


STATE OF ALABAMA)
 :
SHELBY COUNTY)


20220408000146500 1/12 \$55.00
Shelby Cnty Judge of Probate, AL
04/08/2022 03:15:27 PM FILED/CERT

AFFIDAVIT OF M. WAYNE WHEELER

Comes now M. Wayne Wheeler and would make this Affidavit with reference to the following described real property:

Lot 22, according to the Survey of Canterbury Estates, First Addition, as recorded in Map Book 16, Page 67, in the Probate Office of Shelby County, Alabama.

That real property is part of the pending litigation styled: *Werner H. Beiersdoerfer, et al. v. Anomthy Prentice, et al.* Case No. CV-2021-900672 now pending in Shelby County, Alabama.

1. The dispute between the parties arose as to the encroachment across a boundary line between lots 22 and 21 of the above subdivision.

2. That after a hearing before the Court, the Defendant, Anomthy Prentice, removed the existing fence back on his property. As a result, the matter became moot.

3. That pursuant to the actions of the Defendant, a Motion to Dismiss was filed (Exhibit A).

4. That by Order dated April 6, 2022 (Exhibit B), the pending matter was dismissed and the attorney of record was required to record a copy of the Motion and Order in the Probate Court of Shelby County, Alabama.

5. That the true and correct boundary line between lots 22 and 21 is hereby established pursuant to the survey of Rodney Shiflett (Exhibit C).



20220408000146500 2/12 \$55.00
Shelby Cnty Judge of Probate, AL
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Dated this the 7th day of April 2022

M. Wayne Wheeler,
Attorney for the Plaintiff

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, Tina P. Henley, a Notary Public in and for said County, in said State, hereby certify that M. Wayne Wheeler whose name is signed to the foregoing Affidavit and who is known to me, acknowledged before me this day, that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 7th day of April 2022.

My Commission Expires:

5-28-25

Notary Public



ELECTRONICALLY FILED
3/29/2022 9:58 AM
58-CV-2021-900672.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

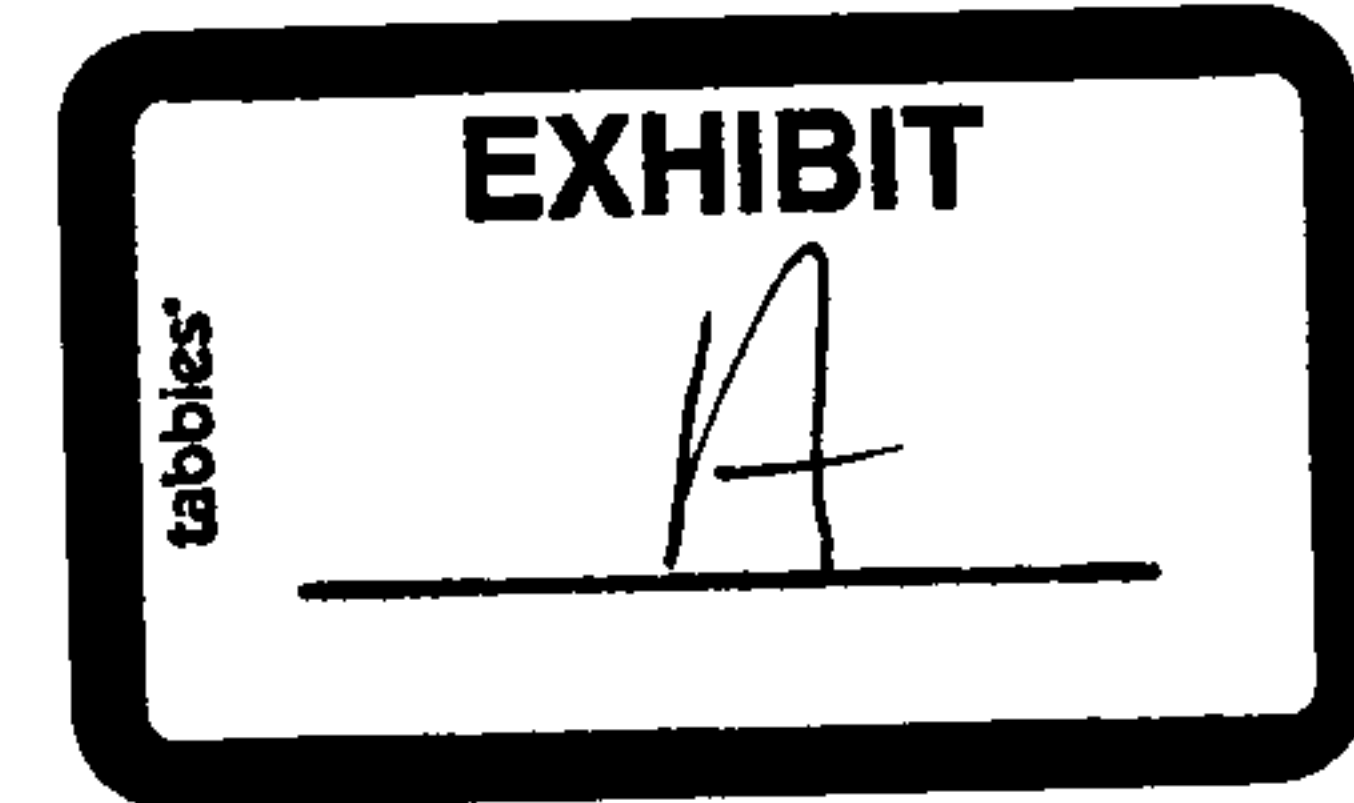
**WERNER H. BEIERSDOERFER and
MICHAEL KENNETH FLOWERS, AS
TRUSTEES FOR THE SANCTUARY
TRUST FOR SHELBY COUNTY, et al.**

Plaintiffs,

vs.

ANOMTHY PRENTICE, et al.

Defendants.



CASE NO. CV-2021-900672



20220408000146500 3/12 \$55.00
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MOTION TO DISMISS

COMES NOW Plaintiffs by and through their undersigned counsel, and would show unto this Honorable Court as follows:

1. That the original Complaint was a trespass action because the existing fence of the Defendant encroached on the property of the Plaintiffs. The legal description of the property is as follows:

Lot 22, according to the Survey of Canterbury Estates, First Addition, as recorded in Map Book 16, Page 67, in the Probate Office of Shelby County, Alabama.

2. That since this matter has been filed, the Plaintiffs have been advised that the fence has been removed by the Defendant. As a result, the moved fence is now on the property of the Defendant and not the Plaintiffs.

3. That a photograph of the fence is attached (Exhibit A) showing that the encroaching fence has been moved back on the property of the Defendant.

4. That the correct boundary line is established as set out in the survey (Exhibit B).



20220408000146500 4/12 \$55.00
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5. That the issue is now moot due to the action of the Defendant in moving the fence onto the Defendant's property. As a result, the property can be sold and a mortgage placed on the property by the purchaser.

6. The Plaintiffs shall record a copy of this Motion and Order in the Probate Court of Shleby County, Alabama in order to establish the resolution of the boundary line dispute.

7. A proposed Order is attached as Exhibit C.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully request this Honorable Court to dismiss the pending matter as moot due to the actions of the Defendants and for such other and further relief to which the Plaintiffs may be entitled.

/s/M. Wayne Wheeler

M. Wayne Wheeler (WHE004)

/s/Larry R. Boothe, Jr.

Larry R. Boothe, Jr. (BOO052)

Attorneys for Plaintiff

Of Counsel:

M. Wayne Wheeler, P.C.
2230 Third Avenue North
Birmingham, Alabama 35203
(205) 322-0627

20220408000146500 5/12 \$55.00
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing by placing a copy of the same in the U.S. mail postage prepaid upon the following:

Anomthy Prentice
110 Buckingham Circle
Montevallo, AL 3515

This the 29th day of March 2022.

/s/M. Wayne Wheeler
Of Counsel

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

**WERNER H. BEIERSDOERFER and
MICHAEL KENNETH FLOWERS, AS
TRUSTEES FOR THE SANCTUARY
TRUST FOR SHELBY COUNTY, et al.**

Plaintiffs,

vs.

ANOMTHY PRENTICE, et al.

Defendants.

CASE NO. CV-2021-900672

FINAL ORDER

Upon consideration of the Motion to Dismiss as filed by the Plaintiffs, the same is due to be granted.

It is therefore **ORDERED, ADJUDGED** and **DECREED** as follows:

1. That the true and correct boundary line of the property between the Plaintiffs and Defendant is, in fact, the established survey by Rodney Shiflett being attached as Exhibit A.

2. That the pending matter is now moot because the Defendant has moved the fence on to his property and off the property of the Plaintiffs. There is no longer an encroachment on the property of the Plaintiffs.

3. That due to the actions of the Defendant, the pending matter is dismissed with prejudice.

4. That the attorney of record for the Plaintiffs, M. Wayne Wheeler, shall record a copy of this Motion and Order in the Probate Court of Shelby County, Alabama with the name of the Plaintiffs as Grantor.



20220408000146500 7/12 \$55.00
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5. Costs are taxed to the Defendant.

DONE and ORDERED this the ____ day of _____ 2022.

CIRCUIT COURT JUDGE



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Shelby Cnty Judge of Probate, AL
04/08/2022 03:15:27 PM FILED/CERT





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04/08/2022 03:15:27 PM FILED/CERT





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IN THE CIRCUIT COURT OF SHELBY COUNTY,

V.

Case No.: CV-2021-900672.00

ORDER

It is therefore **ORDERED, ADJUDGED** and **DECREED** as follows:

- DONE this 6th day of April, 2022.

CIRCUIT JUDGE

EXHIBIT

tabbles

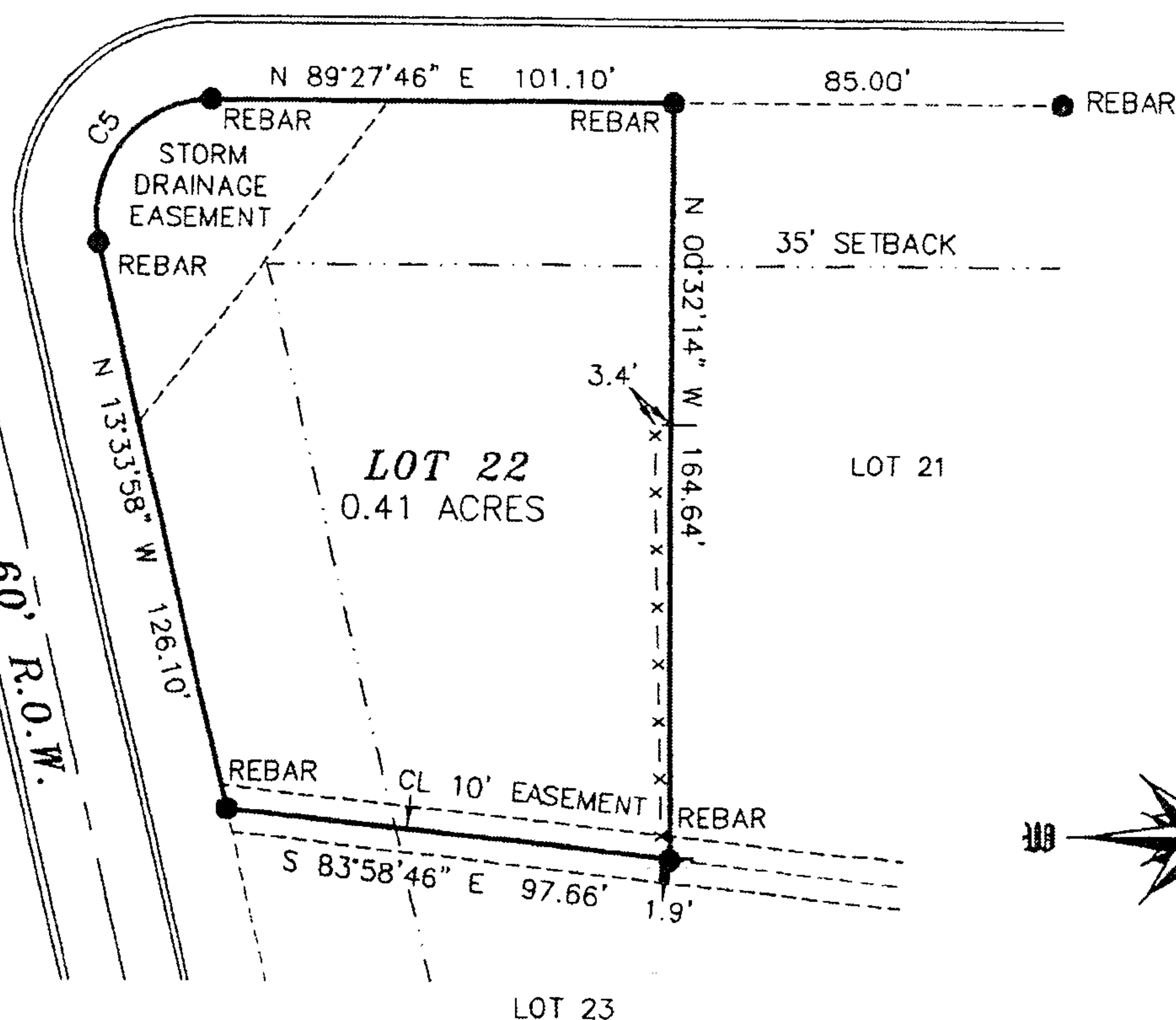


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CURVE	ARC LENGTH	RADIUS	CHORD BEARING	CHORD LENGTH
C5	44.94'	25.00'	N 37°56'35" E	39.13'

BUCKINGHAM CIRCLE - 60' R.O.W.

OXFORD CIRCLE - 60' R.O.W.



CLOSING SURVEY

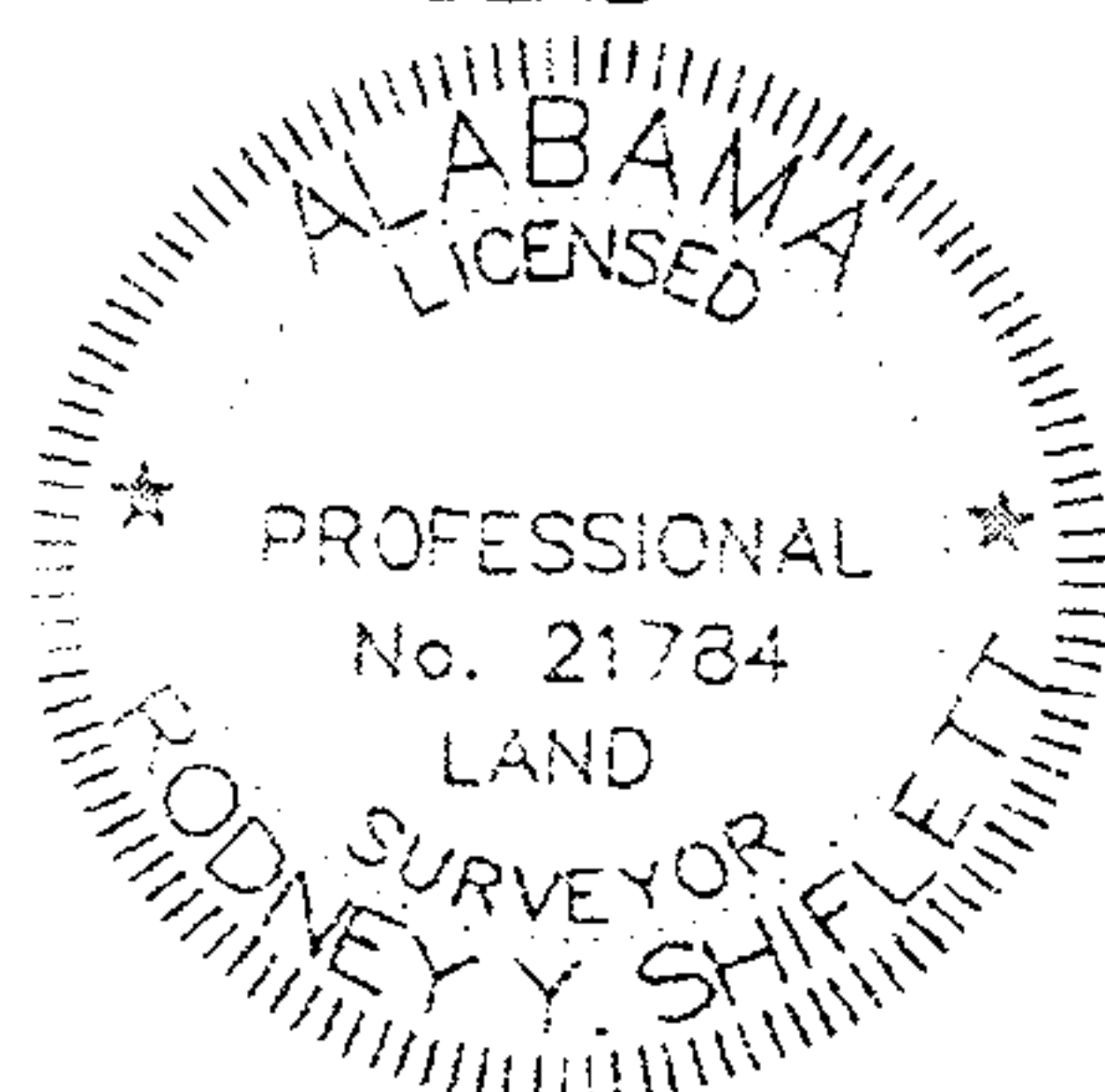
I, Rodney Shiflett, a Registered Professional Land Surveyor in the State of Alabama do hereby certify that this is a true and correct plat of my survey as shown hereon. That there are no visible encroachments of any kind upon the subject lot except as shown hereon, excluding utility service lines, wires or pipes that serve the subject lot only that are within dedicated easements or rights of way. That steel corners have been found or installed at all lot corners. I hereby certify that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief, the correct legal description being as follows:

Lot 22 of Canterbury Estates, 1st Addition, as recorded in Map Book 16, Page 67, in the Office of the Judge of Probate of Shelby County, Alabama.

I further certify that I have consulted the Federal Insurance Rate Map (F.I.R.M.) Community Panel #01117C 0503 E, Zone 'X', dated February 20, 2013, and found that the above described Parcel does not lie in a Flood Hazard Zone.

Rodney Shiflett
 Rodney Shiflett Al. Reg. #21784

SEAL



LEGEND

- 1/2" REBAR SET
- IRON PIN FOUND
- R.O.W. RIGHT-OF-WAY
- NOT TO SCALE
- UTILITY POLE
- E OVERHEAD UTILITIES
- (M) FIELD MEASURED
- (P) PLAT / RECORDED MAP
- ⊗ COVERED DECK/PORCH
- ▨ DECK/PORCH

JOB NO. 21264

DATE 4/7/21 DATE OF FIELD SURVEY 4/7/21

ADDRESS 220 Oxford Circle SCALE 1" = 50'

DRAWN BY H. LETTS CHECK BY R.Y.S.

RODNEY SHIFLETT SURVEYING

P.O. BOX 204
 COLUMBIANA, ALABAMA 35051
 TEL. 205-669-1205 FAX. 205-669-1298