

20190129000030110
01/29/2019 01:32:46 PM
ESMTAROW 1/17

Instrument Prepared By:
Jerome K. Lanning, Esq.
Butler Snow LLP
1819 Fifth Avenue North, Suite 1000
Birmingham, Alabama 35203

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“Agreement”) is made and entered into as of the 5th day of October, 2018, by and between the **SMYER LAKE HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation (the “Association”), **DAVID D. WHITE**, an Alabama resident (“White”), and **JOHN E. ADAMS**, an Alabama resident (“Adams”) (White, Adams and the Association may be collectively referred to herein as the “parties”).

RECITALS

The parties entered into a Memorandum of Agreement dated as of May 11, 2018 (the “MOA”), a copy of which is attached as “Exhibit A” and is incorporated herein by reference (capitalized terms in this Agreement and not defined are defined in the MOA; and

The MOA provides that the Association will prepare and distribute drafts of the documents required to consummate the transactions described in the MOA for review and approval by the parties, and this Agreement is to provide for the grant by White and Adams to the Association of a permanent and non-exclusive easement extending from Smyer Lake Way to the Boat Ramp Apron over the existing gravel drive which provides access to Adams’ house on Lot 19 to the point where a new and straightened Access Drive begins as shown in orange and/or yellow on the Survey, and from that point continuing to the Boat Launch Apron as shown on the Survey (the “Easement” and the “Access Drive”, respectively).

White and Adams are willing to grant the Easement to allow the Association to construct, maintain and use the Access Drive for the purposes described in the MOA upon the terms provided for in this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, the parties agree as follows:

AGREEMENT

1) Grant of Access Easement.

Subject to the terms and conditions set forth below, White and Adams do hereby grant, bargain, sell, convey and assign unto the Association the permanent and non-exclusive Easement described herein, over and across those portions of their respective properties required to provide access to the Association to and from the Boat Launch Apron and Smyer Lake Way, and for the construction, maintenance and use of the Access Drive identified on the Survey.

2) Easement Rights, Obligations & Limitations.

(a) The Easement established and granted pursuant to this Agreement shall be non-exclusive, shall be appurtenant to and shall serve the Association property, shall constitute a covenant running with the land, and shall be binding upon and inure to the benefit of the parties and their respective successors, heirs and assigns.

(b) The Easement shall be used by the Association for the purpose of permitting its members to utilize the Ramp from time to time to service or replace boats, or to deliver or remove construction materials related to boat house or dock construction projects, or to allow the Association's lake testing and service provider(s) (currently SE Pond) to make periodic applications of lime and fertilizer, and provide other lake management services, and for necessary construction, maintenance and repairs to the Access Drive, Ramp and Boat Launch Apron.

3) Rules.

The parties agree that the use of the Access Drive and Ramp shall be subject to reasonable Rules established by the Association from time to time. Such Rules shall, among other things, provide for use being restricted to daylight hours, and a process by which any member or other party entitled to use being required to first notify an Association representative as to the nature and timing of such requested use, and for the Association to contact White and Adams in order to confirm that would not result in a conflict with their plans.

4) Liability & Indemnity.

The parties agree that the use of the Easement shall be at the user's sole risk, and that each permitted user shall be asked by the Association to sign a liability waiver to that effect, which shall incorporate both a liability waiver and an indemnification provision in favor of all parties. The Easement being non-exclusive as to the parties, each party agrees to indemnify and hold the other parties harmless from and against any demands or claims made

in connection with any accident, injury or damage arising out of the use of the Easement by such party, or his or its contractors, licenses, agents or invitees.

5) Maintenance.

The Association agrees to be solely responsible for the costs of constructing its improvements to the Access Drive, Boat Launch Apron, and for the maintenance of those and other improvements it has either made or authorized within the Easement area, subject only to repairs clearly required as a result of damage caused by the use of either White or Adams or their contractors or invitees.

6) Miscellaneous.

(a) This Agreement constitutes the entire agreement between the parties hereto, and may be amended and modified only by the written consent of the parties or their respective heirs, successors or assigns.

(b) The terms of this Agreement and the Easement herein provided for shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7) Recordation Verifications.

(a) The Easement property is not subject to the homestead rights of any party to this Agreement.

(b) The "Grantor" parties herein are as follows:

(i) David D. White, an Alabama resident whose address is
16 SMYER LAKE WAY
LEEDS, AL 35094.

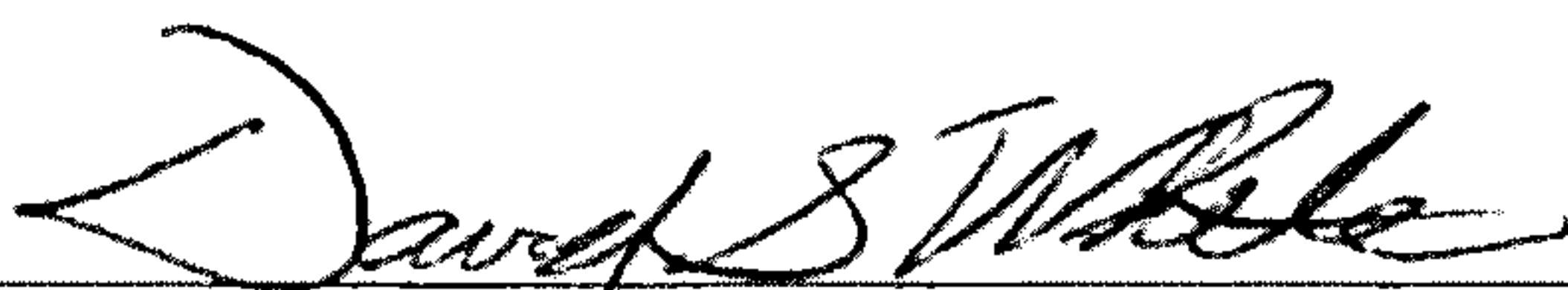
(ii) John E. Adams, an Alabama resident whose address is 3941 South Cove Drive, Birmingham, AL 35213.

(c) The "Grantee" party herein is the Smyer Lake Homeowners Association, Inc., an Alabama nonprofit corporation, with an address as
P.O. Box 59571, B'HAM., AL 35259.

(d) There was no monetary consideration paid by the Association, as "Grantee" herein, for the conveyance to it of the Easement property, which is estimated to have a market value of \$20,000 or less.

(e) The Easement property is unimproved property fronting on Smyer Lake Way in Shelby County, Alabama, and there is no available street address.

[Signature page of Access Easement Agreement]



DAVID D. WHITE

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

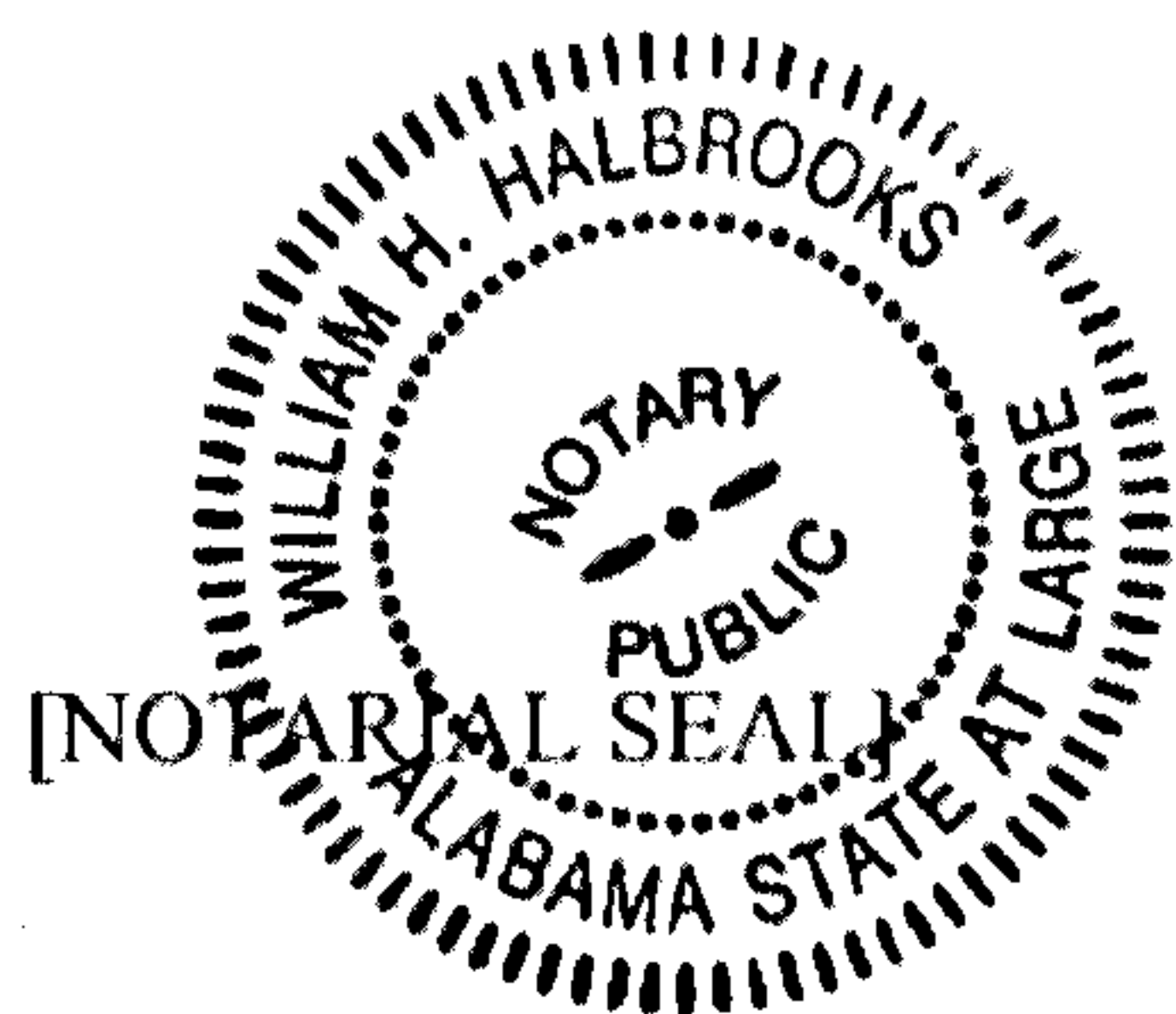
I, the undersigned, a notary public in and for said county in said state, hereby certify that **DAVID D. WHITE**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily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

Given under my hand and official seal this 24th day of JAN., 2018.



NOTARY PUBLIC

My commission expires: 4/21/20



[Signature page of Access Easement Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
day and year first above written.

ASSOCIATION:

SMYER LAKE HOMEOWNERS ASSOCIATION, INC.
an Alabama nonprofit corporation

By: 

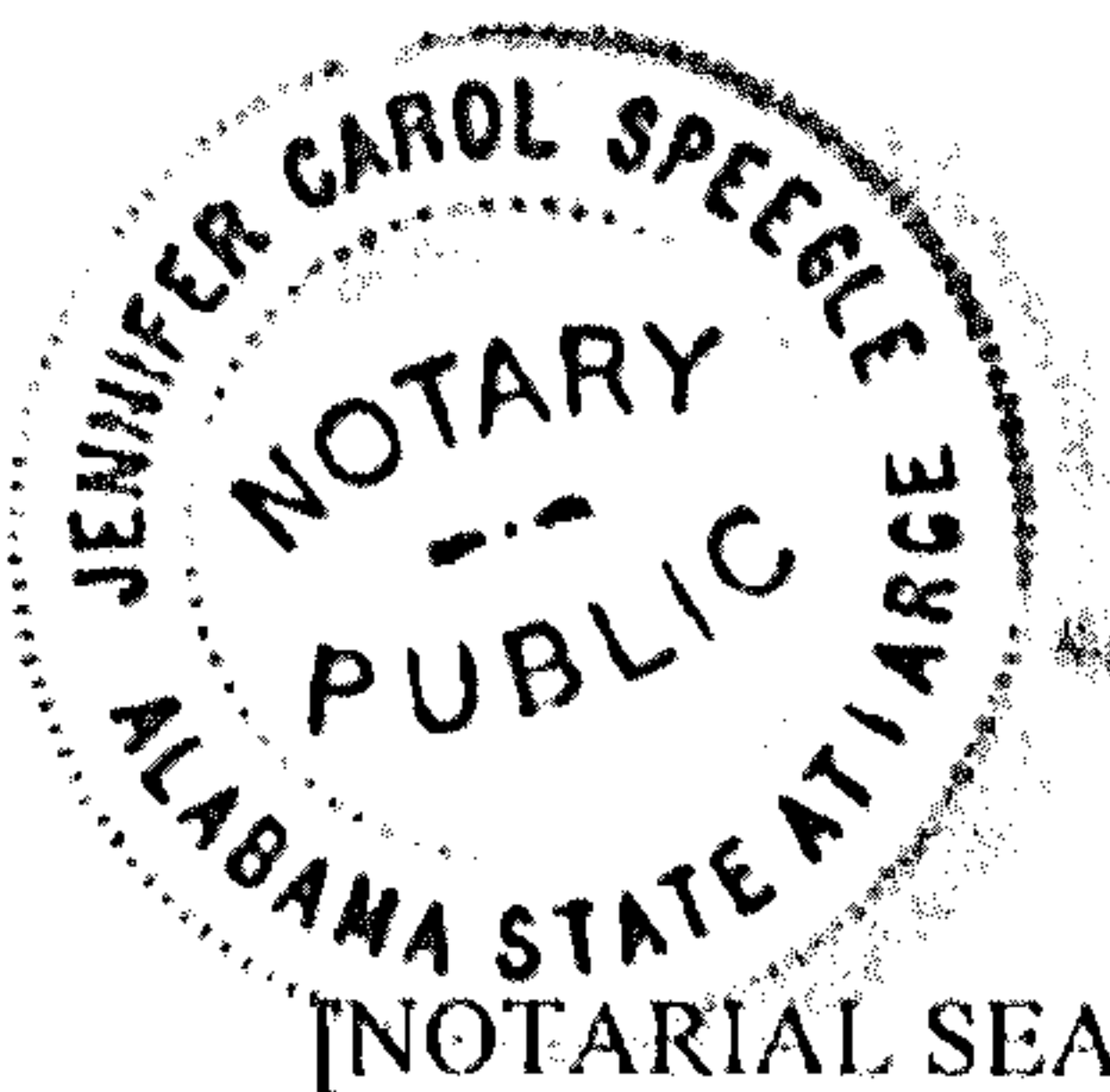
Name: William M. Gunn


Its: President

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that William M. Gunn, whose name as President of **SMYER LAKE HOMEOWNERS ASSOCIATION, INC.**, 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 as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 5th day of October, 2018.




NOTARY PUBLIC

My commission expires: 11-07-2018

[Signature page of Access Easement Agreement]

John E. Adams
JOHN E. ADAMS

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

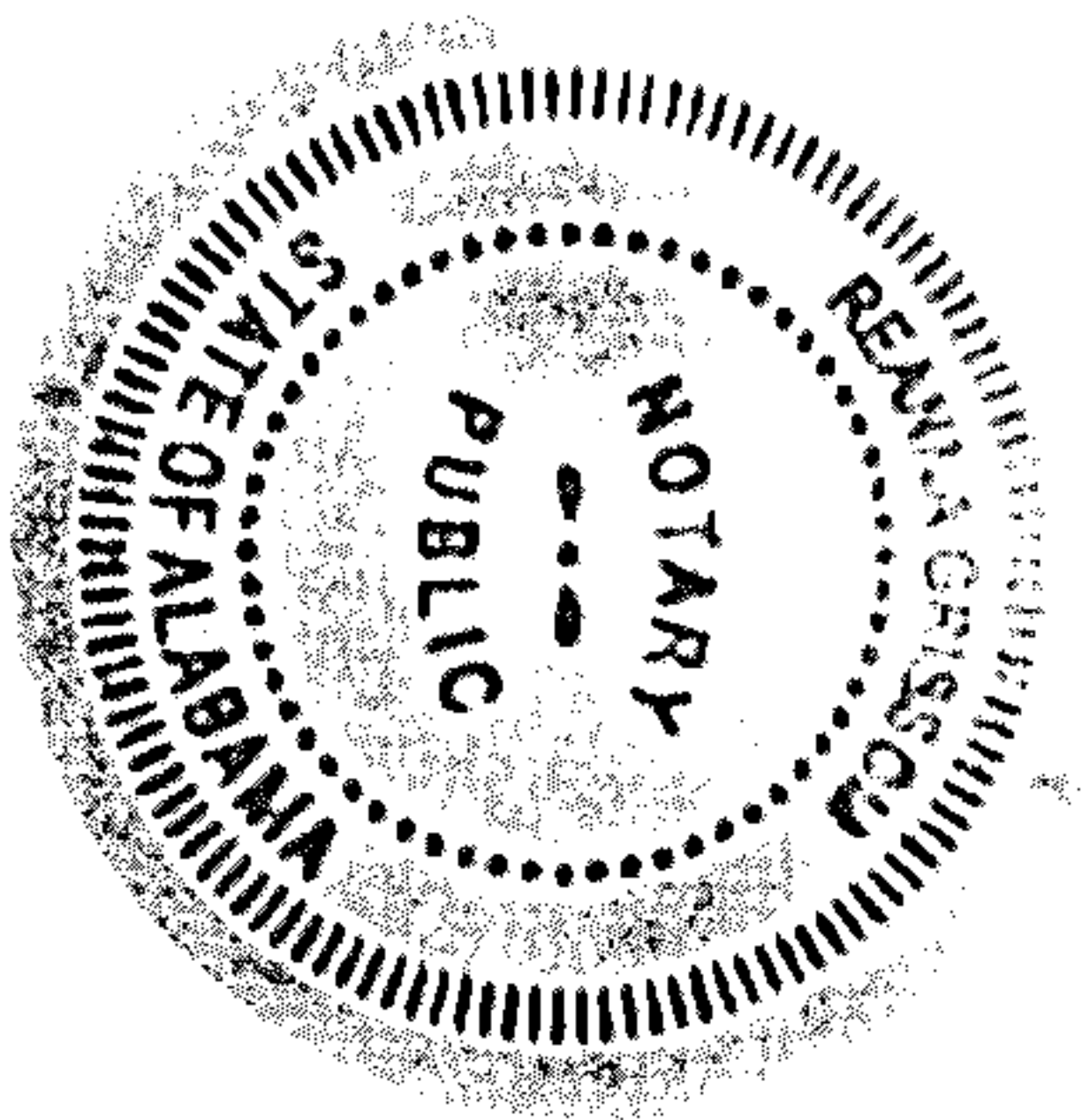
I, the undersigned, a notary public in and for said county in said state, hereby certify that **JOHN E. ADAMS**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily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

Given under my hand and official seal this 16th day of October, 2018.

Sharon L. Lister
NOTARY PUBLIC

My commission expires: April 26th, 2020

[NOTARIAL SEAL]



**20190129000030110 01/29/2019 01:32:46 PM ESMTAROW
7/17**

EXHIBIT "A"

MEMORANDUM OF AGREEMENT
(attached hereto)

MEMORANDUM OF AGREEMENT

THE MEMORANDUM OF AGREEMENT ("MOA") entered into as of the 11th day of May, 2018, between DAVID D. WHITE, an Alabama resident ("White"), JOHN E. ADAMS, an Alabama resident ("Adams"), and SMYER LAKE HOMEOWNERS ASSOCIATION, INC., an Alabama nonprofit corporation (the "Association").

RECITALS

White is the owner of Lot 18 adjoining Smyer Lake in Shelby County, Alabama, which is identified on the plat attached as **Exhibit A** (the "**Plat**"); and

Adams is the owner of Lot 19, together with property lying between Lot 19 and a private road owned by the Association known as "Smyer Lake Way" (the "**Road**"), also identified on the Plat; and

The Association owns a parcel containing approximately 1.85 acres lying between Lot 18 and the Road as shown on the Plat (the "**Association Parcel**"), and further described in a survey performed by Ray and Gilliland dated ~~April~~ ^{MARCH} 7, 2018, a copy of which is attached as **Exhibit B** (the "**Survey**"); and

The Survey shows the Association Parcel being divided into two portions, the one on the eastern side being identified on the Survey as Parcel "A", and the portion on the western side being identified as Parcel "B".

The Association owns Smyer Lake, and years ago constructed and has historically used a boat launch ramp ("**Ramp**") extending into the lake at a point where the common lot line between Lots 18 & 19 meets at the lake, and which extends onto both Lots 18 and 19 for a distance that is sufficient to allow a boat trailer to be backed into the water for launch (identified on the Survey as the "**Boat Launch Apron**"); and

The Association has been permitted by Adams and White to allow its members to utilize the Ramp from time to time to service or replace boats, and to allow its lake testing and services provider (currently "**SE Pond**") to make periodic applications of lime and fertilizer, by utilizing the existing gravel drive which provides access to Adams' house on Lot 19, and extends from Adams' house in a "meandering" fashion from the Ramp area up to Smyer Lake Way over the properties owned by Adams, the Association, and White as shown on the Survey; and

The Association would like to obtain a non-exclusive permanent easement from Adams & White to permit it to improve and straighten the Ramp access drive over the area shown in orange on the Survey, including the construction of a short "back-in" area on Adams' property to permit launch vehicles and trailers to reverse direction as depicted on the Survey (the "**Access Drive**"), and to utilize the Access Drive for the benefit of its members and service providers; and

The Association has agreed to bear all costs related to the construction of the new Access Drive, as well as all costs required to keep the Access Drive in serviceable condition going forward.

In partial consideration for the use by the Association that has been historically permitted by Adams and White for access to the Ramp, and for the grant by them of the permanent Easement herein provided for, the Association has agreed to convey fee simple title to Parcel "A" to White, and to Parcel "B" to Adams; and

The parties to this MOA entered into an unrecorded Joint Driveway Use Agreement dated as of April 1, 2016, in order to address title and use issues created by the "meandering" location of the existing gravel drive which has served to access both the Adams house and the Ramp. These issues will no longer exist following the consummation of the transactions contemplated by this MOA, and the parties mutually agree to terminate that agreement following the closing of the transactions provided for herein.

The above provisions considered, and for other good and valuable consideration, the parties agree as follows:

1. Document Preparation and Review: The Association will prepare and distribute drafts of the documents required to consummate the transactions described in the above Recitals for review and approval by the parties, and this MOA is entered into subject to the approval of the documents by all parties. Those draft documents shall include (a) the Easement, (b) the Deeds to Parcels A & B, (c) an instrument terminating the Joint Driveway Use Agreement, (d) a Closing Memorandum, and (e) such other instruments as may be required.
2. Closing Expenses & Prorations. Each party will bear its own recording or other expenses, and there shall be no proration of property taxes (assuming that taxes currently due have been paid).
3. Title. The condition of title shall be evidenced by a current title report, and title shall be conveyed free of any conditions of title not approved by the Grantee.

This MOA has been executed by the parties in one or more counterparts, each as of the date above.

[signatures on following page]


[Signature page to Memorandum of Agreement]

**SMYER LAKE HOMEOWNERS
ASSOCIATION, INC.**

By: _____
Name: _____
Its: President
Dated: _____

By: _____
Name: _____
Its: Secretary
Dated: _____

DAVID D. WHITE

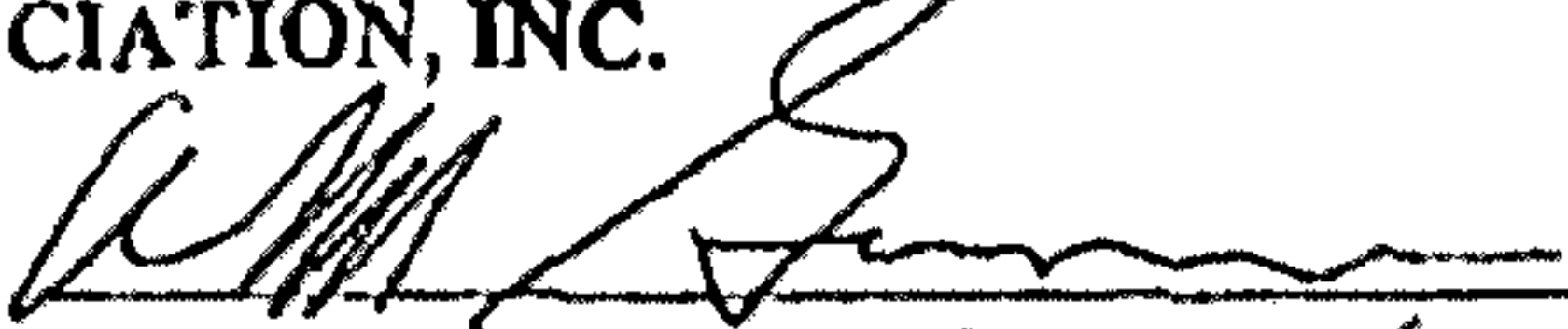

Dated: 1/24/19

JOHN E. ADAMS


Dated: 5/14/2018

[Signature page to Memorandum of Agreement]

SMYER LAKE HOMEOWNERS
ASSOCIATION, INC.

By: 
Name: William A. Gunn
Its: President
Dated: 5-11-18

By: _____
Name: _____
Its: Secretary
Dated: _____

DAVID D. WHITE

Dated: _____

JOHN E. ADAMS

Dated: _____

**20190129000030110 01/29/2019 01:32:46 PM ESMTAROW
12/17**

EXHIBIT A

**PLAT
(attached hereto)**

J Young@muslangeng.com)

113 2:27 PM

Marc Robillard, Paul Stivendor, Walter Brown (walterb@grahamcompany.com)

• **party**

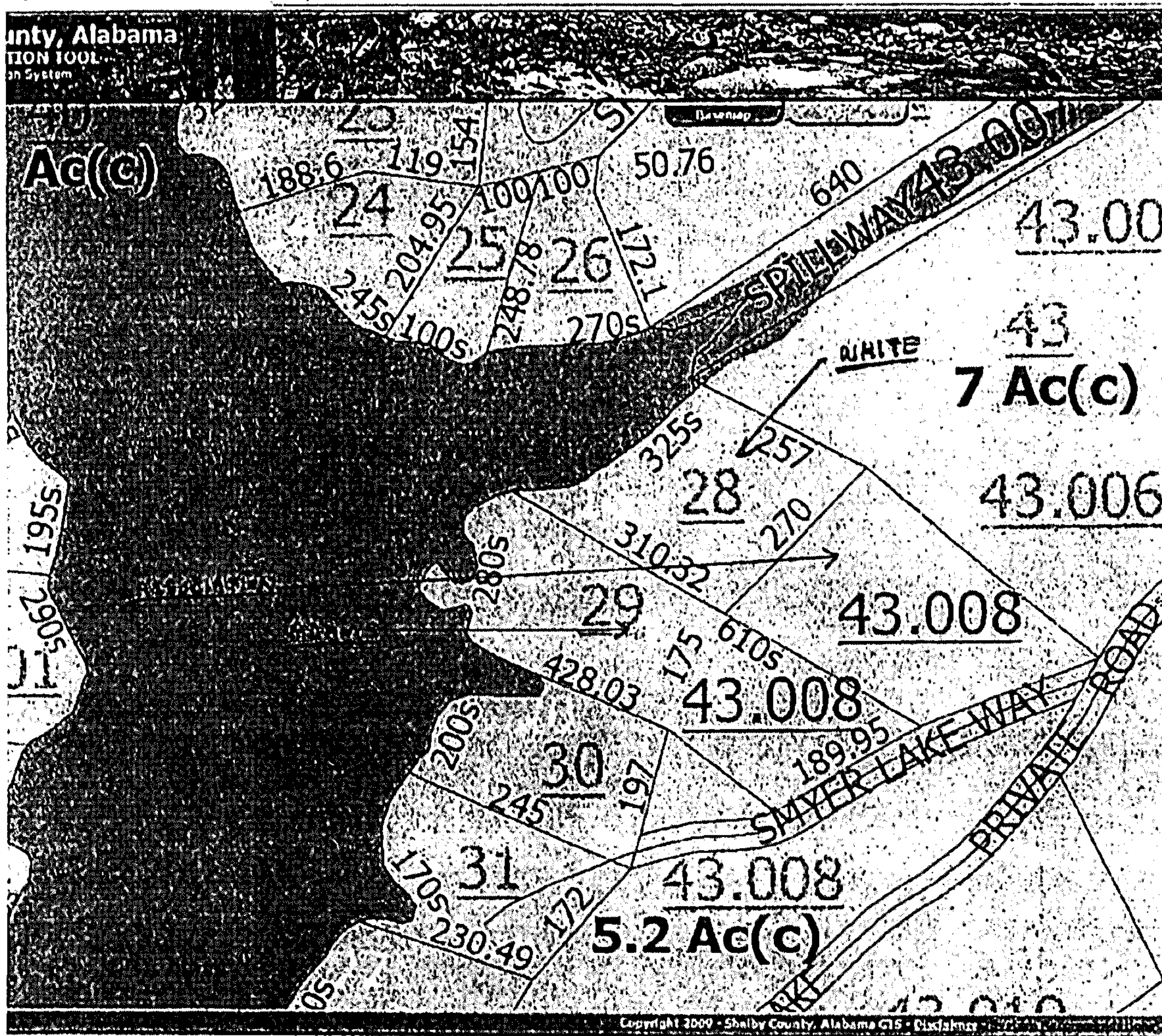
is not recorded, apparently, to Charles E Davis as I could not identify the parcels that way; however, we know the land is adjacent to Jack Adam's (e dot). See Parcel 28 which appears to consist of two lots - only one having lake frontage - this is the subject land. Adjacent Parcel 43 (7 ac) to property.

and Information Tool - Windows Internet Explorer provided by Mustang Engineering

lbyal.com/s

Tools Help

my, Alabama • Land Information Tool



but confidential information. Please notify the sender if you have received this email in error. If you are not the intended recipient, any use or disclosure of this email or any attached files is prohibited.

**20190129000030110 01/29/2019 01:32:46 PM ESMTAROW
14/17**

EXHIBIT B

**SURVEY
(attached hereto)**

15/17

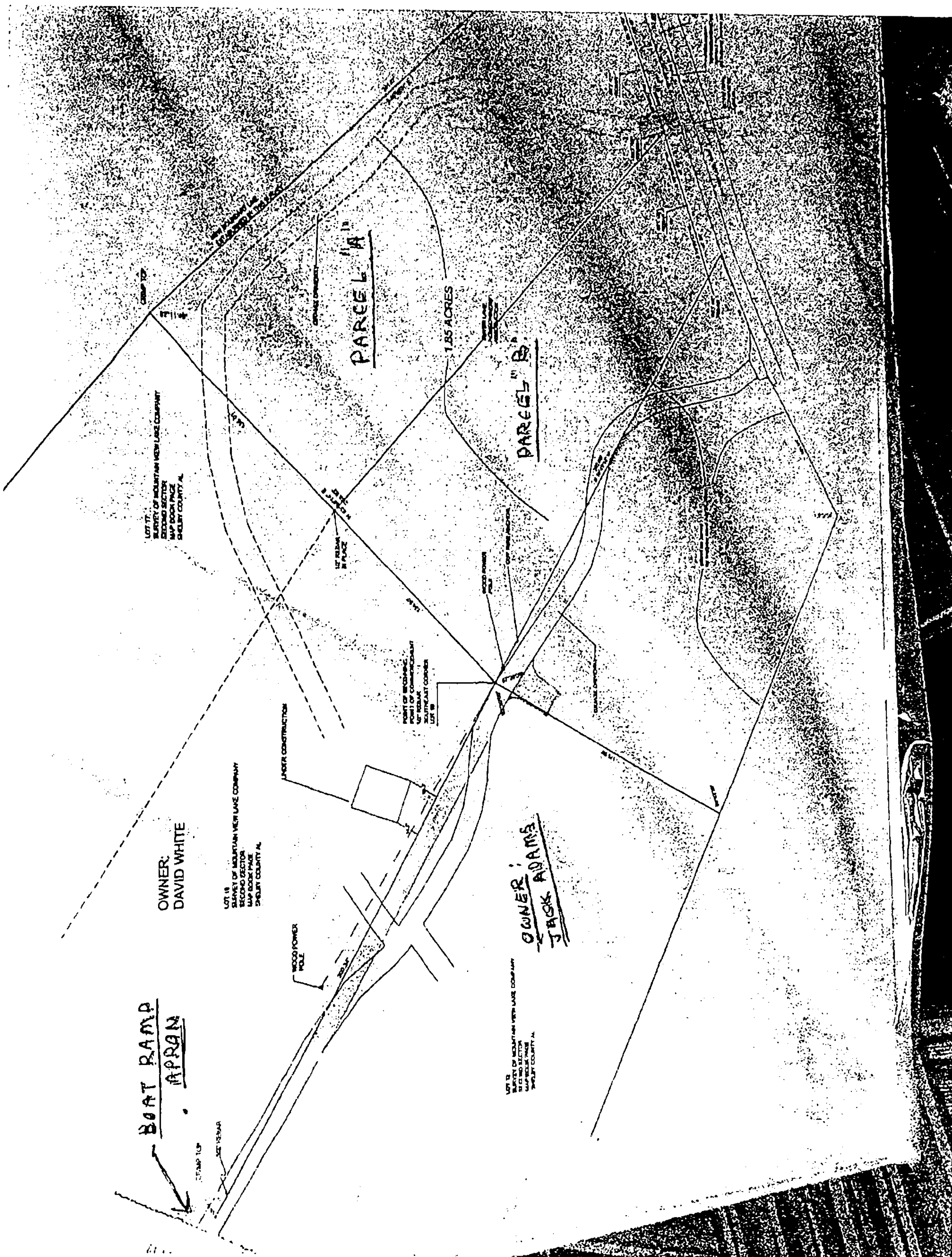


EXHIBIT B - Page 2

