

This instrument prepared by:  
Jerome K. Lanning  
Butler Snow LLP  
One Federal Place, Suite 1000  
1819 Fifth Avenue North  
Birmingham, Alabama 35203

STATE OF ALABAMA       )  
SHELBY COUNTY         )

**DECLARATION OF COVENANTS  
AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made as of the 30<sup>th</sup> day of JUNE, 2016, by and between Sidney W. Smyer, Jr. (S.W.S. Jr.), Sidney W. Smyer, III (S.W.S. III), Ingrid Frances Smyer (Fran), Harald L. Smyer (Hal), Richard G. Edge ("Richard"), and Andrew N. A. Edge ("Andrew") and spouse Elizabeth P. Edge ("Elizabeth"), (Richard, Andrew and Elizabeth may be collectively referred to herein as the "Edges").

**RECITALS**

WHEREAS, the above parties are each the owners of parcels of real property (collectively, the "Property") situated in Shelby County and adjoining the Duck Pond as hereinafter described; and

WHEREAS, the parties desire to place covenants and restrictions on the Property which will be to the mutual benefit of all the parties (the "Family Covenants"); and

WHEREAS, the Property is generally described in the conceptual plat (the "Plat") made Exhibit "A" hereto; and

WHEREAS, S.W.S. Jr. is the owner of "Duck Swamp" area shown on the Plat lying below Elevation 699'± (the "Duck Pond"); and

WHEREAS, S.W.S., III is the owner of the property adjoining the Duck Pond to the NE extending to Hwy 41 generally identified on the Plat, the portion lying within four hundred feet (400') of the Duck Pond being herein referred to as the "S.W.S. III Parcel"; and

WHEREAS, Hal and Fran together are the owners of property adjoining the Duck Pond to the SE identified on the Plat as Lots 2, 3, 4 & 5, and are collectively referred to herein as the "Hal & Fran Parcel"; and

WHEREAS, the Edges are the owners of property adjoining the Duck Pond to the West identified on the Plat as the "Edge Parcel"; and

WHEREAS, legal descriptions of the parcels comprising the Property are attached as follows:

- (a) The Duck Pond: Exhibit I
- (b) The S.W.S. III Parcel: Exhibit II
- (c) The Hal and Fran Parcel: Exhibit III
- (d) The Edge Parcel: Exhibit IV; and

WHEREAS, it had been the intention of the parties to grant a conservation easement to the Freshwater Land Trust, a tax-exempt nonprofit organization qualified under Sections 501(c)(3), 509(a) and 170(h) of the Internal Revenue Code, whose primary purpose is acquiring and protecting portions of streams, waterways and forested land within Jefferson and surrounding counties in Alabama, including Shelby County, (the "Land Trust") with respect to the Duck Pond and an area extending one hundred fifty feet (150') from the margin of the Duck Pond (the "Protected Area"), and one or more of the parties may elect to do that in the future, but for the purpose of this Declaration the parties desire to instead self-impose comparable protective covenants as to this Protected Area in order to preserve the water quality and plant and wildlife values of Protected Area (the "Conservation Values") of importance to the parties and to the Land Trust; and

WHEREAS, the Land Trust has recently acquired by purchase from the parties S. W. S. Jr., Hal and Fran their forested property along the crest of double Oak Mountain which adjoins the Hal and Fran Parcel, and the parties desire to provide in this Declaration a grant to the Land Trust of the right to enforce the "Protected Area Covenants", as well as all applicable provisions of the broader "Family Covenants" related to the Property, both as defined and provided for in this Declaration, as a third-party beneficiary hereunder, but with the acknowledgment of the parties that the Land Trust has no obligation of enforcement as to either the Protected Area Covenants or the Family Covenants (the Protected Areas and the Family Covenants may be sometimes collectively referred to as the "Covenants" under the terms of this Declaration).

NOW, THEREFORE, in consideration of the premises, the mutual promises and obligations contained herein, and other good and valuable consideration in hand by paid the undersigned to each other, the receipt and sufficiency of which is separately and severally acknowledged, the undersigned parties declare, grant and establish the following Covenants with respect to the Property:

A. The Family Covenants.

1. With respect to the S.W.S., III Parcel, which contains one existing residential structure (the "Tool Shed" house shown on Exhibit "A-2"), no more than one additional single family structure may be constructed,



which shall not be located within two hundred feet (200') of the Duck Pond; provided, however, that a total of two single family structures may be constructed on this parcel if it is later subdivided to exclude the portion where the "Tool Shed" house is located; and provided further, that the 200' distance from the Duck Pond restrictions shall not apply if one of these houses is built on the "Planned Residence" (or "Potential House Site") to be located as shown on Exhibit "A-2".

2. With respect to the Hal and Fran Parcel, no more than four single family residential structures may be constructed, which shall not be located within two hundred feet (200') of the Duck Pond.
3. With respect to the Edge Parcel, which contains one existing residential structure, one additional single family structure may be constructed; provided, however, that (a) such construction shall be in compliance with all Shelby County Subdivision requirements, and (b) the structure shall not be located within two hundred feet (200') of the Duck Pond.
4. With respect to the Potential House Site described in Paragraph 1 hereof, the following restrictions shall apply:
  - a. No further construction shall be permitted on the Potential House Site for a minimum period of five (5) years from the date of this Declaration; and
  - b. The right to construct a house at the Potential House Site following the expiration of this five (5) year period shall terminate on the happening of the earlier of either (i) the death of S.W. Smyer, III, or (ii) the expiration of twenty (20) years from the date of this Declaration.
5. With respect to all of the properties of the parties located within two hundred feet (200') of the Duck Pond, including any construction at the Potential House Site, the parties agree to establish an architectural review committee ("Committee") to establish standards relating to the design, construction, exterior finishes and lighting, tree removal and other items to ensure that any construction within that area shall be compatible with the preservation of the natural beauty of the area, and to minimize the visibility of such improvements, and to the extent possible be consistent with the Protected Area Covenants (the "Design Specifications"), and to have the power and authority to enforce the Covenants as hereafter provided for. Among other provisions, the Design Specifications shall provide that any construction shall be completed within a reasonable time (not to exceed eighteen (18) month), and that the owner shall provide the Committee with evidence of the availability of sufficient funds to complete the construction within that time period. This Committee shall be established by a majority vote of the owners of each of the parcels comprising the Property conducted in the manner provided for in





Paragraph A.8 of this Declaration, and this Committee shall have all legal powers necessary to enforce the Design Specifications, including those Committee Remedies for Covenants Violations set forth in Exhibit "B" to this Declaration.

6. Subject to the Covenants and restrictions provided for in this Declaration, and with the exception of the Protected Area, the Property may be subdivided in any manner that meets the requirements of the Subdivision Regulations of Shelby County, Alabama; provided, however, that any such subdivision shall prohibit the construction of any single family residence within two hundred feet (200') of the Duck Pond, with the exception of any construction that may be permitted under the terms of this Declaration at the Potential House Site referenced in Paragraph A-1 of this Declaration.
7. Only owners of said single-family lots adjacent to the Duck Pond and their tenants and guests shall have the right of use thereof.
8. These Family Covenants and restrictions herein provided for shall run for a period of forty years from date hereof, and shall automatically be renewed for successive ten year periods thereafter unless amended terminated by an instrument in writing signed by a majority of the then owners of the parcels comprising the Property has been recorded in the Shelby County Probate Office within 120 days of the termination date or the date of any renewal thereof. For any termination vote pursuant to this Paragraph A.8, there shall be one vote allocated to the owner(s) of each of the parcels comprising the Property multiplied by the number of existing and potential future residential construction rights allocated to each.
9. These Family Covenants and restrictions shall be imposed upon all parcels comprising the Property, and shall be binding upon said owners and their heirs, successors and assigns.

B. The Protected Area Covenants.

1. Purpose and Duration. The Protected Area shall be subject to the Family Covenants to the extent applicable, but shall also be subject to the following covenants and restrictions (the "Protected Area Covenants") to help ensure that the Protected Area will, to the extent possible, be retained in its existing natural and/or restored condition, and to prevent any use of the Protected Area which might impair or interfere with its Conservation Values. The Protected Area Covenants shall be of the same duration and other terms as is provided for in Paragraph A.8 above for the Family Covenants.



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2. Reserved Rights. The parties reserve to themselves all ownership rights in their respective portions of the Protected Area as are not inconsistent with either the Family Covenants, or those Prohibited Uses described in Paragraph B.3 below, including the following reserved rights:

- a. To have all personal access and non-commercial recreational use rights with respect to the Protected Area that are consistent with protection of its Conservation Values and involve no material surface alteration or other development of the land. Recreational uses shall not include the use of motorized vehicles, including motorcycles, all-terrain or off-road vehicles, jet skis, or motorized boats (electric trolling motors will be permitted).
- b. To sell, lease, give, mortgage or otherwise convey the parties respective portions of the Protected Area, or any portion thereof; provided, however, that such conveyance is made subject to the terms of this Declaration, and that prior written notice is provided to the other parties.
- c. Subject to prior Committee approval, to construct, maintain, repair, and if required replace any fencing, gazebo or other structures or facilities on the Protected Area on the date hereof, including, without limitation, (a) the repair and replacement, if required, of the existing residential structure on the Edge Parcel, and (b) the possible construction of a single family residence on an existing excavated foundation site (with utilities in place) located in the NE portion of the S.W.S. III Parcel, generally identified in the plat made Exhibit "A-2" hereto (a/k/a the "Potential House Site"); provided, however, that the right to construct a single family residence on this site is subject to those conditions provided for in Paragraph A.4 of this Declaration.
- d. Subject to prior Committee approval, to construct a dock extending into the Duck Pond to provide access to (i) the Pond (but no boathouse or similar structure shall be permitted on the Duck Pond), or (ii) a gazebo or similar structure on the surrounding land consistent with the preservation of the Conservation Values of the Protected Area, and to utilize the Duck Pond for non-commercial recreational purposes, including hunting, swimming, fishing and the use of non-motorized watercraft, and the right to install picnic tables and other amenities and walking paths in the area around the Duck Pond, and to construct a footbridge across the spillway area below the Duck Pond dam, as well as a foot path over the existing Duck Pond Dam, in order to permit recreational pedestrian access around the entire perimeter of the Duck Pond within the Protected Area.
- e. Subject to the prior approval of the Committee, to repair, reconstruct, maintain and service the existing Duck Pond dam.

All personal and non-commercial use rights provided for in this Paragraph B.2 shall also extend to the visitors, guests and lessees of parties.

3. Prohibited Uses. The following uses of or activities upon the Protected Area shall be prohibited;

- a. Any industrial use of the Protected Area of the Property;
- b. The placement, construction, or maintenance of any building, structures, storage or boathouses, or other improvements of any kind (including, without limitation, fences, roads, parking lots, and utility lines and related facilities) other than those improvements and facilities permitted under Paragraph B.2 above.
- c. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, or sod, except those actions or operations permitted under Paragraph B.2 above;
- d. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surfaces or subsurface waters;
- e. Any new or additional use that might substantially increase pollution or that would substantially interfere with the preservation of the Protected Area of the Property;
- f. The pruning, cutting down, or other destruction or removal of trees or other vegetation, except as necessary to prevent disease or to repair damage resulting from fire or windstorm or other casualty;
- g. The use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as may be necessary to prevent disease or to remove invasive and/or non-native species;
- h. The processing, storage, dumping, or other disposal of wastes, refuse, and debris on the Protected Area of the Property;
- i. The exploration for, or development and extraction of minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the preservation of the Conservation Values of the Property.

4. Rights and Powers of the Committee. The Committee shall have the authority to take all actions and exercise all powers necessary to preserve and protect the Conservation Values of the Protected Area, and to enforce compliance with the terms of the Family and Protected Area Covenants, and in doing so to take those actions and exercise those remedies provided for in Exhibit B.

5. General Provisions.



a. Controlling Law. The interpretation and performance of this Declaration shall be governed by the laws of the State of Alabama.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of and protection and preservation of the Conservation Values of the Property.

c. Severability. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This Declaration sets forth the entire agreement of the parties with respect to the Property, and supersede all prior discussions, negotiations, understandings, or agreements relating to the subject matter hereof, all of which are merged herein.

e. Homestead. The Parcels comprising the Property do not currently constitute the homestead of any of the parties.

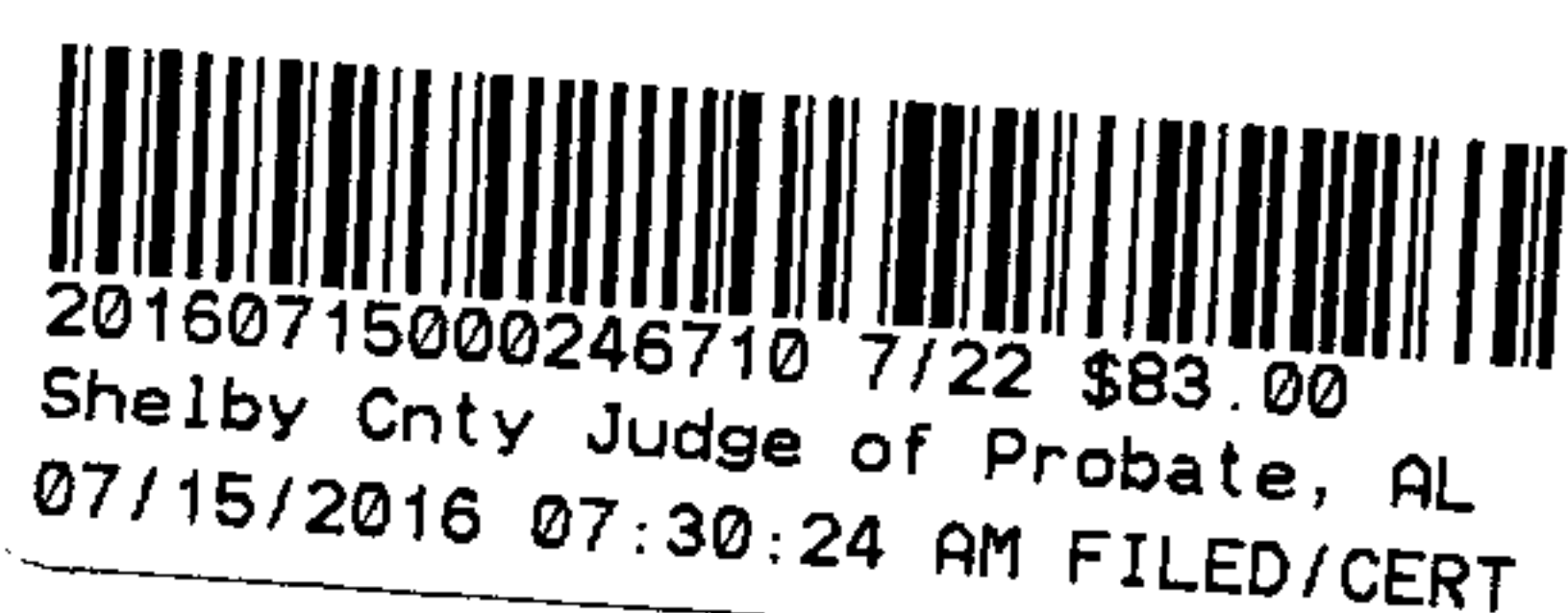
f. Captions. The captions in this Declaration have been inserted solely for convenience of reference, and are not a part of this instrument and shall have no effect upon its construction or interpretation.

g. Counterparts. The parties may execute this Declaration in multiple counterparts to be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

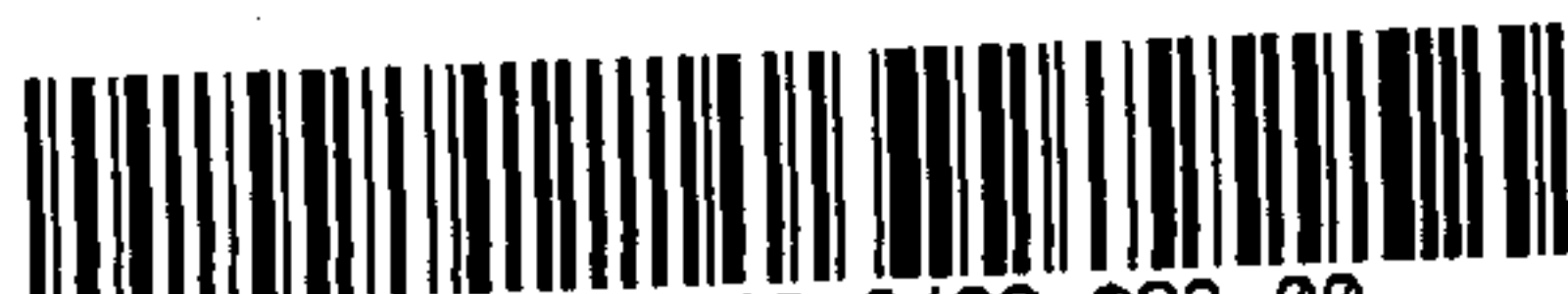
h. Parties Subject to Covenants. The Covenants agreed to and the terms, conditions, and restrictions imposed by this Declaration shall not only be binding upon the parties, jointly and severally, but also their lessees, licenses, agents, heirs and assigns, and all other successors in title to any of parties, and shall continue as a servitude running in perpetuity with the Property.

i. Subsequent Transfers. The parties agree to incorporate the terms of this Declaration by reference in any deed or other legal instrument by which any of parties may divest himself or herself of any interest in all or a portion of his, her or their interest in any portion of the Property, including, without limitation, any mortgage or leasehold interest.

THE UNDERSIGNED do hereby represent, warrant, covenant and agree that the real property owned by them as described in the attached exhibits does not constitute the homestead of any of the undersigned or their respective spouses, if any.

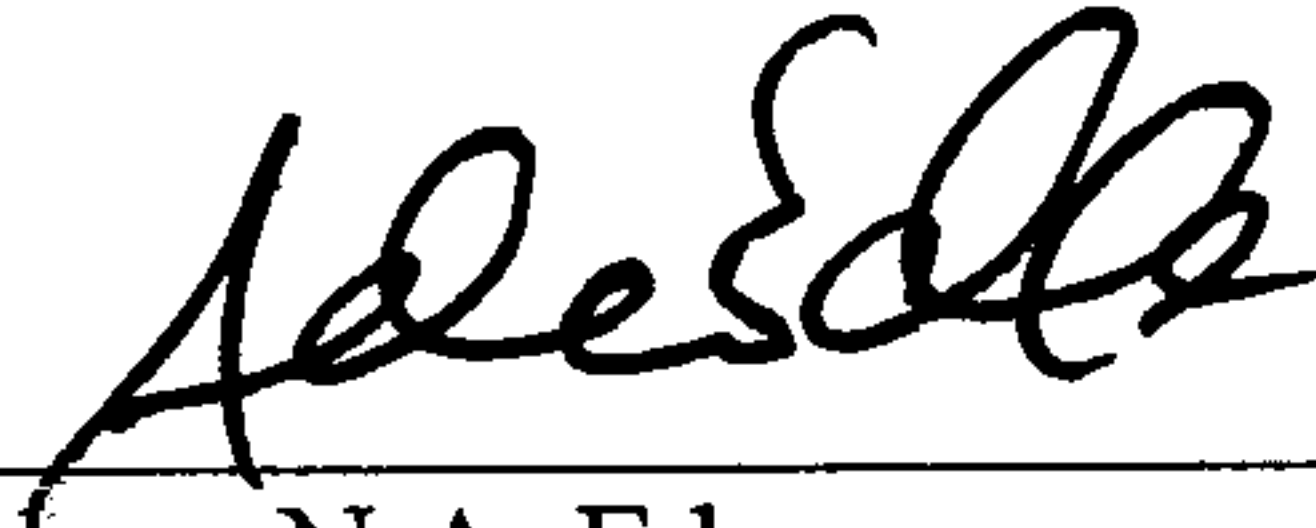


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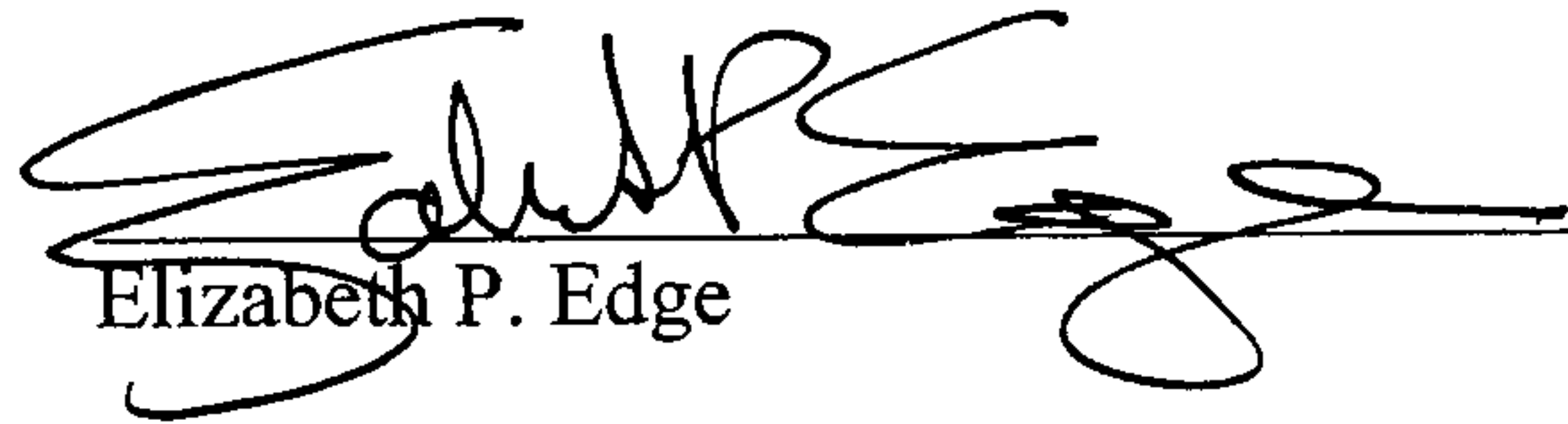


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Andrew N.A. Edge

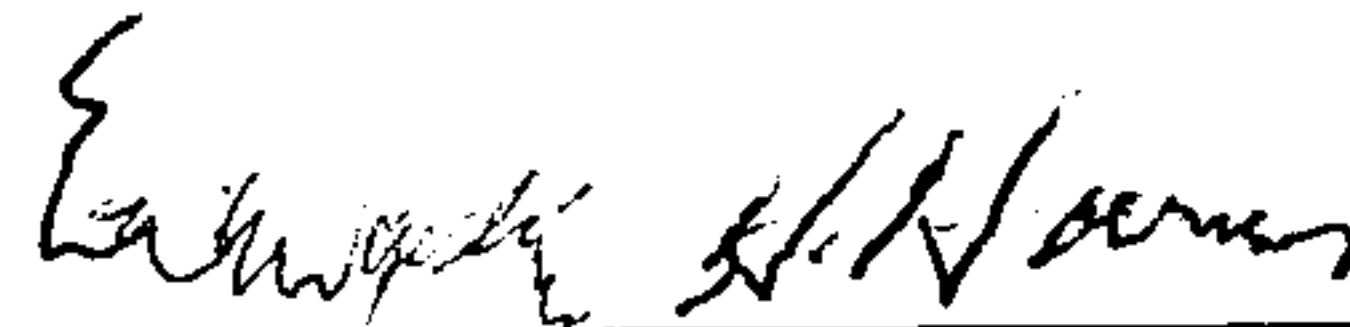


Elizabeth P. Edge

STATE OF Alabama )  
 )  
COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **Andrew N. A. Edge** and wife **Elizabeth P. Edge**, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 30<sup>th</sup> day of JUNE, 2016,  
2016.



Notary Public

My Commission Expires

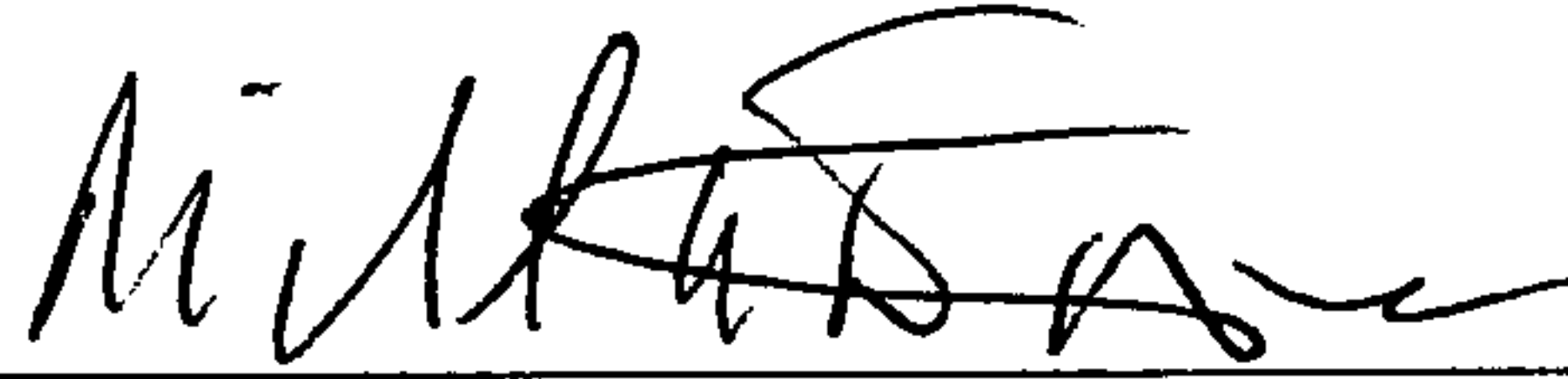
**MY COMMISSION EXPIRES APRIL 28, 2018**

[AFFIX SEAL]

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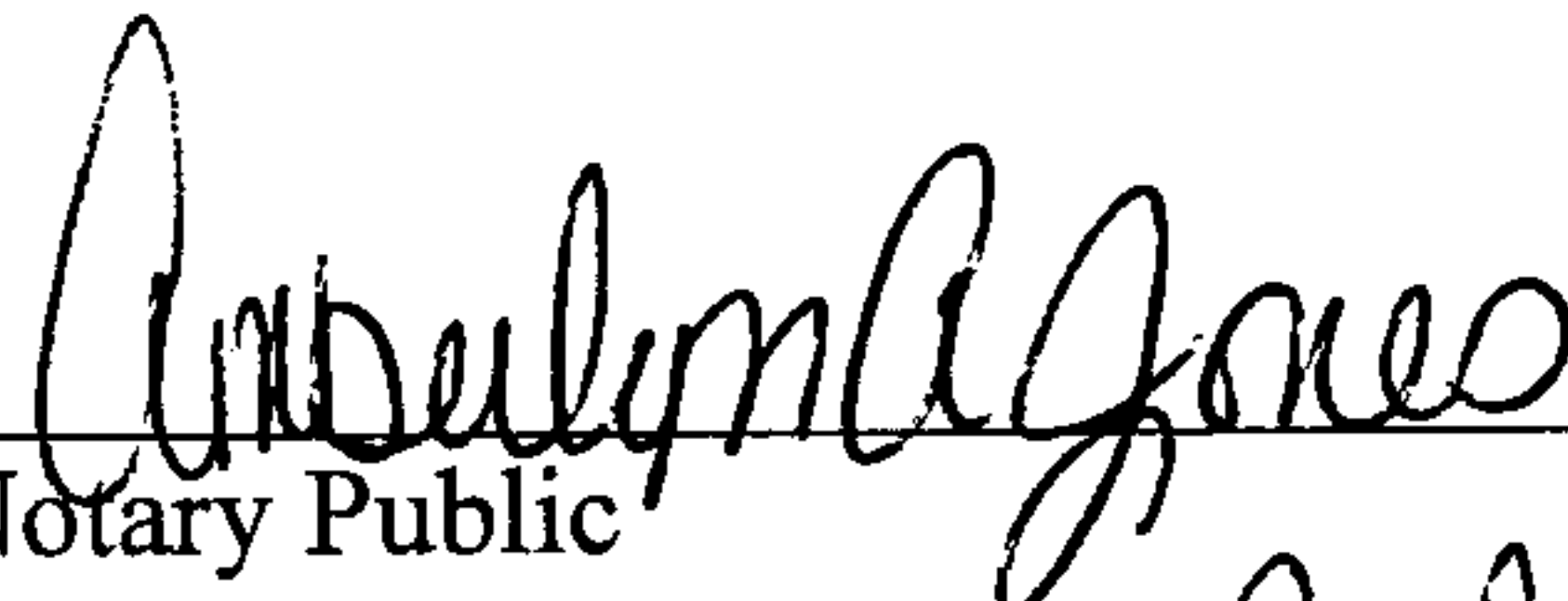


Richard G. Edge

STATE OF Pennsylvania )  
COUNTY OF Mercer )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **Richard G. Edge**, 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.

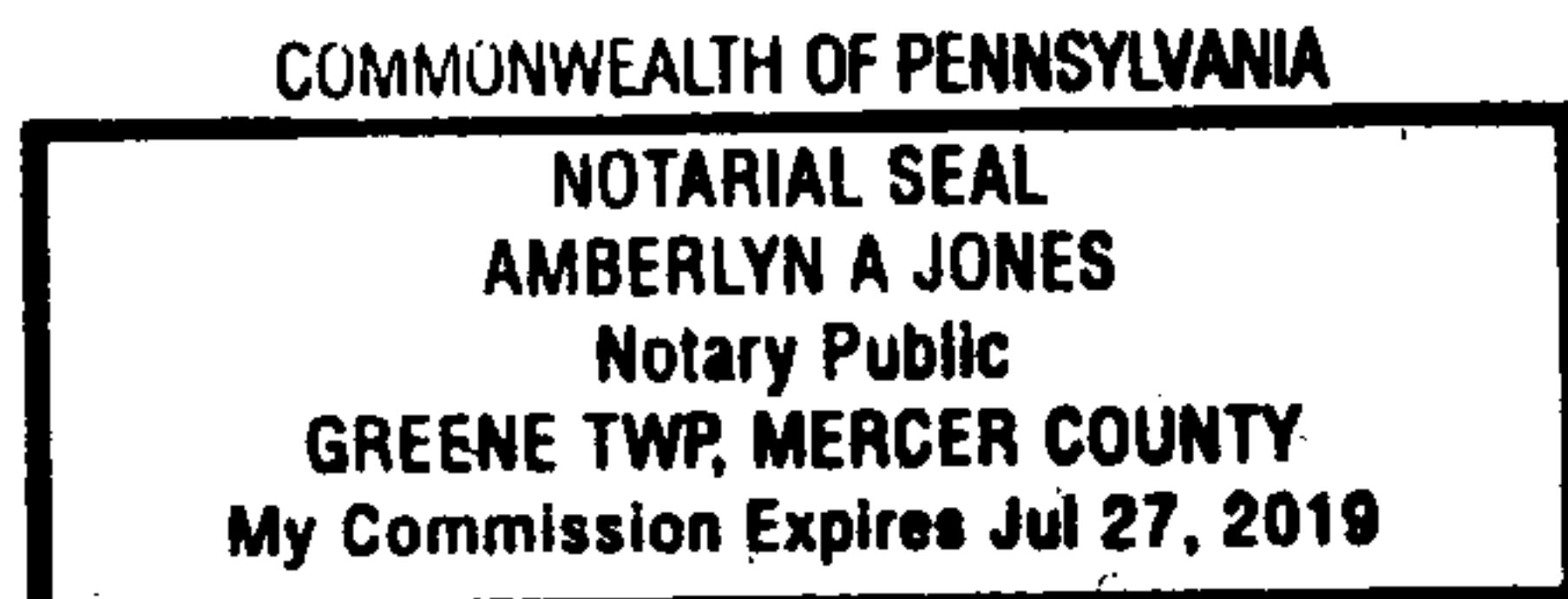
Given under my hand and official seal, this 22 day of June, 2016.



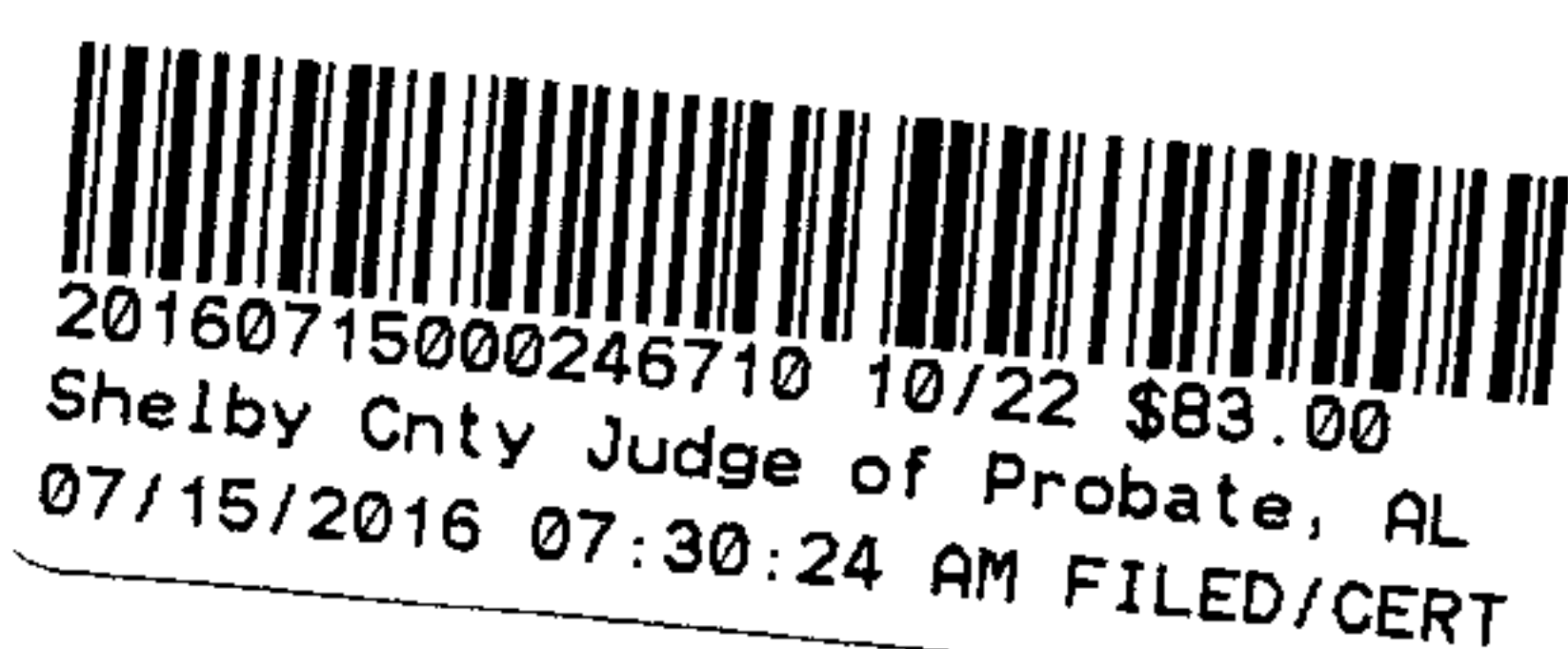
Notary Public

My Commission Expires: Jul 27 2016

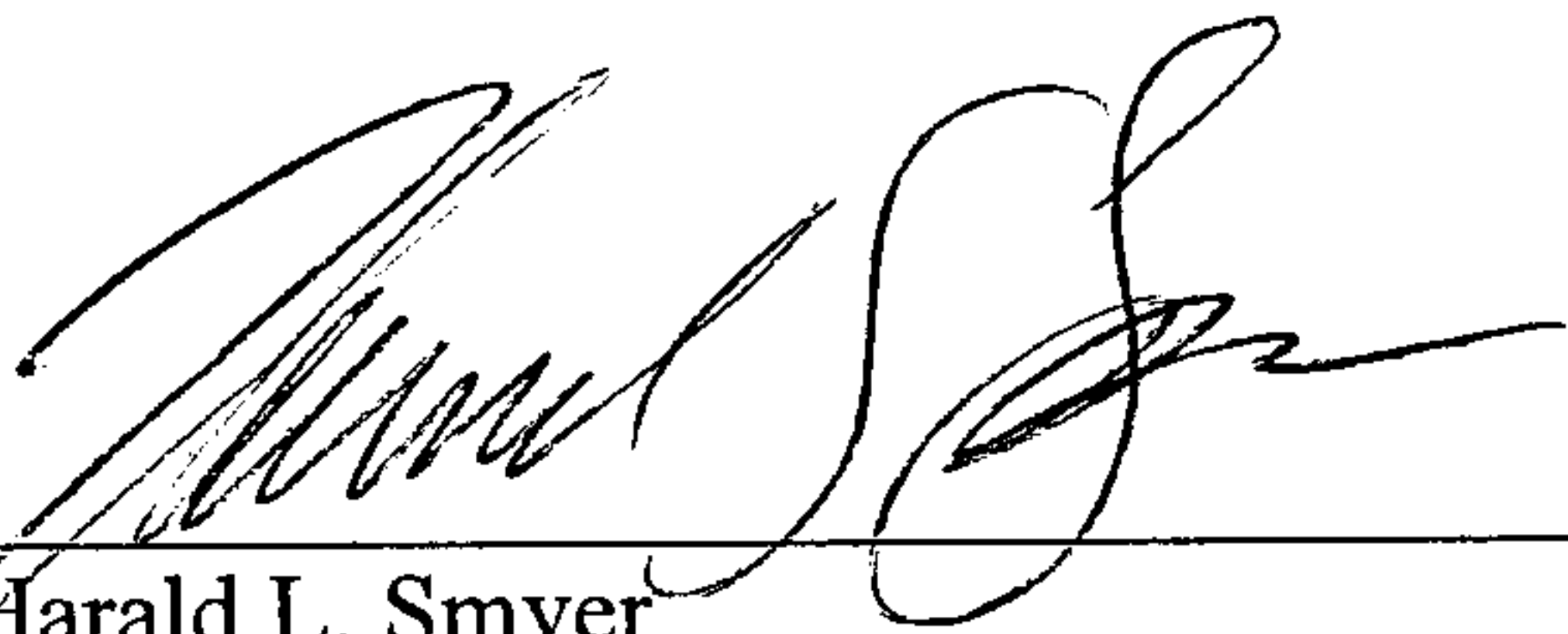
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[END OF SIGNATURES]





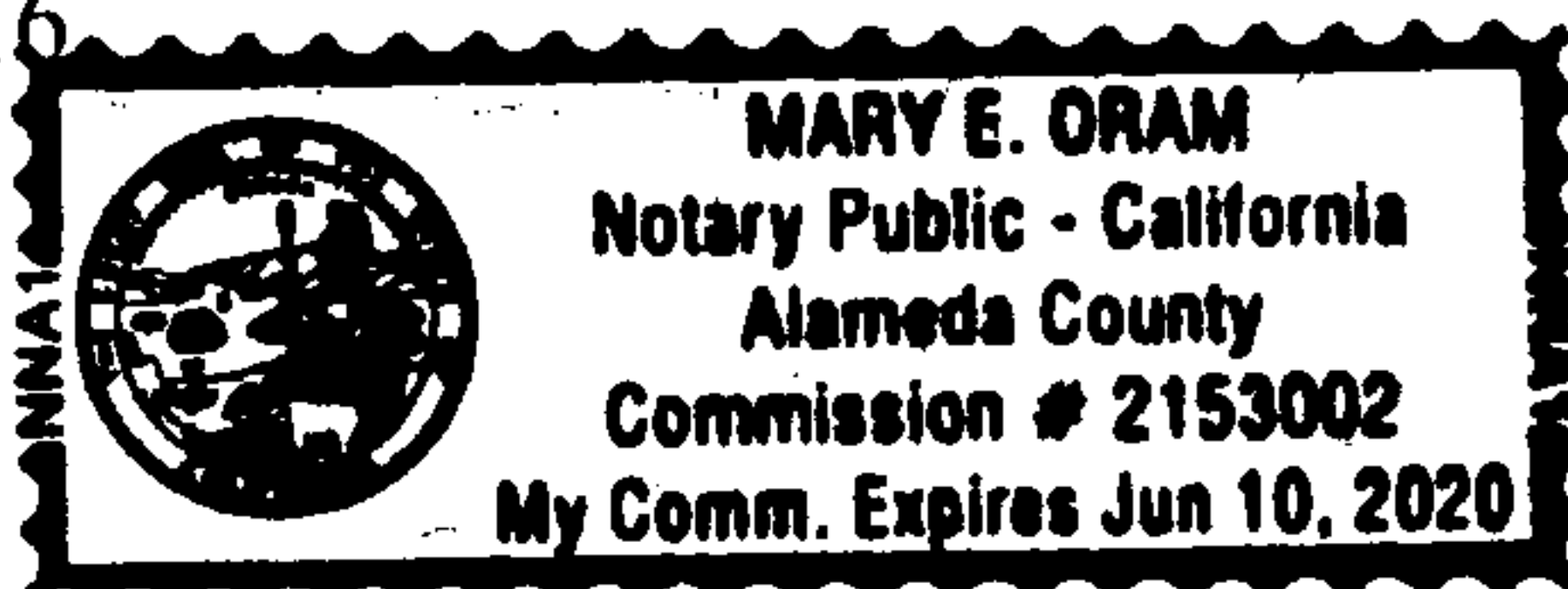
  
Harald L. Smyer

STATE OF California )  
COUNTY OF Alameda )

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.

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **Harald L. Smyer**, 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 13<sup>th</sup> day of June, 2016

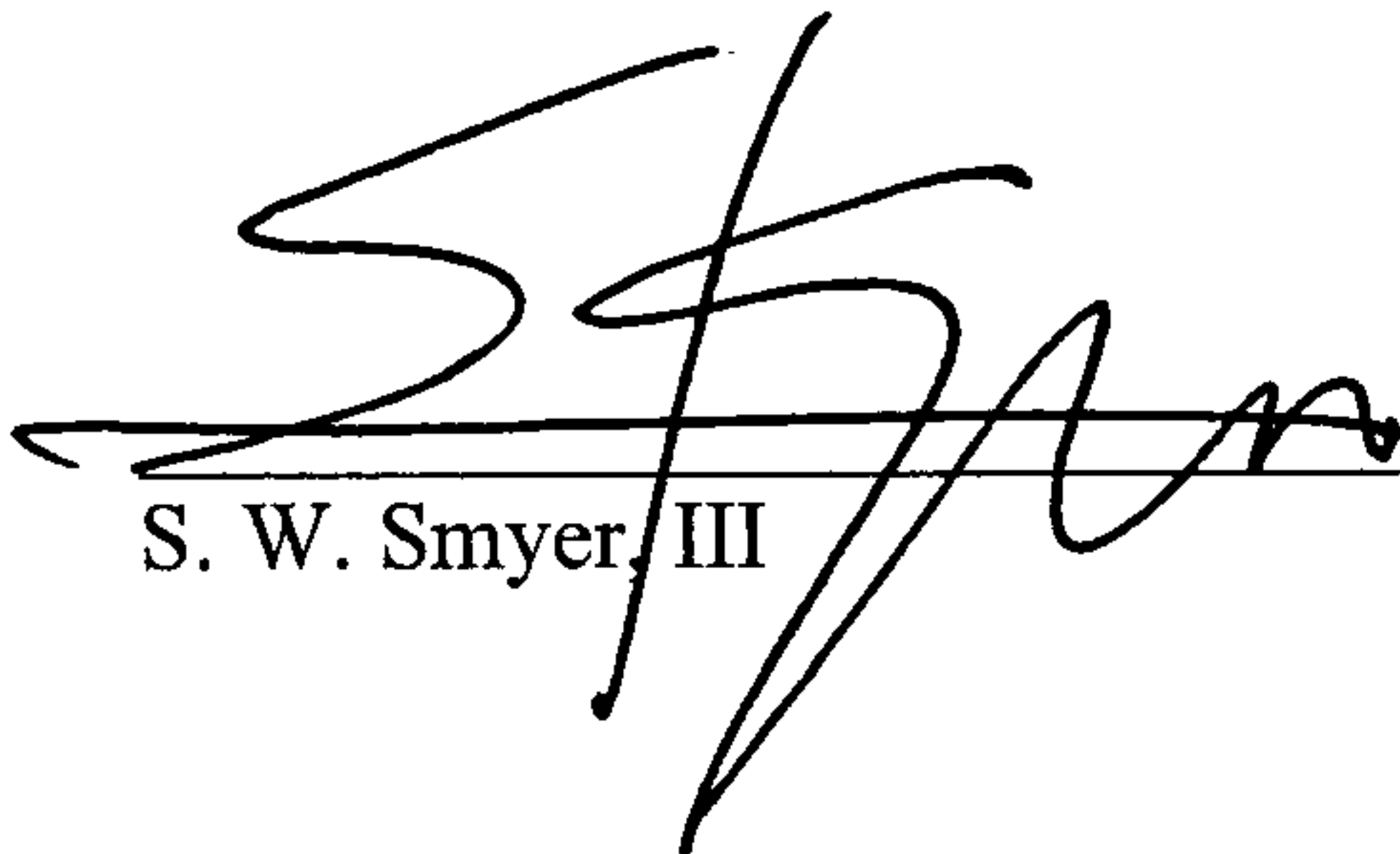


[AFFIX SEAL]

Mary E Oram  
Notary Public  
My Commission Expires: June 10, 2020

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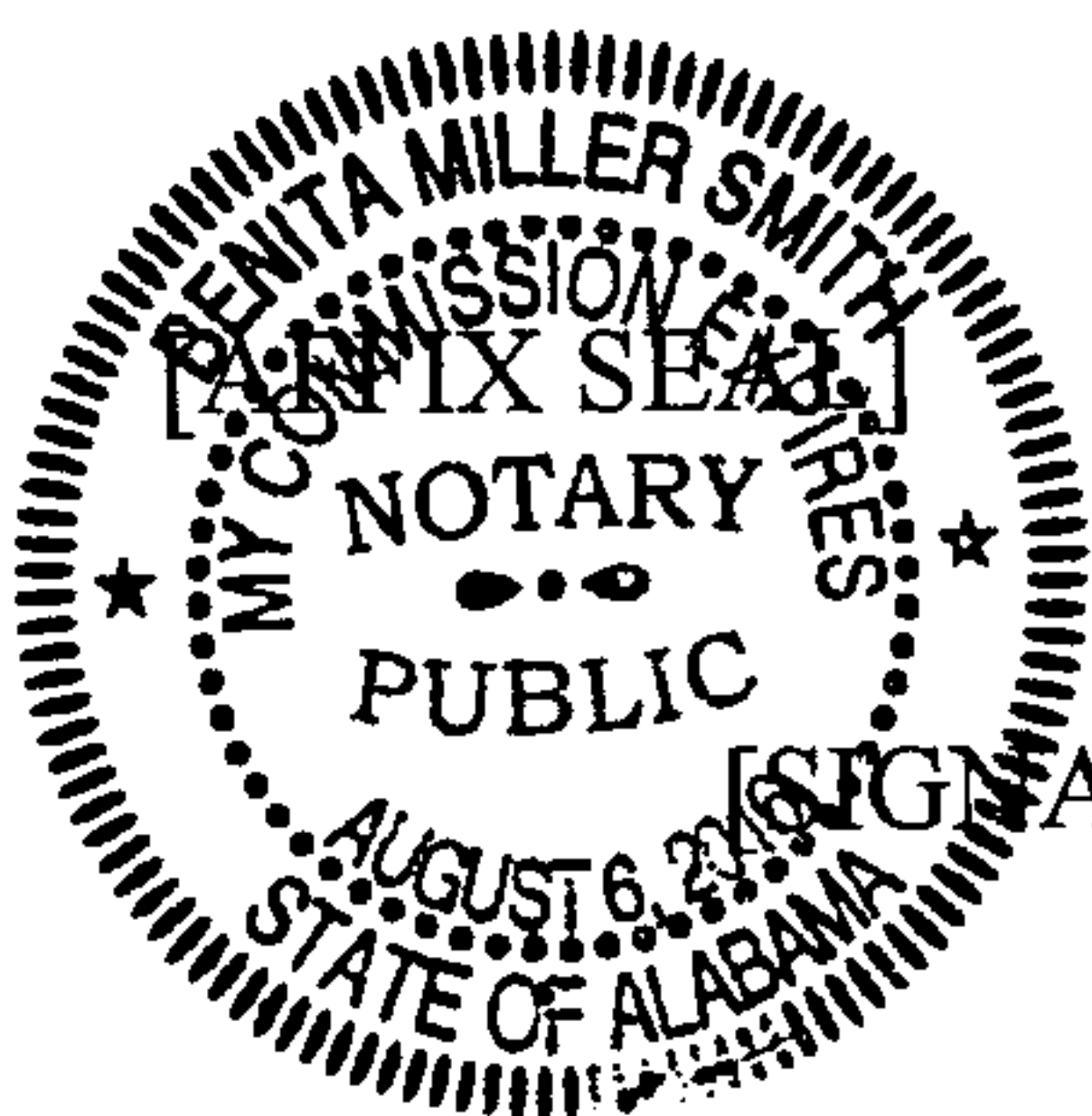
  
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S. W. Smyer, III

STATE OF ALABAMA           )  
  )  
COUNTY OF JEFFERSON    )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **Sidney W. Smyer, III**, 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 15<sup>th</sup> day of June, 2016.



  
Notary Public  
My Commission Expires: August 6, 2016

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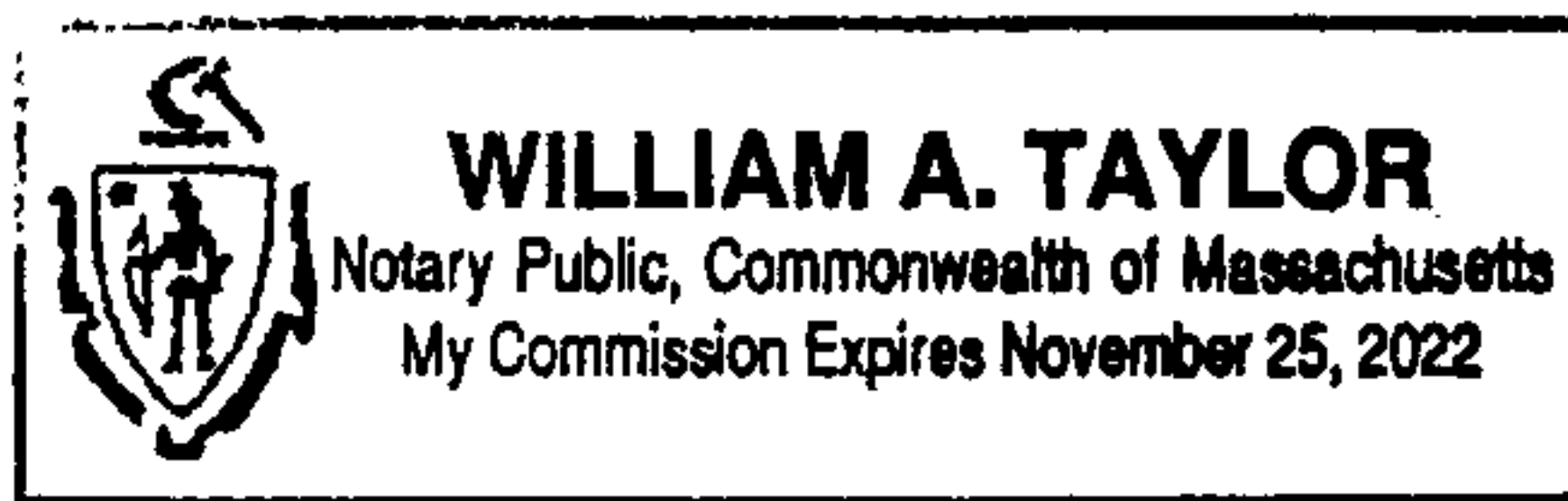


  
Ingrid Frances Smyer


STATE OF Massachusetts )  
 )  
COUNTY OF Suffolk )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **Ingrid Frances Smyer**, 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, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 16<sup>th</sup> day of May, 2016.



[AFFIX SEAL]

  
Notary Public William A Taylor  
My Commission Expires: November 25, 2022

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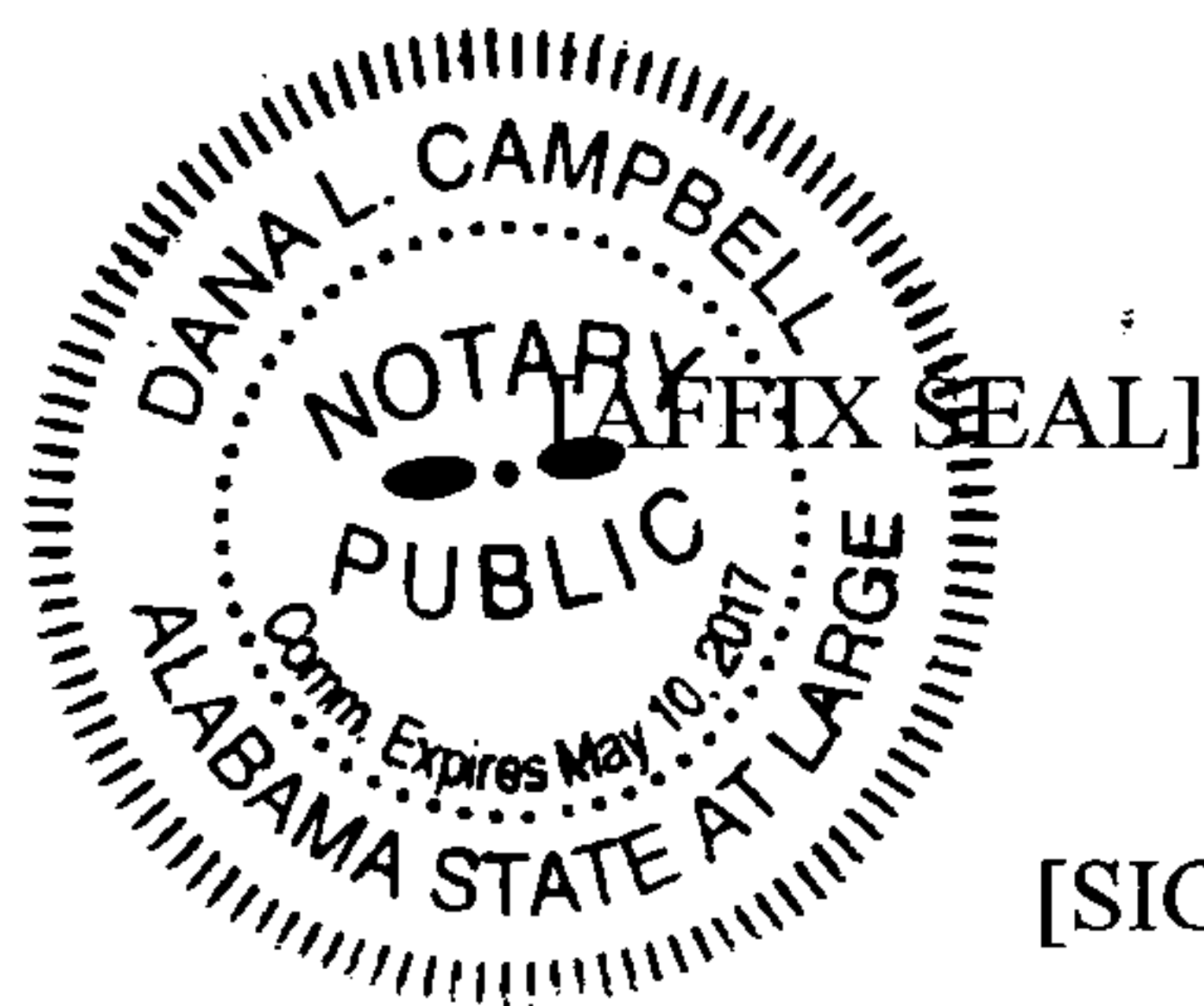
IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date set forth above.

  
S. W. Smyer, Jr.

STATE OF ALABAMA           )  
  )  
COUNTY OF JEFFERSON    )


I, the undersigned 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 12<sup>th</sup> day of May, 2016.



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

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## SCHEDULE OF EXHIBITS

1. Conceptual Plat of a portion of the Property: Exhibit "A".
2. Legal Descriptions of the Property as follows:
  - (a) Duck Pond: Exhibit "I"
  - (b) The S.W.S. III Parcel: Exhibit "II"
  - (c) Harald and Fran Parcel: Exhibit "III"
  - (d) The Edge Parcel: Exhibit "IV"
3. Exhibit "B": Committee Remedies for Covenants Violations



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SCHEDULE

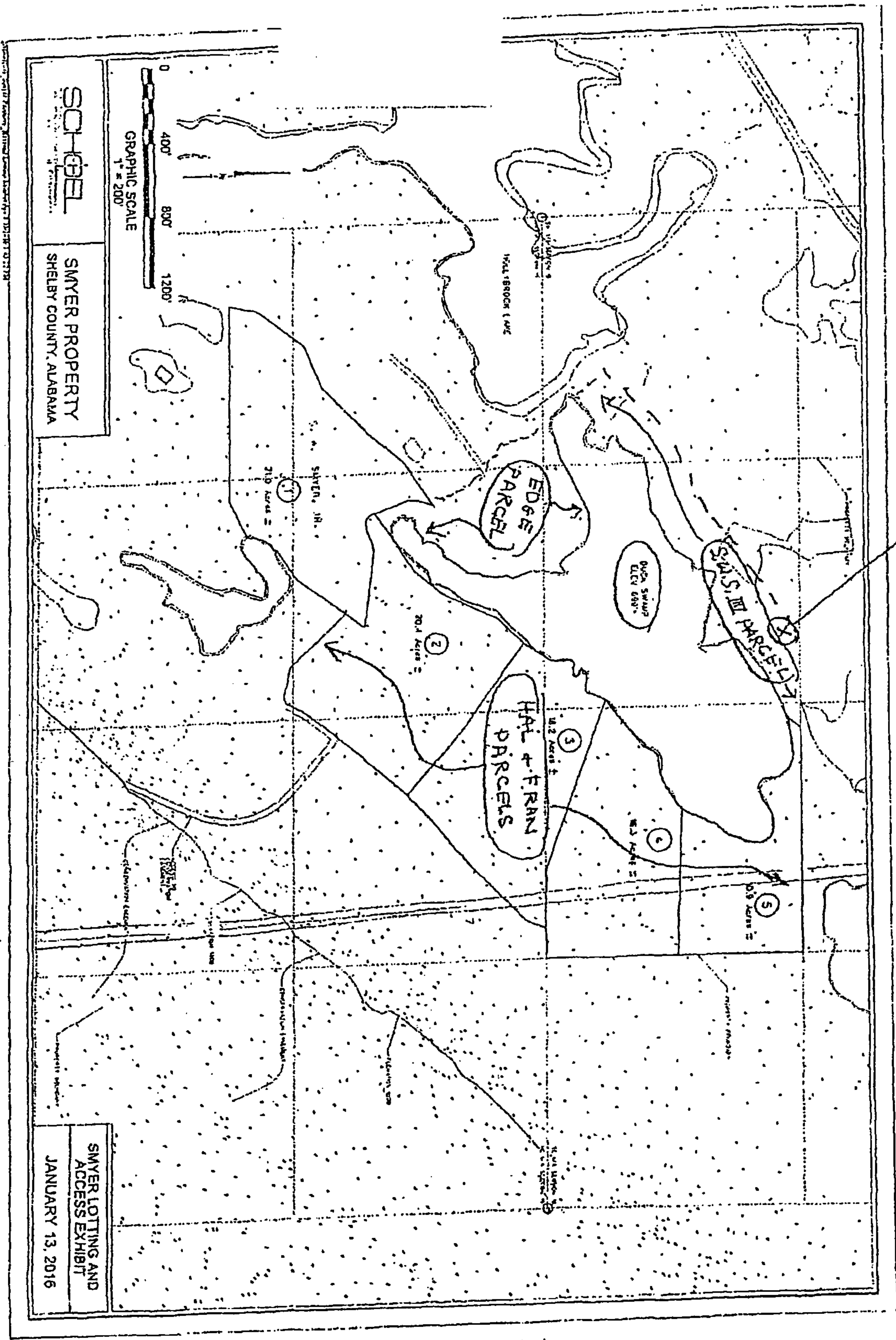


EXHIBIT "A"



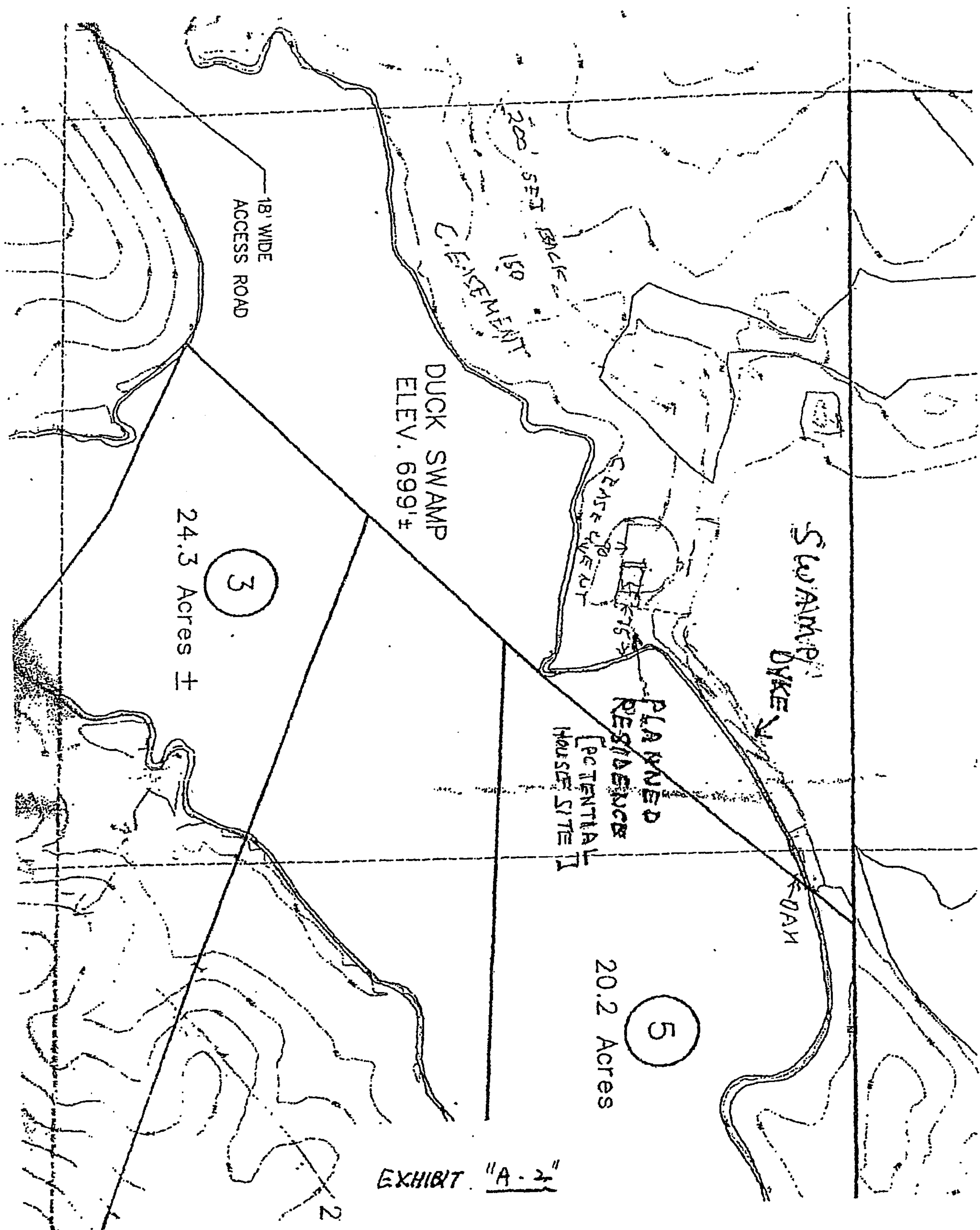


EXHIBIT "A-2"




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**EXHIBIT "I"**

**DUCK POND**

All of the following described real estate owned by Sidney W. Smyer, Jr., which lies below the elevation of 699' above mean sea level:

All that part of South one-half of South one-half of Section 18, and Northeast quarter of Northwest Quarter of Section 18, Township 18 South, Range One East, all lying within the bounds of Duck Swamp at Elevation 699 feet above sea level situated in Shelby County, Alabama.

  
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**EXHIBIT "I"**




**EXHIBIT "II"**

**THE S.W.S. III PARCEL**

All that part of the West ½ of SW¼ and SE¼ of Section 18, Township 18 South, Range 1 East, bounded as follows:

On the north by Shelby County Highway 41; on the west by land conveyed to Ingrid L. Smyer, and lots 1 and 2 and area marked "DAM" according to survey of Hollybrook Lake as recorded in the Office of Judge of Probate of Shelby County in Map Book 4, page 74; and on the south by the northern boundary of Shoal Creek and "duck swamp."

  
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**EXHIBIT "II"**

**EXHIBIT "III"**

**HAL AND FRAN PARCEL**

All that part of Sections 18 & 19, Township 18 South, Range 1 East, described in separate deeds to Ingrid Frances Smyer ("Fran") and Harald Lassen Smyer ("Hal") recorded in Real Vol. 296, Page 854, and Real Vol. 301, Page 881, respectively, in the Probate Office of Shelby County, Alabama, *Less And Except* the following:

(a) All real property conveyed by Fran and/or Hal as described in Instrument #2001-02967 and Instrument #2001-02972, in the Probate Office of Shelby County, Alabama; and

(b) All real property owned by Fran and/or Hal in Section 18 and 19, Township 18 South, Range 1 East, in Shelby County, Alabama, lying above Elevation 1,000 feet above mean sea level.



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**EXHIBIT "III"**

**EXHIBIT "TV"**

**EDGE PARCEL**

All that part of Southwest Quarter of Section 18 and Northwest Quarter of Section 19, Township 18 South, Range One East, lying South and East of Hollybrook Lake Road as described in Instrument #1999-44787 in the Office of the Judge of Probate of Shelby County, Alabama; and East of Land conveyed by S.W. Smyer, Jr. to Ann J. Shaw, John E. Guess and SouthTrust Bank, N.A. as Trustees under the Will of Henry P. Johnson, deceased, as described in deed dated November 14, 1987; Northwest of land described in deed recorded in Instrument #2000-30649 in said Probate Office; Northwest of dirt road running Southeasterly from most Southeast corner of land conveyed in said Henry P. Johnson, deceased, deed to land conveyed in said Instrument #2000-30649; and South and West of Duck Swamp, containing approximately 10 acres.



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**EXHIBIT "TV"**



## EXHIBIT "B"

### A. Committee Remedies for Covenants Violation.

a. Notice of Violation; Corrective Action. If the Committee determines that a violation of the terms of the Covenants has occurred or is threatened, it shall give written notice to the party involved of such violation and specify the corrective action.

b. Injunctive Relief. If the party involved fail to cure the violation within thirty (30) days after receipt of notice thereof from the Committee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, if such party fail to initiate action to cure such violation within such thirty day period or to continue diligently to cure such violation until finally cured, the Committee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of the Covenants, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and require the restoration of the Covenant protected to the condition that existed prior to any such violation.


c. Damages. The Committee shall be entitled to recover damages for violation of the terms of the Covenants or injury to any Conservation Values protected by the Covenants, including, without limitation, damages for the loss of scenic, aesthetic or environmental values.

d. Scope of Relief. The Committees rights hereunder apply equally in the event of either actual or threatened violations of the terms of the Covenants. The parties agree that the Committee's remedies at law for any violation of the terms of the Covenants are inadequate, and that it shall be entitled to the injunctive relief described in subparagraph (b) above, as well as such other relief to which it may be entitled, including specific performance of the terms of the Covenants, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

e. Costs of Enforcement. All reasonable costs incurred by the Committee in enforcing the terms of the Covenants, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the parties violation of such terms, shall be borne by the party in violation; provided, however, that if such party ultimately prevail in a judicial enforcement action, the Committee shall pay to such party his or her costs and expenses of the suit and his or her reasonable attorney's fees incurred as a result of the suit.

f. Forbearance. Forbearance by the Committee in the exercise of its rights hereunder shall not be deemed or construed to be a waiver of any subsequent breach of the Covenants, and no delay or omission by it in the exercise of any right or remedy upon any breach by a party shall impair such right or remedy or be construed as a waiver thereof.

EXHIBIT "B"  
(Remedies)

  
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Shelby Cnty Judge of Probate, AL  
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