificate:** The form of the Certificate attached to the Second Amendment is hereby amended and restated in its entirety to read as follows:

#### **“ EXHIBIT “G”**

#### **CERTIFICATE AS TO CLOSING OF**



**FEE INTEREST SALE ("CERTIFICATE")**

The undersigned Sidney W. Smyer, Jr. and/or Harald L. Smyer hereby executes and delivers this Certificate to Hollybrook Lake Corporation ("HLC") to notify HLC that the sale of the Fee Interest in the Ridge Property to the Freshwater Land Trust described in the Second Amendment has been closed, and that all terms and conditions of the Second Amendment relating to that Closing have been satisfied. In accordance with the terms of Section 4 of the Second Amendment, the execution of this Certificate by either or both of Sidney W. Smyer, Jr. or Harald L. Smyer shall be binding upon all of the Smyers, with the Consent and Joinder of the Edges described in the Second Amendment.

Executed and delivered by the undersigned as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

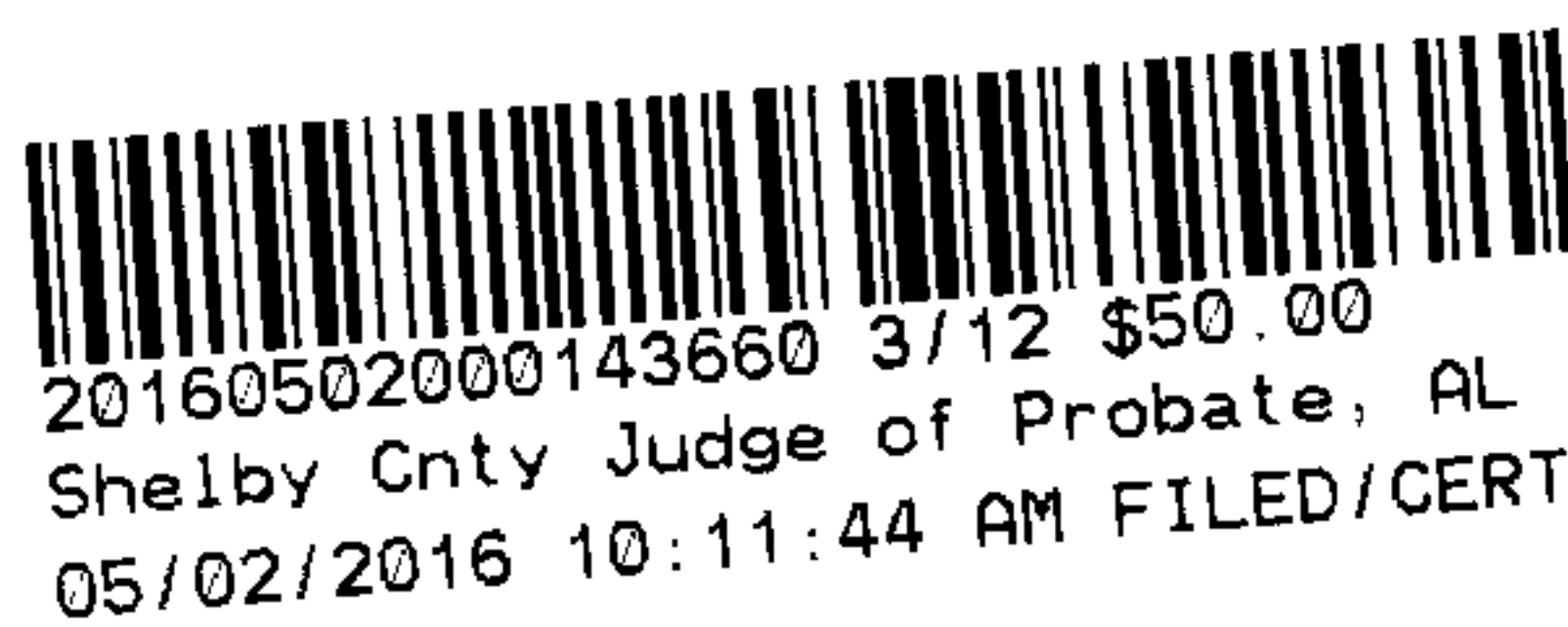
\_\_\_\_\_  
Sidney W. Smyer, Jr.

\_\_\_\_\_  
Harald L. Smyer


[NOTARY BLOCKS ON FOLLOWING PAGE] ”

3. **Ratification**: As hereby amended, all terms and conditions of the Original Agreement, as amended by the First and Second Amendments thereto, are hereby ratified and confirmed.

[SIGNATURES ON FOLLOWING PAGE]



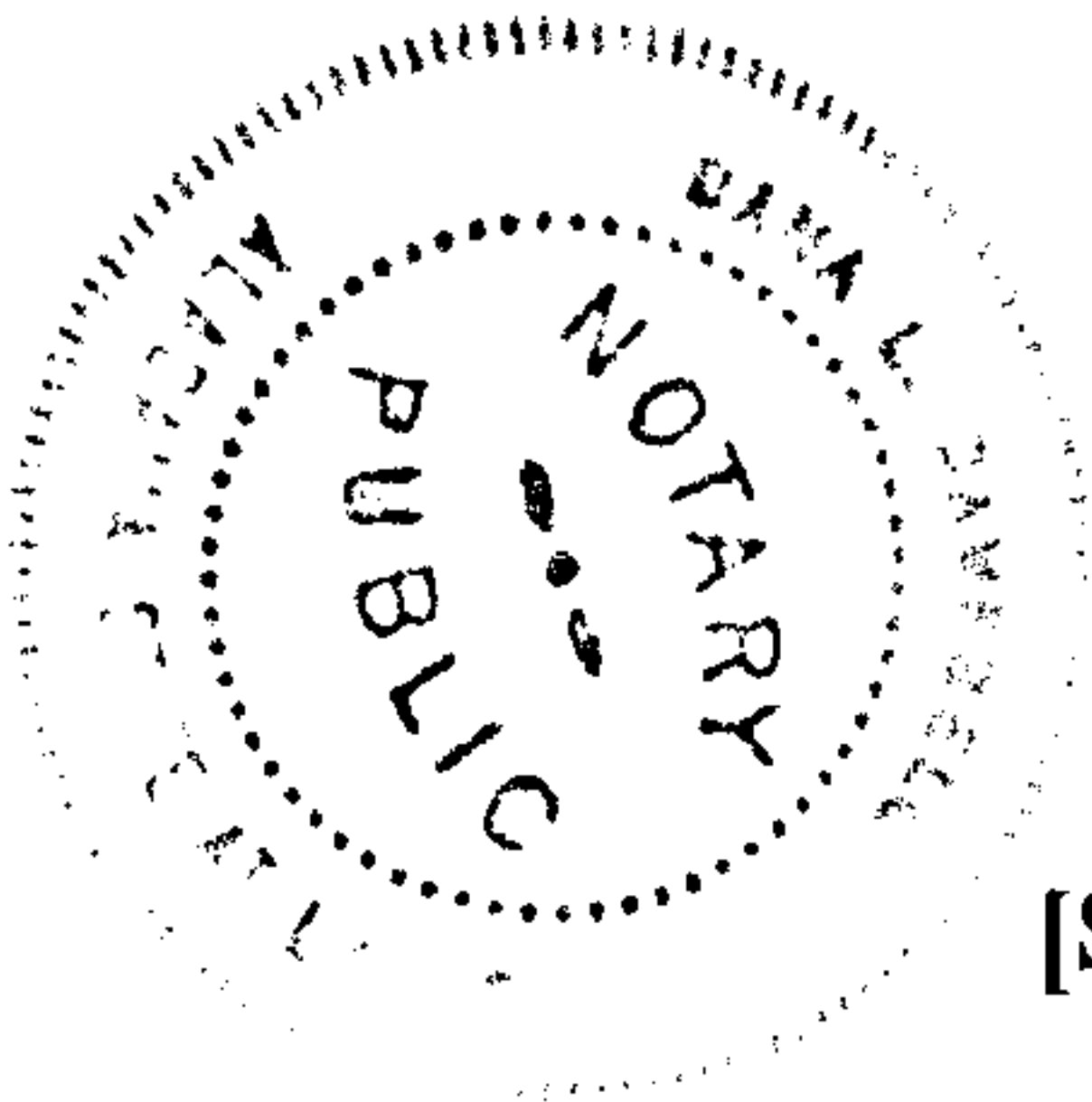
**IN WITNESS WHEREOF**, the parties have affixed their hand and seals as of the date first above written.

  
\_\_\_\_\_  
**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.

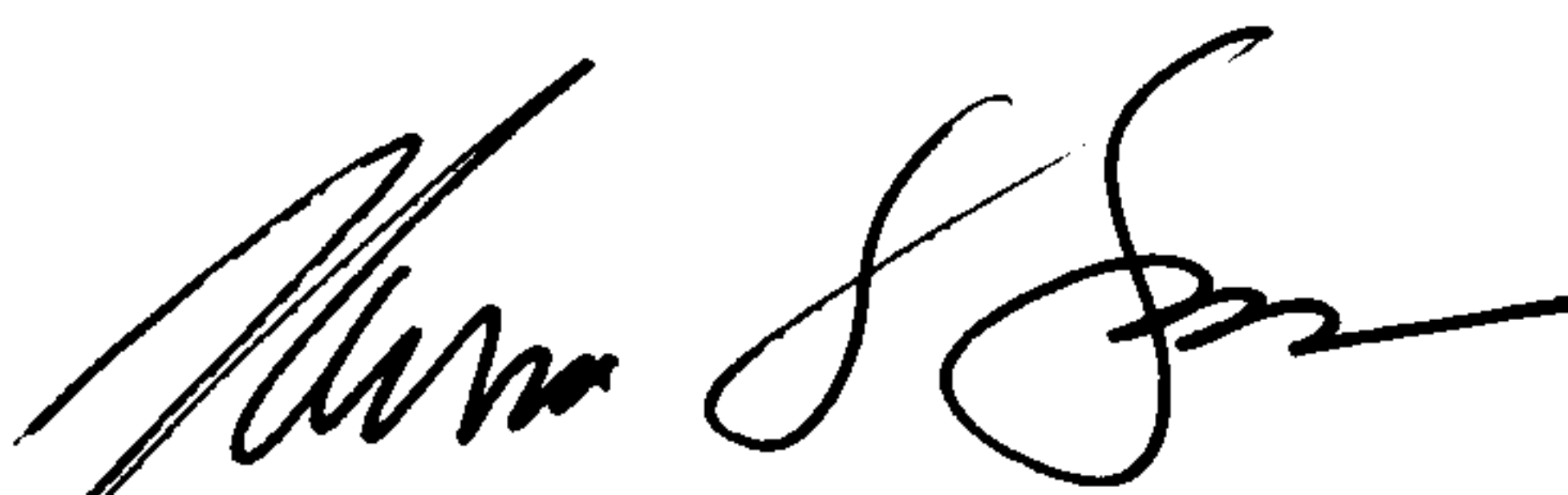
GIVEN under my hand and official seal this 5<sup>th</sup> day of October, 2015.



Dana L. Campbell  
Notary Public  
My Commission Expires: May 10, 2017

**[SIGNATURES CONTINUE ON FOLLOWING PAGES]**

  
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Shelby Cnty Judge of Probate, AL  
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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 )

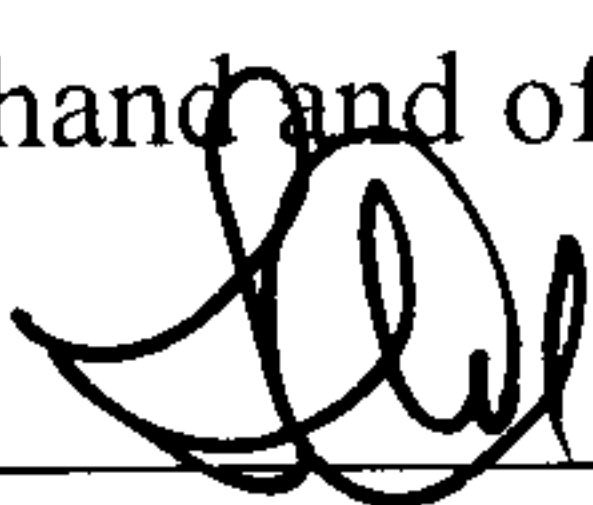
On 10/06/2015, before me, Steve Bauer, Notary,  
(insert name and title of the officer)

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.

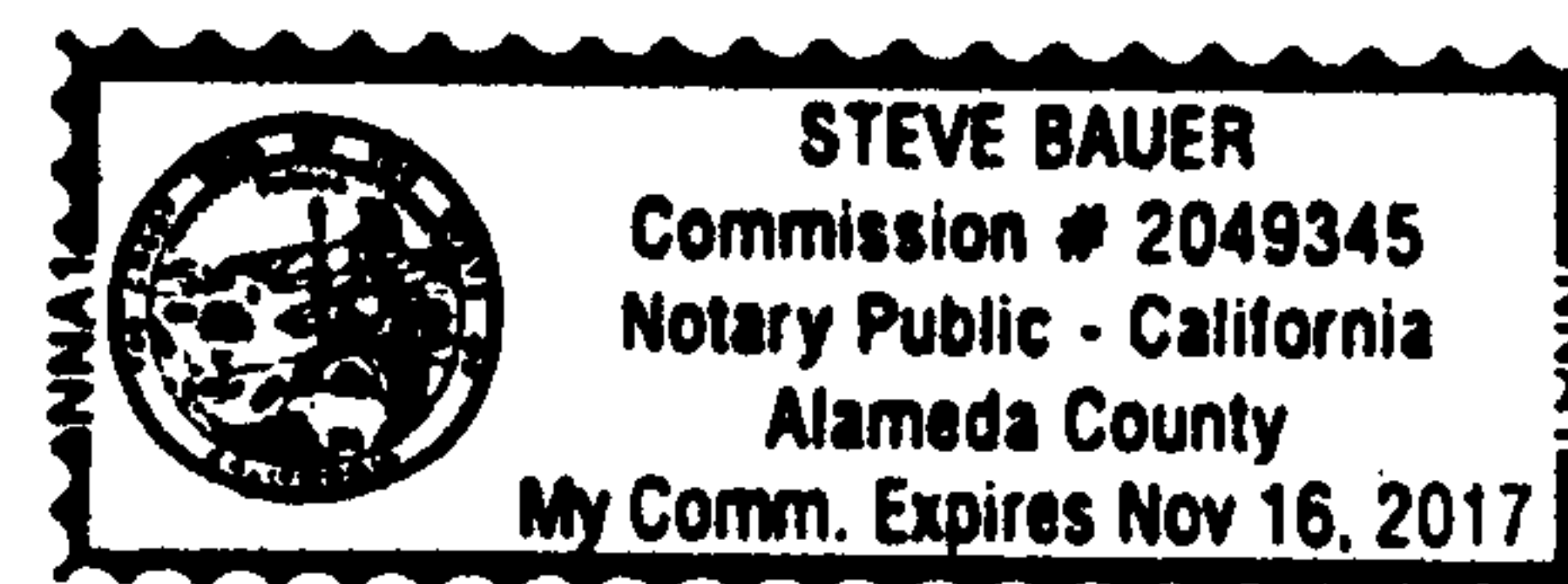
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature



(SEAL)



[SIGNATURES CONTINUE ON FOLLOWING PAGE]


  
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Shelby Cnty Judge of Probate, AL  
05/02/2016 10:11:44 AM FILED/CERT

  
\_\_\_\_\_  
INGRID FRANCES SMYER

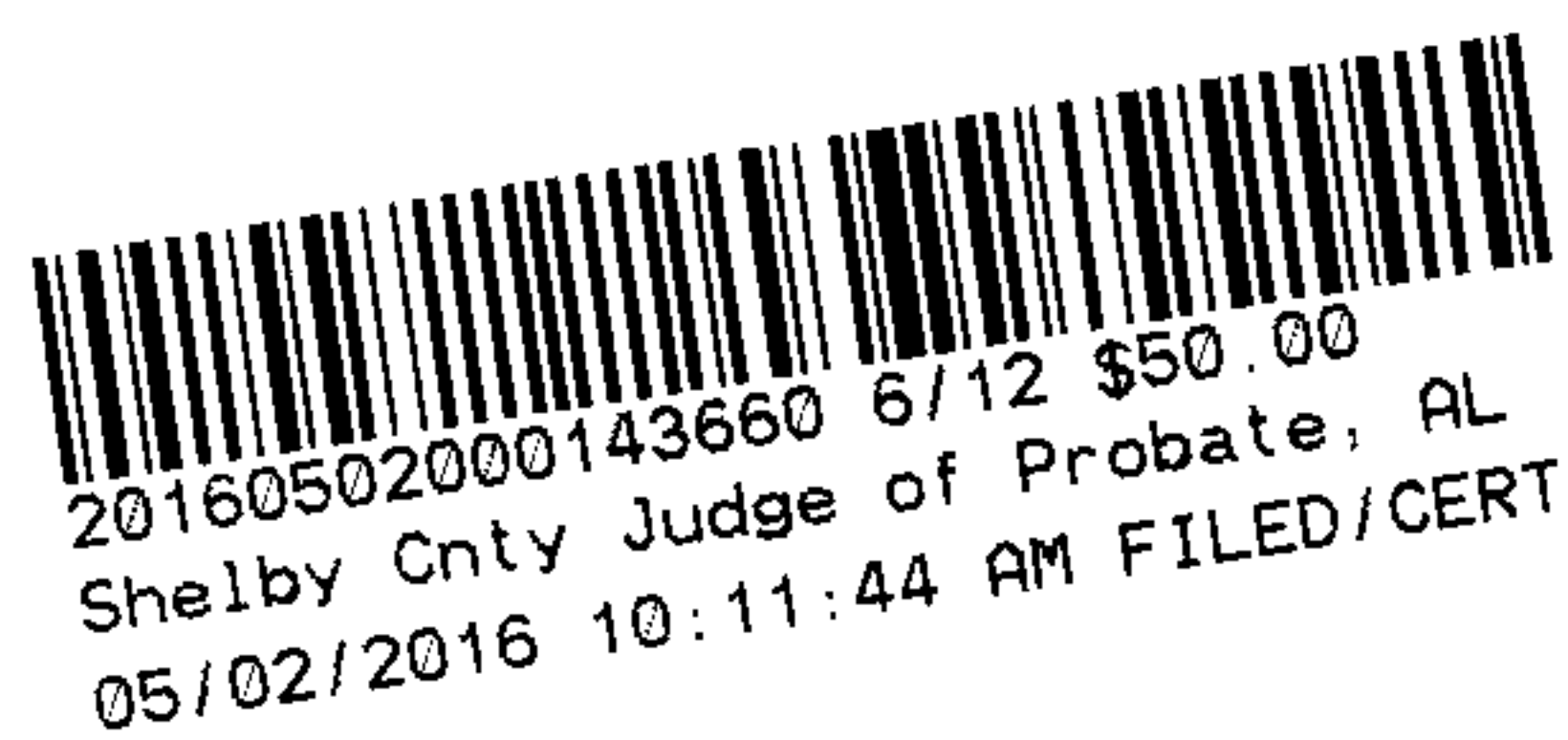
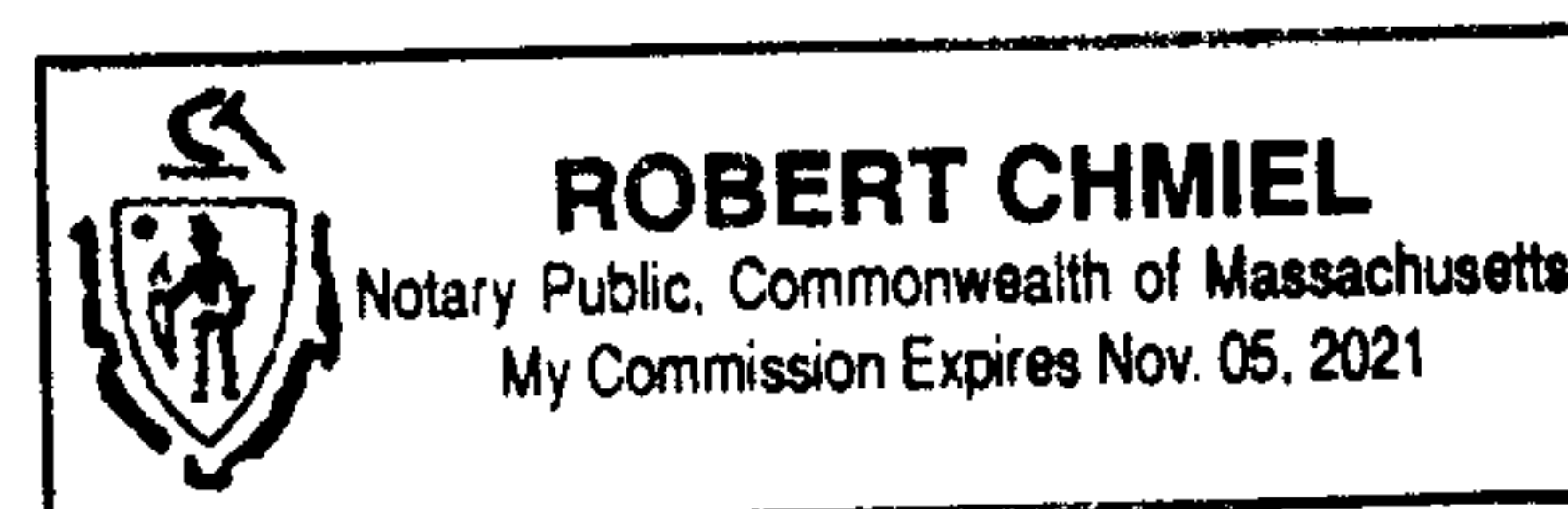
STATE OF MASSACHUSETTS )

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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]





**HOLLYBROOK LAKE  
CORPORATION**

By: *Robert J. Nichols*  
Name: *Robert J. Nichols*  
Its: *President*

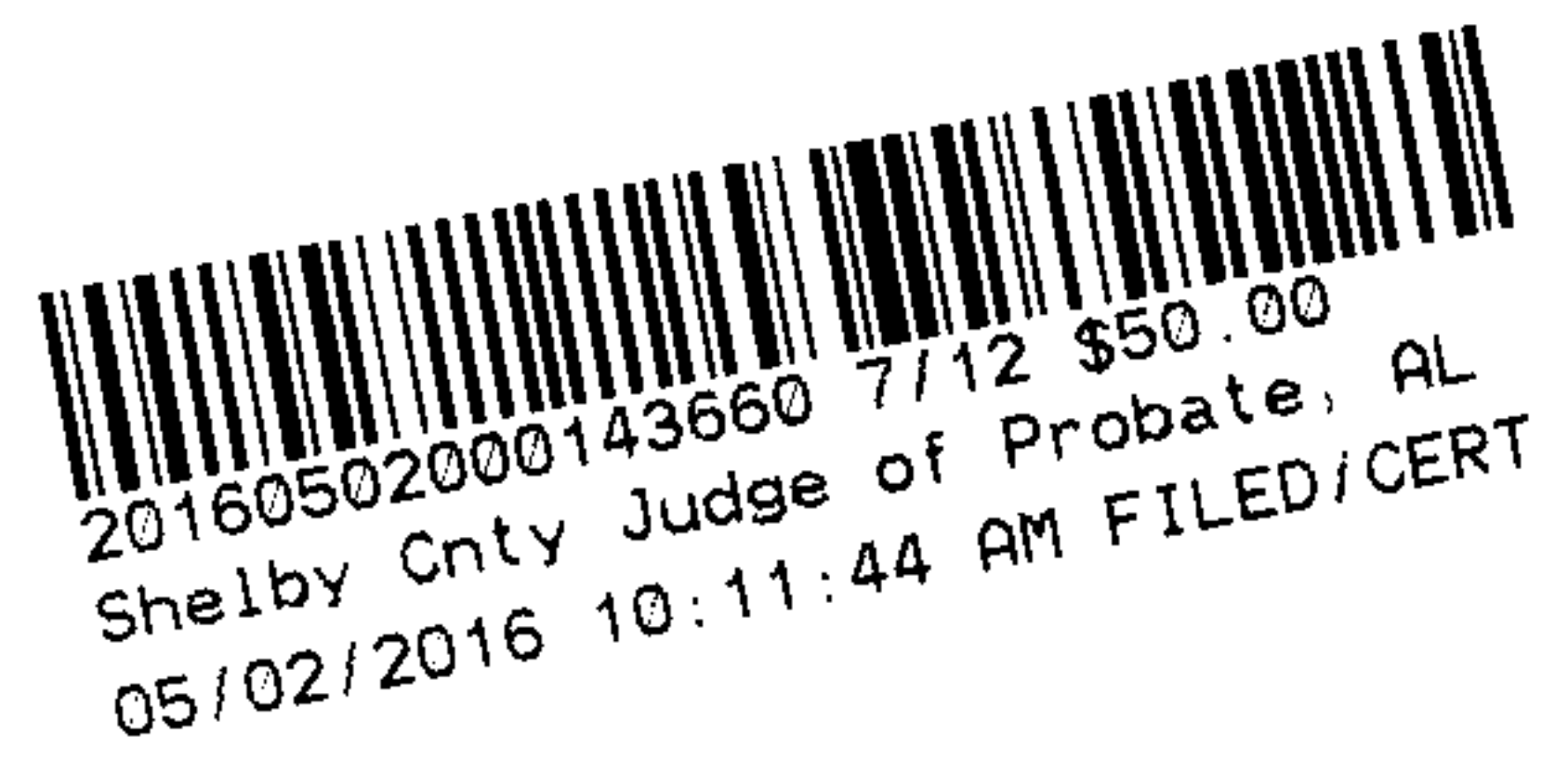
STATE OF ALABAMA           )  
  )  
COUNTY OF *Jefferson*    )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that *Robert J. Nichols*, whose name as *president* of the **Hollybrook Lake Corporation**, an Alabama nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as an officer of the Hollybrook Lake Corporation, and with full authority, executed the same voluntarily for and as the act of said nonprofit corporation on the day the same bears date.

Given under my hand and official seal, this *28<sup>TH</sup>* day of *October*, 2015.

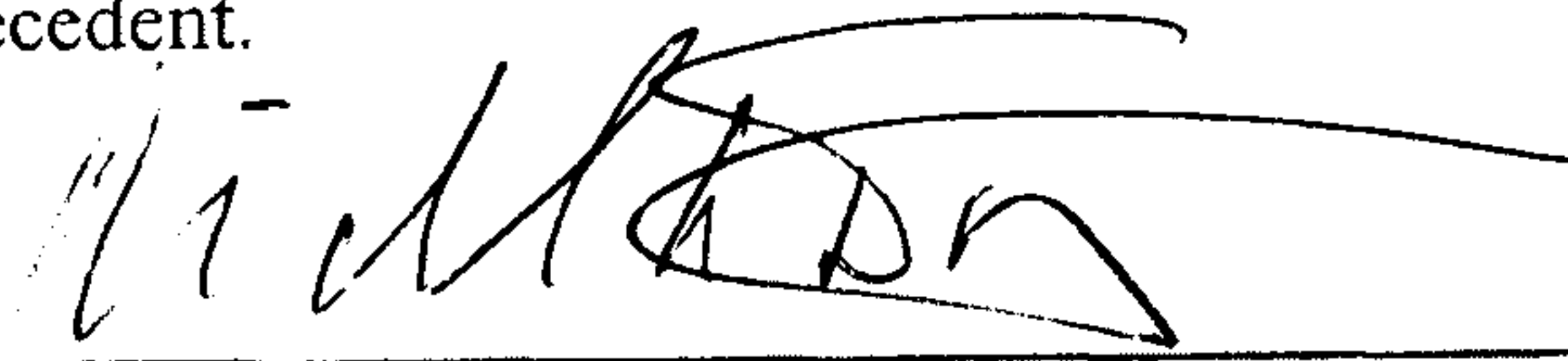
[AFFIX SEAL]

*William E. Shepard*  
Notary Public  
My Commission Expires: *September 9, 2019*



**CONSENT AND JOINDER**

The Edges join in the execution of this Third Amendment for the limited purposes of evidencing their consent and agreement to: (i) the abandonment of any right to construct the "New Access Road" referred to in the First Amendment; (ii) the prohibition of any road being constructed between Hollybrook Lake and the Duck Pond, other than the existing Hollybrook Lake Road; and (iii) any related easement rights, all upon and subject to the satisfaction of the condition provided in the Paragraph 4 of the Second Amendment, as amended and restated in the foregoing Third Amendment, which relates to the timely closing of the Fee Interest sale of the Ridge Property to the Land Trust. The Edges further acknowledge and agree that a Certificate in the form set forth in this Third Amendment executed by either Billy or Hal shall conclusively establish the satisfaction of this condition precedent.



Richard G. Edge

Andrew N. A. Edge

Elizabeth P. Edge

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Shelby Cnty Judge of Probate, AL  
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\_\_\_\_\_  
Richard G. Edge

  
\_\_\_\_\_  
Andrew N. A. Edge

  
\_\_\_\_\_  
Elizabeth P. Edge

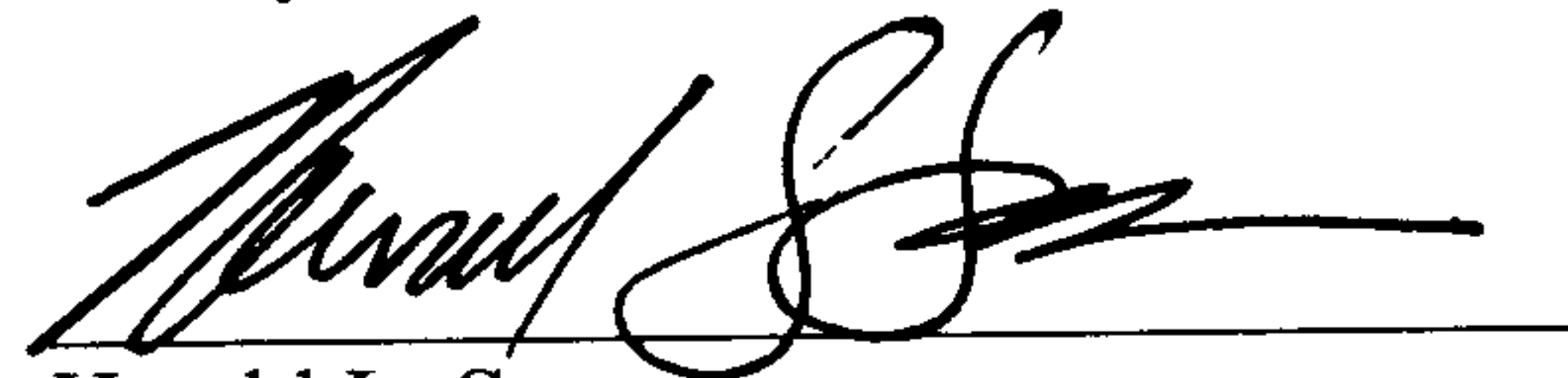
  
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Executed and delivered by the undersigned as of the 16<sup>th</sup> day of October, 2015.

\_\_\_\_\_  
Sidney W. Smyer, Jr.

  
\_\_\_\_\_  
Harald L. Smyer

[NOTARY BLOCKS ON FOLLOWING PAGE]

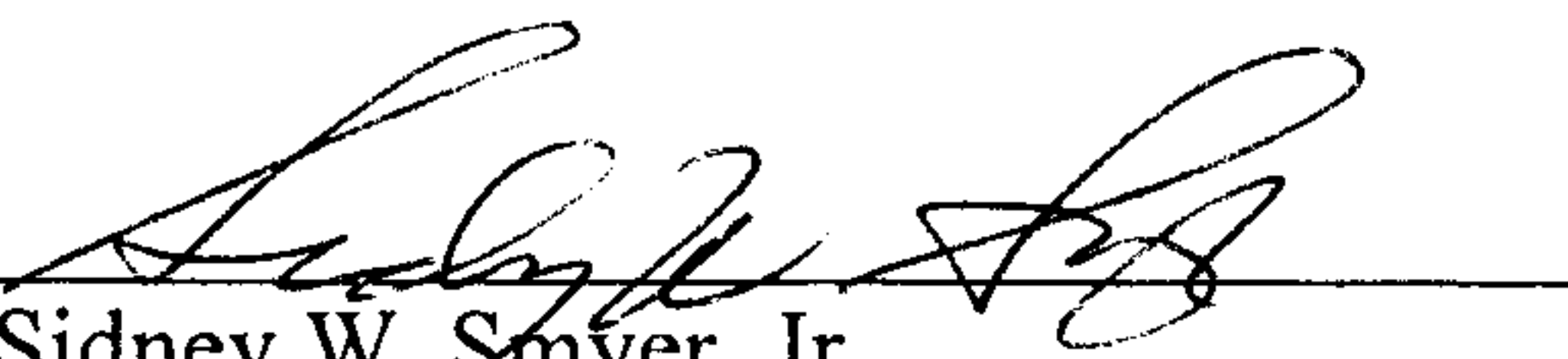


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Executed and delivered by the undersigned as of the 22 day of December 2015.

  
Sidney W. Smyer, Jr.

\_\_\_\_\_  
Harald L. Smyer



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Shelby Cnty Judge of Probate, AL  
05/02/2016 10:11:44 AM FILED/CERT



# Real Estate Sales Validation Form

This Document must be filed in accordance with Code of Alabama 19

20160502000143660 12/12 \$50.00  
Shelby Cnty Judge of Probate, AL  
05/02/2016 10:11:44 AM FILED/CERT

Grantor's Name NA  
Mailing Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantee's Name NA  
Mailing Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Property Address REAL PROPERTY DESCRIBED IN  
INSTRUMENT RECORDED IN THE  
SHELBY COUNTY, ALA. PROBATE  
OFFICE

Date of Sale NA

Total Purchase Price \$ \_\_\_\_\_

or

Actual Value \$ \_\_\_\_\_

or

Assessor's Market Value \$ \_\_\_\_\_

The purchase price or actual value claimed on this form can be verified in the following documentary evidence: (check one) (Recordation of documentary evidence is not required)

☐ Bill of Sale  
☐ Sales Contract  
☐ Closing Statement

☒ Appraisal  
☒ Other AMENDMENT TO DOCUMENT RECORDED AS  
INSTRUMENT NO. 1998-20485 IN SHELBY CO., AL WHICH INVOLVES  
NO CONVEYANCE OF ANY INTEREST IN REAL OR PERSONAL PROPERTY.

If the conveyance document presented for recordation contains all of the required information referenced above, the filing of this form is not required.

## Instructions

Grantor's name and mailing address - provide the name of the person or persons conveying interest to property and their current mailing address.

Grantee's name and mailing address - provide the name of the person or persons to whom interest to property is being conveyed.

Property address - the physical address of the property being conveyed, if available.

Date of Sale - the date on which interest to the property was conveyed.

Total purchase price - the total amount paid for the purchase of the property, both real and personal, being conveyed by the instrument offered for record.

Actual value - if the property is not being sold, the true value of the property, both real and personal, being conveyed by the instrument offered for record. This may be evidenced by an appraisal conducted by a licensed appraiser or the assessor's current market value.

If no proof is provided and the value must be determined, the current estimate of fair market value, excluding current use valuation, of the property as determined by the local official charged with the responsibility of valuing property for property tax purposes will be used and the taxpayer will be penalized pursuant to Code of Alabama 1975 § 40-22-1 (h).

I attest, to the best of my knowledge and belief that the information contained in this document is true and accurate. I further understand that any false statements claimed on this form may result in the imposition of the penalty indicated in Code of Alabama 1975 § 40-22-1 (h).

Date \_\_\_\_\_

Print JEROME K. LANNING, ATTY. FOR THE "SMYERS"  
DESCRIBED IN THE ATTACHED "THIRD AMENDMENT"  
DOCUMENT

Sign Jerome K. Lanning  
(Grantor/Grantee/Owner/Agent) circle one

Unattested \_\_\_\_\_

(verified by)

ATTORNEY Form RT-1