

AFFIDAVIT AS TO TITLE

THIS AFFIDAVIT AS TO TITLE ("**Affidavit**") is given by the undersigned, as authorized representative of Smyer Lake Homeowners Association, Inc., an Alabama nonprofit corporation (the "Association"), to be recorded in the Probate Office of Shelby County, Alabama, to serve as notice of the facts herein stated applicable to the real property in Shelby County, described herein (the "Property"), pursuant to Section 35-4-69 Code of Alabama (1975), as amended, and may be relied upon by anyone searching title with respect to the Property.

The title conditions related to the Property and evidenced by this Affidavit are the following:

A. By Memorandum of Agreement entered into as of March 30, 2016, a copy of which is attached as Exhibit "A" (the "MOA"), the Association, and Sidney W. Smyer, III, Harald L. Smyer and Ingrid Frances Smyer (together, the "Smyers"), the Association and the Smyers entered into certain agreements, including ones relating to the Smyers' "Pond Parcel", as described in Exhibit "B" to the MOA, and the "Miller House Parcel", as described in Exhibit "C" to the MOA, providing, in part, as follows:

RECITALS

Ingrid L. Smyer ("Ingrid"), the mother of the Smyers, is the owner of a parcel of real property containing approximately 0.44 acres \pm adjacent to Smyer Lake Road in Shelby County, Alabama, more particularly described in the survey plat made Exhibit "A" to this Agreement (the "Ingrid Parcel"); and

The Smyers are the owners of two (2) parcels of real property consisting of part of the SE $\frac{1}{4}$ of Section 24, TS18, R1W, adjoining Smyer Lake Road in Shelby County, Alabama, described as follows:

a) A parcel containing approximately 3.94 acres located immediately to the East of Smyer Lake Road, which contains a pond, and is described as Shelby County, Alabama Tax Parcel No. 03-6-24-0-000-043.013 and depicted in a Shelby County Tax Map made Exhibit "B" to this Agreement (the "Pond Parcel"); and

b) A parcel containing approximately 7 acres situated directly across Smyer Lake Road from the Pond Parcel to the West, which contains a single family residential structure formerly leased to Ann Miller, and is described as Tax Parcel 03-6-24-0-000-043 and depicted in the Shelby County Tax Map made Exhibit "C" to this Agreement (the "Miller House Parcel"); and

The Miller House Parcel is subject to a covenant providing for a not more than "one single family residence and not to subdivide" use restriction, and is "subject to a pro rata assessment by Lake Corp. for road maintenance and security", under the terms of an instrument dated March 19, 1993 between S.W. Smyer, Jr., Harald L. Smyer, Ingrid Frances Smyer and

Shelby Lake Corporation (n/k/a the "Association") recorded as Instrument #1993-08110 in the Shelby County, Alabama, Probate Office (the "Restrictions"); and

Ingrid has agreed to sell the Ingrid Parcel to the Association for a purchase price of \$20,000 upon the terms provided for in a Purchase Contract attached to this Agreement as Exhibit "D" (the "Purchase Contract"), and

The Association has agreed to purchase the Ingrid Parcel from Ingrid upon the terms provided for in the Purchase Agreement, subject to the agreement of the Smyers to impose the same Restrictions applicable to the Miller House Parcel upon the Pond Parcel, and to grant first refusal and purchase option rights to the Association as to these two parcels as provided for in this Agreement (the "Purchase Rights"); and

The Smyers have agreed to impose the Restrictions applicable to the Miller House Parcel upon the Pond Parcel, and to grant the Purchase Rights to the Association, as provided for under the terms of this Agreement, subject to the Association granting a small craft "fishing" access right to Smyer Lake for the benefit of the owner(s) of the Miller House Parcel as generally described in this Agreement (the "Fishing Right").

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by all parties, the Association and the Smyers hereby agree as follows:

1. The Association agrees to purchase the Ingrid Parcel for \$20,000 upon the terms set forth in the Purchase Contract.

2. Prior to closing under the Purchase Contract, the Smyers agree to execute an agreement (the "Closing Agreement") in a form approved by all parties which provides for the imposition of the Restrictions as to the Pond Parcel, and for the following First Refusal and Purchase Option agreements relating to the Duck Pond and Miller House Parcels (the "Purchase Rights"):

a. First Refusal. The Smyers agree to grant a right of "first refusal" to the Association with respect to either or both of the Pond and/or Miller House Parcels (together, the "Smyer Parcels"). Upon the receipt by the Smyers of any signed written offer acceptable to them with respect to either or both of the Smyer Parcels, before accepting such offer the Smyers agree to first furnish a copy of the offer to the Association, and the Association shall then have a period of ten (10) business days to agree to purchase the parcel or parcels involved upon the same terms.

B. The Ingrid Parcel Purchase. The purchase by the Association of the Ingrid Parcel provided for in the MOA and the Purchase Agreement made Exhibit "D" to the MOA has now closed.

C. The Miller House. The "single family residential structure" on the Miller House Parcel referred to in MOA has since been removed by the Smyers, leaving only the chimney remaining.



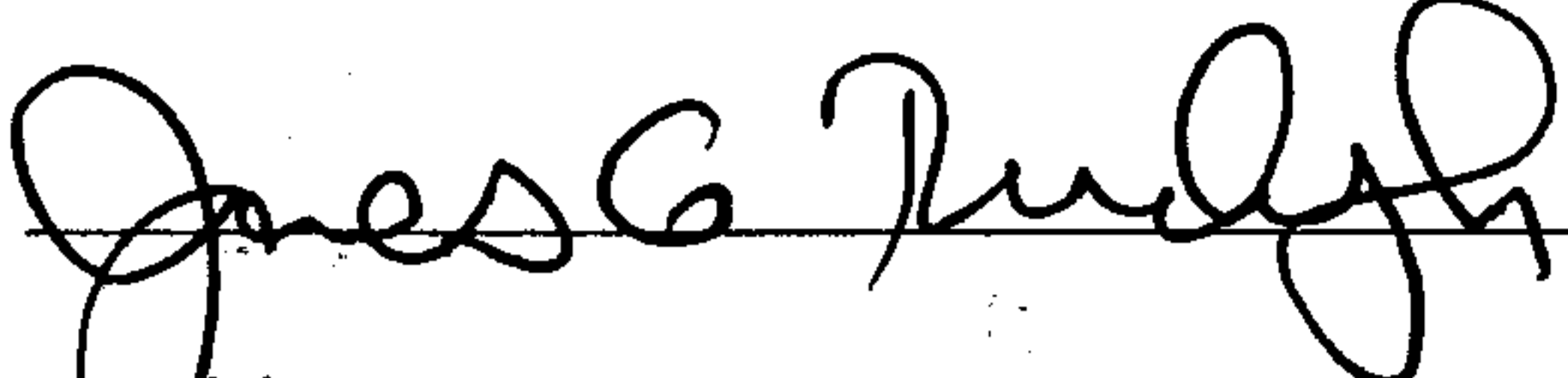
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This Affidavit should be indexed in the real estate records under names of Sidney W. Smyer, III, Harald L. Smyer and Ingrid Frances Smyer, as owners of the Property, consisting of the "Pond Parcel", described in Exhibit "B" to the attached MOA, and the "Miller House Parcel, described in Exhibit "C" to the attached MOA.

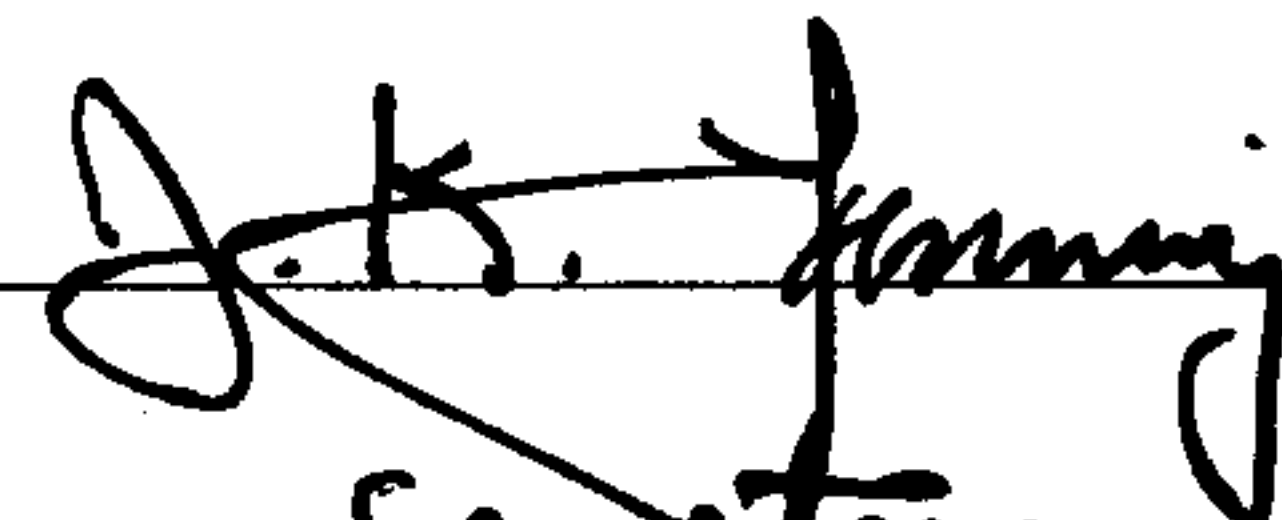
Dated this 5th day of July, 2016.

ASSOCIATION:

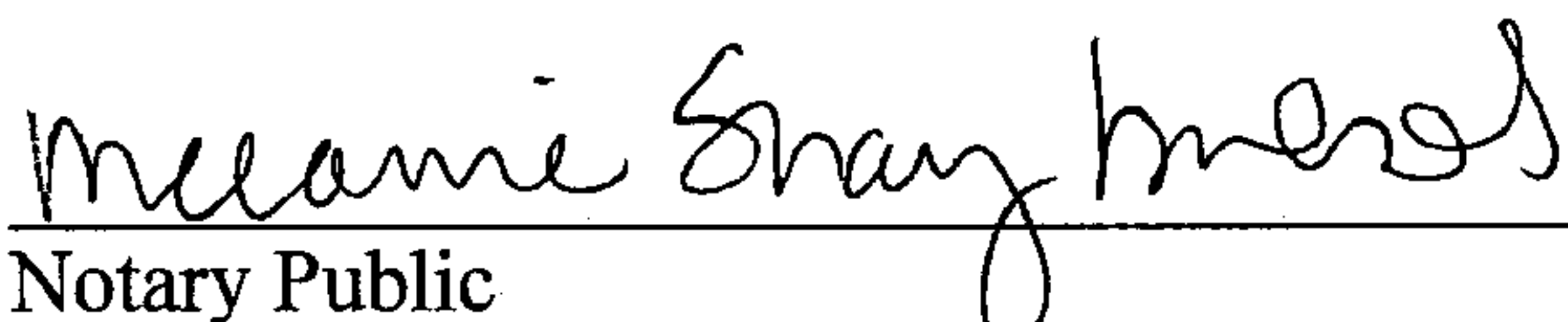
SMYER LAKE HOMEOWNERS ASSOCIATION, INC.

By: 
Its: President

Attest:


Its: Secretary

Sworn to and Subscribed before me this 5 day of July, 2016.


Notary Public

[SEAL]



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EXHIBIT "A"

Memorandum of Agreement

[attached hereto]



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MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement") entered into as of March 30, 2016, between the SMYER LAKE HOMEOWNERS ASSOCIATION (the "Association"), and SIDNEY W. SMYER, III, HARALD L. SMYER & INGRID FRANCES SMYER (together, the "Smyers").

RECITALS

Ingrid L. Smyer ("Ingrid"), the mother of the Smyers, is the owner of a parcel of real property containing approximately 0.44 acres \pm adjacent to Smyer Lake Road in Shelby County, Alabama, more particularly described in the survey plat made Exhibit "A" to this Agreement (the "Ingrid Parcel"); and

The Smyers are the owners of two (2) parcels of real property consisting of part of the SE $\frac{1}{4}$ of Section 24, T518, R1W, adjoining Smyer Lake Road in Shelby County, Alabama described as follows:

- a) A parcel containing approximately 3.94 acres located immediately to the East of Smyer Lake Road, which contains a pond, and is described as Shelby County, Alabama Tax Parcel No. 03-6-24-0-000-043.013 and depicted in a Shelby County Tax Map made Exhibit "B" to this Agreement (the "Pond Parcel"); and
- b) A parcel containing approximately 7 acres situated directly across Smyer Lake Road from the Pond Parcel to the West, which contains a single family residential structure formerly leased to Ann Miller, and is described as Tax Parcel 03-6-24-0-000-043 and depicted in the Shelby County Tax Map made Exhibit "C" to this Agreement (the "Miller House Parcel"); and

The Miller House Parcel is subject to a covenant providing for a not more than "one single family residence and not to subdivide" use restriction, and is "subject to a pro rata assessment by Lake Corp. for road maintenance and security", under the terms of an instrument dated March 19, 1993 between S.W. Smyer, Jr., Harald L. Smyer, Ingrid Frances Smyer and Shelby Lake Corporation (n/k/a the "Association") recorded as Instrument #1993-08110 in the Shelby County, Alabama, Probate Office (the "Restrictions"); and

Ingrid has agreed to sell the Ingrid Parcel to the Association for a purchase price of \$20,000 upon the terms provided for in a Purchase Contract attached to this Agreement as Exhibit "D" (the "Purchase Contract"); and

The Association has agreed to purchase the Ingrid Parcel from Ingrid upon the terms provided for in the Purchase Agreement, subject to the agreement of the Smyers to impose the same Restrictions applicable to the Miller House Parcel upon the Pond Parcel, and to grant first refusal and purchase option rights to the Association as to these two parcels as provided for in this Agreement (the "Purchase Rights"); and

The Smyers have agreed to impose the Restrictions applicable to the Miller House Parcel upon the Pond Parcel, and to grant the Purchase Rights to the Association, as provided for under the terms of this Agreement, subject to the Association granting a small craft "fishing" access right to Smyer Lake for the benefit of the owner(s) of the Miller House Parcel as generally described in this Agreement (the "Fishing Right").

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by all parties, the Association and the Smyers hereby agree as follows:

1. The Association agrees to purchase the Ingrid Parcel for \$20,000 upon the terms set forth in the Purchase Contract.

2. Prior to closing under the Purchase Contract, the Smyers agree to execute an agreement (the "Closing Agreement") in a form approved by all parties which provides for the imposition of the Restrictions as to the Pond Parcel, and for the following First Refusal and Purchase Option agreements relating to the Duck Pond and Miller House Parcels (the "Purchase Rights"):

a. First Refusal. The Smyers agree to grant a right of "first refusal" to the Association with respect to either or both of the Pond and/or Miller House Parcels (together, the "Smyer Parcels"). Upon the receipt by the Smyers of any signed written offer acceptable to them with respect to either or both of the Smyer Parcels, before accepting such offer the Smyers agree to first furnish a copy of the offer to the Association, and the Association shall then have a period of ~~fifteen (15)~~ ^{ten (10)} business days to agree to purchase the parcel or parcels involved upon the same terms. *HS IPS*

b. Purchase Option. ~~The Smyers also agree to grant to the Association an option to purchase either or both of the Smyer Parcels for a purchase price equal to ninety-five (95%) of the then current Shelby County tax appraisal for such Parcel(s), payable in cash within forty-five (45) days of the date of exercise.~~ *HS IPS*

3. Fishing Right. Subject to the approval by the members of the Association of the board's recommendation, the Closing Agreement shall further provide that the Smyers and future owners of the Miller House Parcel shall be entitled to exercise the right to access Smyer Lake by the use of a canoe, kayak or small skiff up to fourteen (14) feet, powered by an electric trolling motor or outboard motor of up to 5 HP, for the purpose of fishing or scenic access, subject to the observance by such users of all Association Rules and potential penalties relating to Lake access and use. The option to exercise the Fishing Right shall be subject to the agreement of the Smyers that effective upon exercise of the Fishing Right they are to become responsible for the payment of a prorated portion of the annual assessment made by the Association related to the management of the Lake, such as periodic fertilization, liming, and testing (i.e. in addition to the road and gate maintenance assessment already applicable to the Miller House Parcel).

The above provisions related to the imposition of the Restrictions as to the Pond Parcel, and to the Purchase Rights granted with respect to the Smyer Parcels, and to the Fishing Right, shall be further evidenced by the Closing Agreement, which shall be in recordable form, and shall contain customary terms and provisions relating to title insurance, survey, property tax



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proration, notices and other matters satisfactory to both the Smyers and the Association, to be executed by all parties on or before the date of closing under the Purchase Contract.

[SIGNATURES ON FOLLOWING PAGE]



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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

WITNESS:

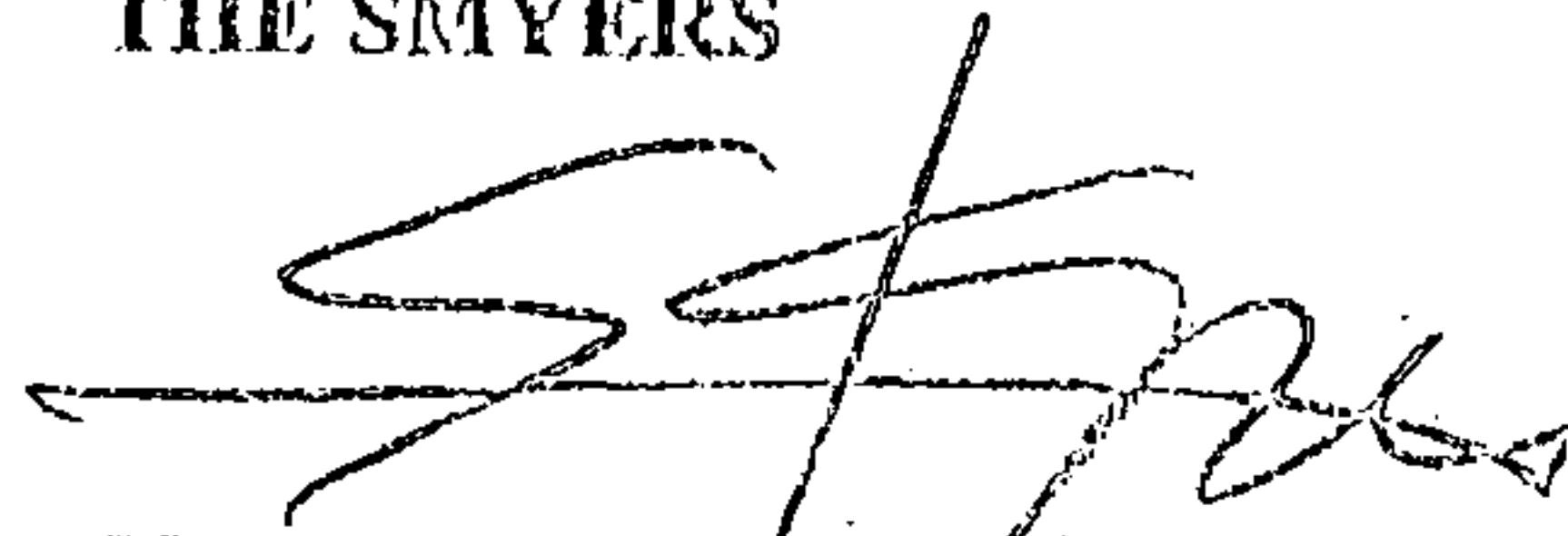
THE ASSOCIATION

SMYER LAKE HOMEOWNERS ASSOCIATION

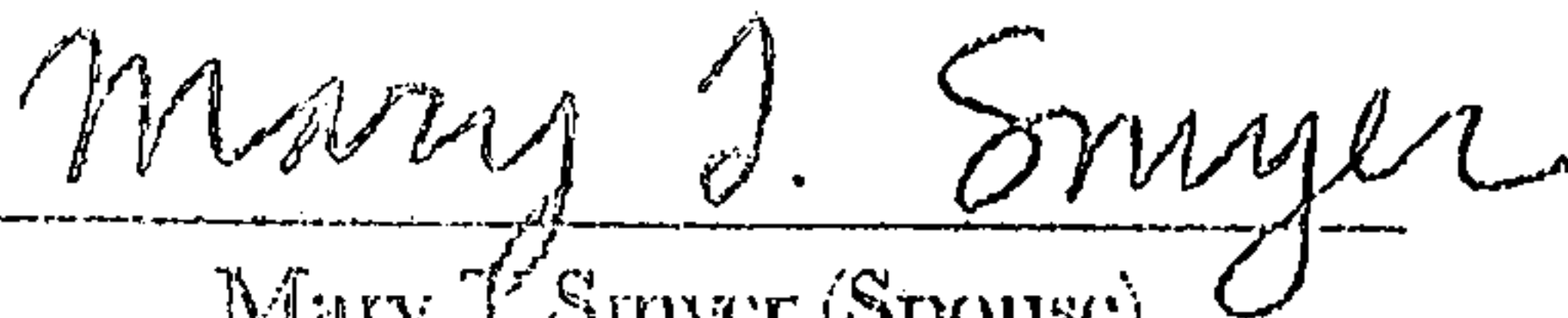
By: 

Its: BOARD PRESIDENT

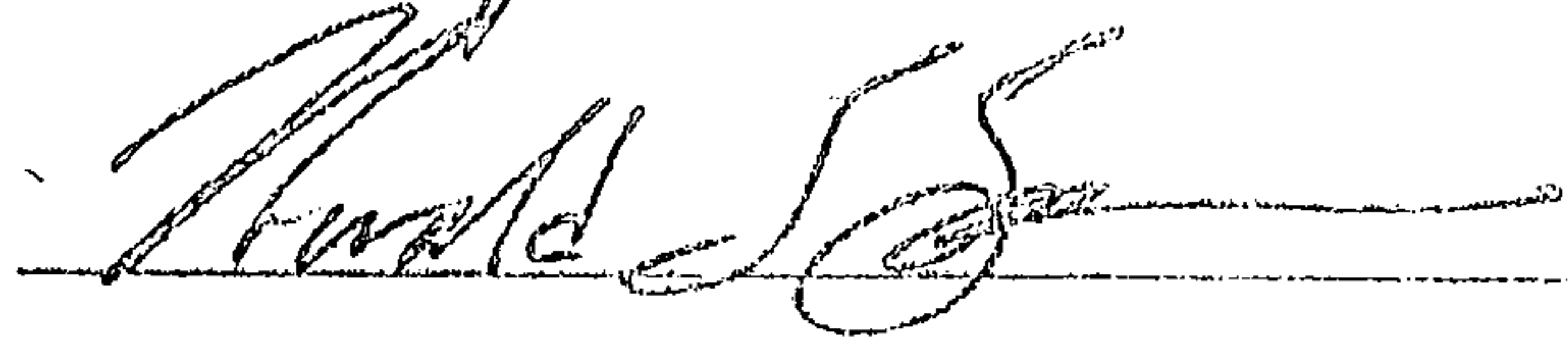
THE SMYERS



Sidney W. Smyer, III



Mary T. Smyer (Spouse)



Harald L. Smyer

Ingrid Frances Smyer



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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

WITNESS:

THE ASSOCIATION

SMYER LAKE HOMEOWNERS ASSOCIATION

By: [Signature]
Its: BOARD PRESIDENT

THE SMYERS

[Signature]
Sidney W. Smyer, III

Harald L. Smyer

[Signature]
Ingrid Frances Smyer



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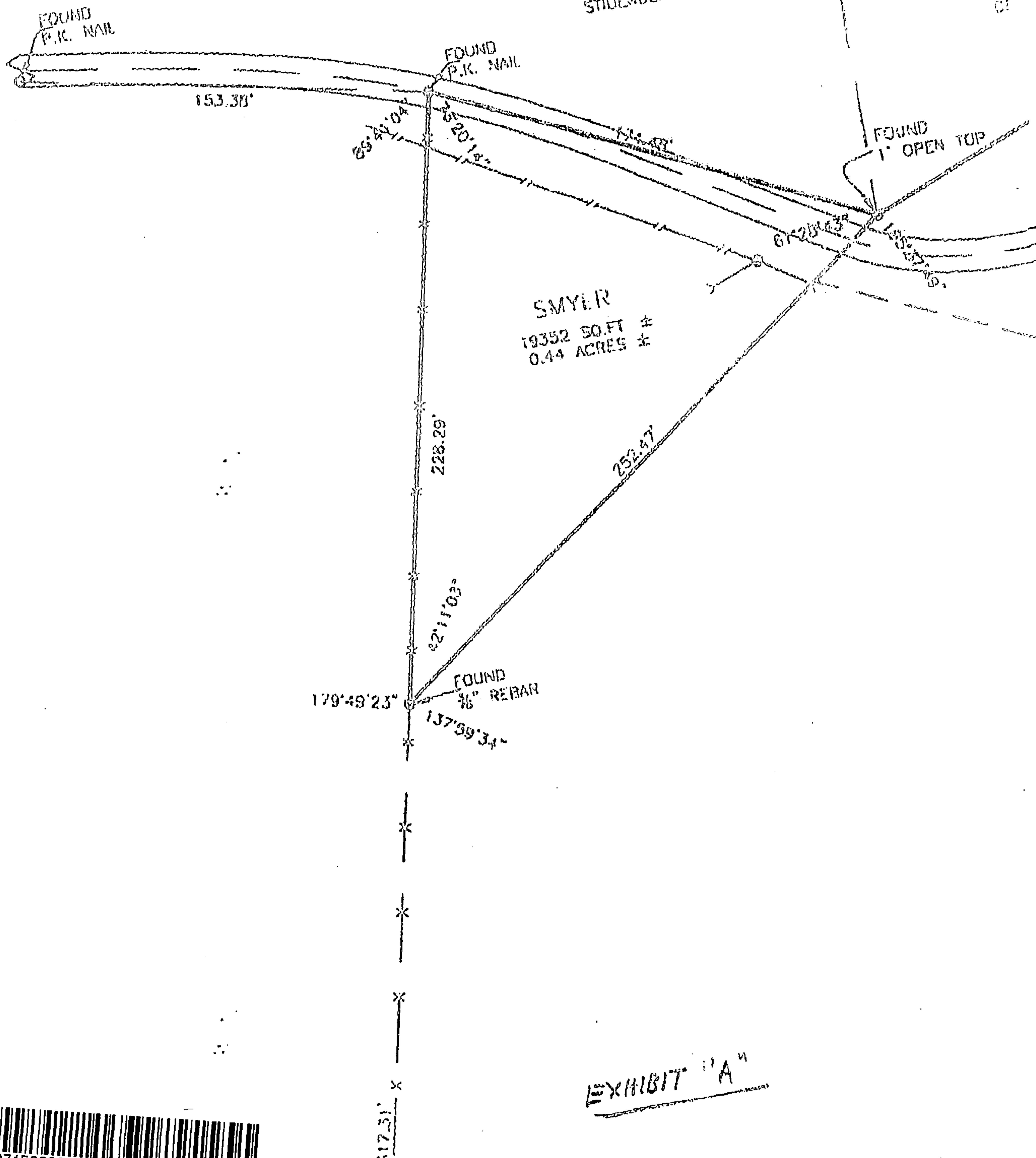
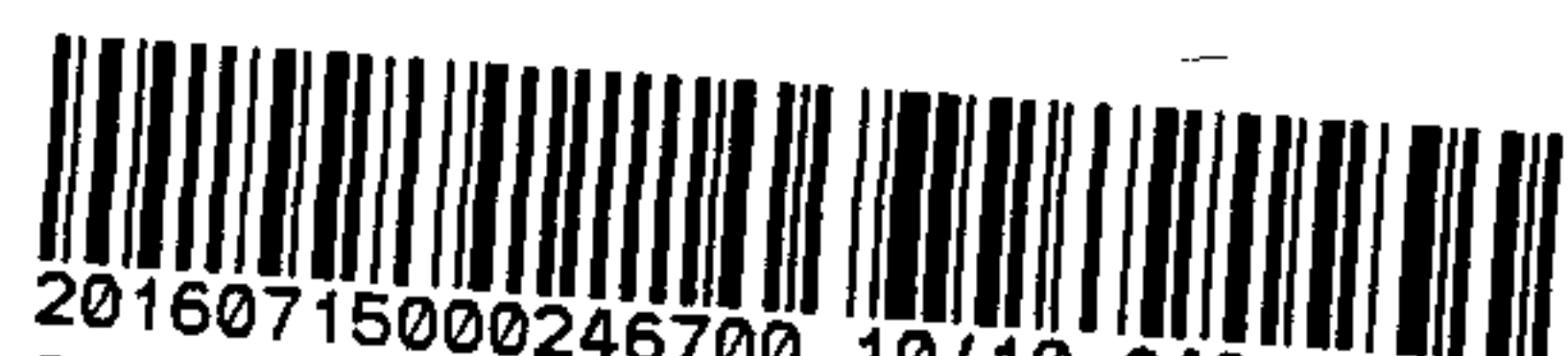


EXHIBIT "A"



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