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CIRCUIT & DISTRICT
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IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

**STEVAN K. GOOZEE and
CHRISTINE P. GOOZEE,**

Plaintiffs,

vs.

**M. EUGENE MOOR and
VERA AUKE MOOR,**

Defendants.

CIVIL ACTION NO.:

CV 2005-1023

**ORDER REGARDING GRANT OF, AND
CONDITIONS ASSOCIATED WITH, ACCESS EASEMENT**

On June 30, 2004, Stevan K. Goozee and his wife, Christine P. Goozee (collectively, the "Goozees"), filed an action in the Probate Court of Shelby County, Alabama, against M. Eugene Moor and his wife, Vera Aukes Moor (collectively, the "Moors"), under ALA. CODE § 18-3-1 for a private condemnation of a right-of-way for access across property owned by the Moors.

A decision was entered by the Honorable Patricia Fuhrmeister on September 12, 2005, determining that the Goozees had an alternative route of access and denying the Petition for Condemnation filed by the Goozees. The Goozees appealed to this Court from that decision.

The parties have announced to the Court that a basis for settlement has been reached. To effect that settlement, the Court is entering this Order to provide a limited easement for access by the Goozees and the terms and conditions thereof as follows:

Certified a true and correct copy
Date: 9.28.09
Mary H. Harris
Mary H. Harris, Circuit Clerk
Shelby County, Alabama

1. ***Luther Property.*** The Goozees are the owners of the following described real property situated in Shelby County, Alabama, *to-wit:*

Lots 1, 2 and 3 of the Goozee Property as recorded in Map Book 26, Page 17, in the Office of the Judge of Probate, Shelby County, Alabama, being a Resurvey of Lot 4D of a Resurvey of Lots 4c and 4d Saddle Creek Farms and Parcel C Survey of Luther Property recorded in Map Book 14 on Page 19 and Map Book 17 on Page 148 in the Office of the Judge of Probate, Shelby County, Alabama, situated in the SE ¼ of Section 22, Township 18 South, Range 1 West, Shelby County, Alabama

(hereinafter such property is called the "Luther Property").

2. ***Moor Property.*** Vera Aukes Moor is the owner of the following described real property situated in Shelby County, Alabama, *to-wit:*

Lot 4B of the Saddle Creek Farms (Final Survey) as recorded in Map Book 14, Page 5, in the Office of the Judge of Probate, Shelby County, Alabama.

And

Lot 3 of the Saddle Creek Farms (Final Survey) as recorded in Map Book 14, Page 5, in the Office of the Judge of Probate, Shelby County, Alabama. That parcel of land consisting of the NW ¼ of the SE ¼ of Section 22, Township 18 South, Range 1 West, Shelby County, Alabama, consisting of 40.6 acres more or less.

(hereinafter the above-described property is called the "Moor Property"). Defendant M. Eugene Moor has spousal rights in and to the Moor Property as it is part of the property used by the Moors as their principal residence.

3. ***Easement Area.*** Included within the Moor Property is the following described real property situated in Shelby County, Alabama, *to-wit:*



A. First Private Easement Area

A twenty (20) foot wide private access easement located in the NW ¼ of the SE ¼ of Section 22, Township 18 South, Range 1 West, Shelby County Alabama, said easement lying ten (10) feet on either side of and parallel to the following described centerline:

Commence at the SE corner of the NW ¼ of the SE ¼ of Section 22, Township 18 South, Range 1 West, Shelby County, Alabama, said point also being the NW corner of Lot 1 of the Goozee Property as recorded in Map Book 26, Page 17, and the SW corner of Lot 5C Saddle Creek Farms subdivision as recorded in Map Book 14, Page 5 A&B, both recorded in the Office of the Judge of Probate, Shelby County, Alabama, and run in a Westerly direction along the South line of the NW ¼ of the SE ¼ of said Section 22 S 87°22'51" W for a distance of 28.61 feet to the Point of Beginning of the existing centerline of an existing private access easement running along the following described centerline; thence run N 02°09'37" W along said centerline for a distance of 1144.03 feet to a point on a curve to the left having a central angle of 91°00'30", a radius of 160.00 feet and a chord that bears N 47°39'51" W for a distance of 228.26 feet; thence run along the arc of said curve for a distance of 254.14 feet; thence run S 86°49'53" W for a distance of 745.87 feet; thence run N 84°13'50" W for a distance of 245.21 feet to a point on the North line of the NW ¼ of the SE ¼ of said Section 22 and the end of said existing private access easement.

(hereinafter the above-described twenty (20) foot private access easement area is called the "First Private Easement Area").

(and)

B. Second Private Easement Area

A twenty (20) foot wide private access easement located in the SW ¼ of the SE ¼ of Section 22, Township 18 South, Range 1 West, Shelby County, Alabama, said easement lying ten (10) feet on either side of and parallel to the following described centerline:

Commence at the SE corner of the NW ¼ of the SE ¼ of Section 22, Township 18 South, Range 1 West, Shelby County, Alabama, said point also being the NW corner of Lot 1 of the Goozee Property as recorded in Map Book 26, Page 17, and the SW corner of Lot 5C Saddle Creek Farms subdivision as recorded in Map Book 14, Page 5 A&B, both recorded in the Office of the Judge of Probate, Shelby

County, Alabama, and run in a Westerly direction along the South line of the NW ¼ of the SE ¼ of said Section 22 S 87°22'51" W for a distance of 28.61 feet to the Point of Beginning of the existing centerline of an existing paved area and then running along the following described centerline; said Beginning Point being on a curve to the left having a central angle of 89°52'03", a radius of 26.50 feet and a chord that bears S 51°50'04" E for a distance of 37.43 feet; thence run along the arc of said curve for a distance of 41.56 feet to a point of intersection with the centerline of an existing driveway and the West line of said Lot 1 Goozee Property and the end of said private access easement.

(hereinafter the above-described area is called the "Second Private Easement Area") (collectively, the First Private Easement Area and the Second Private Easement Area are called the "Easement Area").

4. ***Grant of Private Access Easement.*** The Goozees are granted a nonexclusive right of access across the Easement Area (such right of access is hereinafter referred to as the "Private Access Easement") for ingress and egress in travelling to and from the Luther Property from and to the public road existing on the date hereof nearest or most convenient to the Luther Property.

5. ***Future Enlargement of First Private Easement Area.*** The First Private Easement Area described in Part A of Paragraph 3 is located inside the boundaries of what is depicted as a 60-foot wide private drive easement and designated "Saddle Creek Trail" on the drawing attached as Exhibit A, prepared by Robert J. Black, Jr., Registered Professional Land Surveyor, Alabama No. 17268, dated "May 2009" (SURVEYED: May 12, 2009; CERTIFIED: June 29, 2009) and (i) constitutes the area now actually used as a private drive by those legally entitled to the use thereof. If the area actually used as a private drive by those legally entitled to the use thereof is enlarged or widened, then the First Private Easement Area shall thereafter take into account and include the additional

area resulting from such enlargement or widening within the boundaries of Saddle Creek Trail (as depicted on Exhibit A). At no time shall the First Private Easement Area exceed the width of the area in actual use by those legally entitled to the use thereof without the prior written consent of the Moors or their successors or assigns. The Goozees have no right or entitlement to cause any enlargement or widening at any time of the First Private Easement Area or the Second Private Easement Area by any means whatsoever.

6. ***Special Covenants of Goozees.*** The Goozees covenant and agree:

(a) Not in any way to obstruct the Easement Area or otherwise take action that would in any way impair access to or usage of the Easement Area by others legally entitled to the use of the Easement Area.

(b) Not in any way interfere with the rights of access of the Moors and their tenants, guests and invitees to and from the Moor Property.

(c) Not deposit or throw on, nor cause to be placed on, the Easement Area any rubbish, trash or debris.

(d) Pay their proportionate share of the cost for the maintenance and upkeep of the Easement Area as required from time to time, and be bound by the obligations set forth in the instruments recorded at Real 056, Page 783; Real 068, Page 929; and Real 184, Page 484, in the Probate Office of Shelby County, Alabama.

(e) Repair all damage to the Easement Area caused by, or attributable to the actions of, the Goozees, their tenants, guests and invitees in their use of the Easement Area.

7. ***Safety Precautions.*** The Goozees recognize that the Easement Area is restricted in width to such an extent that someone driving on the Easement Area would have to proceed with caution, and drive slowly if not stop altogether, if there were an oncoming vehicle traveling in the opposite direction. The Goozees and their tenants, guests and invitees shall use the utmost caution, care and safety in their driving across the Easement Area.

8. ***Indemnification.*** Except for willful or wanton acts of the Moors, the Goozees hereby assume, shall be responsible for and shall defend, indemnify and save the Moors harmless from and against, any liability, loss, claim, suit, damage, charge or expense (including, without limitation, reasonable attorneys' fees) which the Moors may suffer, sustain, incur or in any way be subjected to, on account of (i) the Goozees' use of the Easement Area and (ii) the death of, or injury to, any person whomsoever and for damage to, or loss of or destruction of, any property whatsoever, arising out of, resulting from or in any way connected with the use of the Easement Area by the Goozees and their tenants, guests and invitees. The Goozees, for themselves and their heirs, successors, assigns, transferees, grantees, invitees, guests and tenants (i) assume all risk associated with the use of the Easement Area and (ii) waive any claims that any of them might have against the Moors now or hereafter relating to the use or condition of the Easement Area. The Goozees, and their successors, assigns, transferees and grantees, shall endeavor to maintain in force and effect, at their expense, with a coverage limit in a



reasonable amount, liability insurance that insures against bodily injury and property damage and contractual liability. It is intended that the insurance so obtained shall be primary and noncontributory.

9. ***Compliance with Laws.*** The Goozees shall comply with all laws and governmental regulations, ordinances, rules and requirements (the "Laws") in their usage of the Easement Area. If any use by the Goozees shall not be in compliance with the Laws, and such compliance is not corrected within thirty (30) days after notice to the Goozees, then the obligations of the Goozees hereunder may be specifically enforced through an action for specific performance to comply with the Laws in their usage of the Easement Area and the Goozees may be prohibited from usage of the Easement Area until such noncompliance is corrected.

10. ***Covenant Running with the Land.*** The Private Access Easement herein declared in favor of the Goozees for use of the Easement Area, and the obligations hereby imposed, shall be covenants running with the land and shall be appurtenances to the Luther Property.

11. ***Binding Effect.*** The terms hereof shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns and transferees, including, without limitation, each succeeding owner of the Moor Property and Luther Property. Accordingly, any provision hereof relating to the Moors shall apply to the Moors and to any subsequent owner or owners of record title from time to time of all or part of the Moor Property. Any provision hereof relating to the Goozees shall apply to



the Goozees, to any tenant of all or any part of the Luther Property and to any subsequent owner or owners of record from time to time of all or part of the Luther Property.

12. ***No Rights in General Public.*** The Private Access Easement, and the rights granted herein, shall not create any rights in favor of the general public or any party other than the Goozees.

13. ***Subdivision of Luther Property.*** The Luther Property has been subdivided into three lots. The deed by which the Goozees acquired title to the Luther Property contains a restriction that no more than four residential lots can be placed on the Luther Property. No further subdivision of the Luther Property from its existing three lots to four lots shall occur unless otherwise allowed by law and approved by the applicable governing authority having jurisdiction over such subdivision. If and to the extent the Goozees seek to further subdivide the Luther Property so it will consist of four lots, written notice of their application or petition shall be provided by the Goozees to the Moors of such action prior to submission to the applicable governing authority.

14. ***Sale of Lots.*** If the Goozees sell or transfer any lot comprising the Luther Property, then the purchaser or transferee shall be subject to, and shall be required to fully comply with, along with the other owners of the Luther Property, all of the provisions hereof, just the same as if an original party herein and any such purchaser or transferee shall be responsible for matters taking place from after the date of such transfer, but the seller of such property shall remain liable for any matter attributable to the period of ownership of such seller or transferor.

15. ***No Drainage or Erosion.*** Any construction of residences or of appurtenances thereto on the Luther Property shall not occur in a manner that will cause drainage onto, or erosion of, the Moor Property. Any party constructing a residence on the Luther Property shall prepare a drainage and erosion control plan and provide a copy to the Moors prior to the commencement of construction.

16. ***Recorded Plat Map Partially Superseded.*** Prior to 1999, the Luther Property had not been subdivided into three lots. In 1999, the Goozees had the Luther Property subdivided into three lots. The subdivision map is recorded in Map Book 26, Page 17, in the office of the Judge of Probate of Shelby County, Alabama (hereinafter called the "Goozee Subdivision Plat"). The Goozee Subdivision Plat is in error to the extent it indicates access is available from the Luther Property using any part of the Moor Property. Prior to entry of this Order, there was no legal access from the Luther Property using any part of the Moor Property. The Goozee Subdivision Plat is superseded by this Order to the extent the Goozee Subdivision Plat depicts or indicates access from the Luther Property using any part of the Moor Property. This Order governs all rights of access from the Luther Property and allows usage of the Easement Area subject to all terms, conditions and limitations of this Order.

17. ***Cumulative Remedies.*** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies available in law or equity and nothing contained herein shall limit any remedies available under Alabama law in any proceeding between the Goozees and the Moors.

18. ***Amendment.*** The terms and provisions hereof may be amended at any time, and from time to time, by an instrument in writing executed by the Goozees and the Moors without any approval of any kind whatsoever be required by the Court, it being specifically intended that the parties shall be entitled to modify the terms hereof by written consent as they may agree in writing from time to time.

19. ***Governing Law.*** The provisions hereof shall be governed by the laws of the state of Alabama.

20. ***Recording.*** The Goozees shall cause a copy of this Order to be recorded in the office of the Judge of Probate of Shelby County, Alabama.

21. ***Attorneys' Fees.*** Should either party employ an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach hereof, the non-prevailing party in any judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

22. ***Waiver.*** No provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of such waiver, modification, amendment, discharge or termination is sought and only to the extent set forth in such instrument.

23. ***Interpretation.*** As used herein, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires.

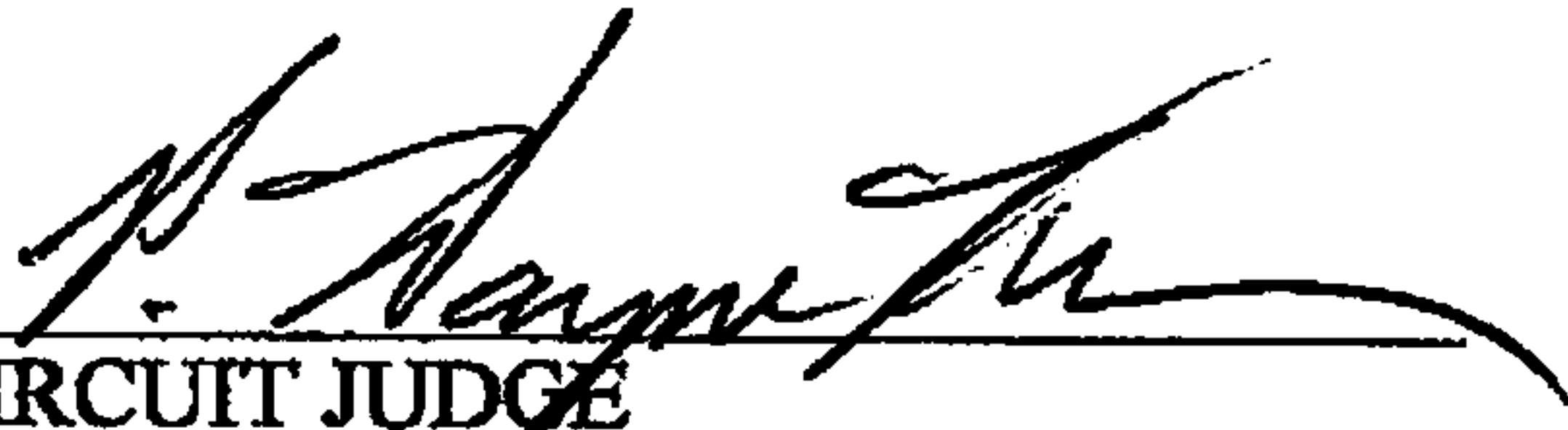
24. ***Abandonment.*** The rights of usage of the Private Access Easement by the Goozees, and the other provisions hereof, shall terminate and no longer be of any force and effect if the Easement Area is actually or constructively abandoned by the Goozees, including, but not limited to, any abandonment by nonuse.

25. ***Settlement Payment.*** The Goozees shall make payment to the Moors simultaneously with the entry of this Order of the amount agreed upon by the parties in the separate Settlement Agreement dated as of April 3, 2009.

The Shelby County Circuit Court Clerk is requested to send a copy of this order to the parties and/or counsel of record for the parties.

This case shall be dismissed, with prejudice, with costs taxed as paid.

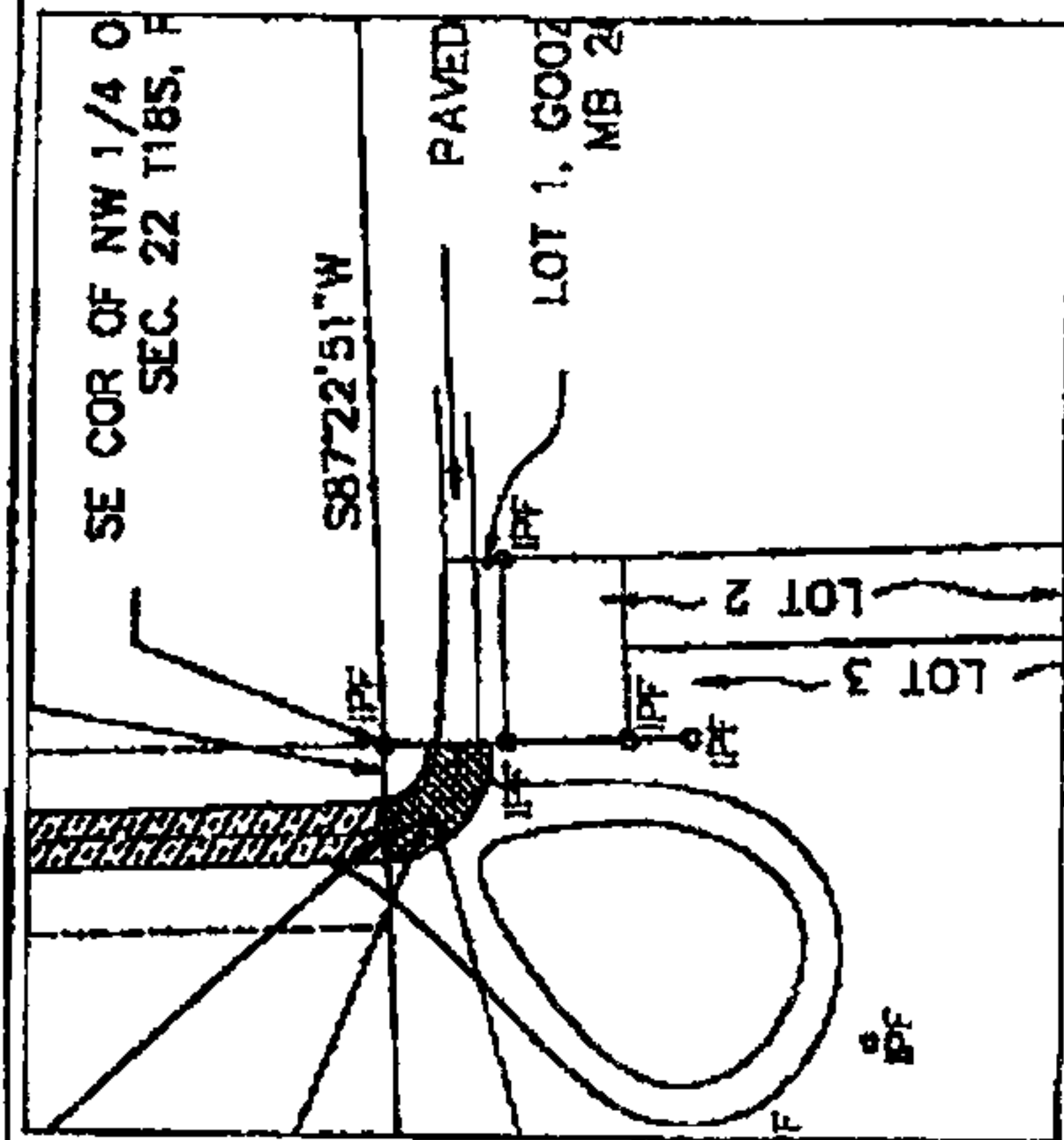
DONE and ORDERED this the 16th day of August, 2009.


CIRCUIT JUDGE

Notice To:

F. Gerald Burnett
Diane B. Maughan
Cabaniss, Johnston, Gardner,
Dumas & O'Neal LLP
2001 Park Place North, Suite 700
Birmingham, Alabama 35203
(Counsel for Defendants)

Thomas J. Skinner, IV
Law Offices of Thomas J. Skinner, IV, LLC
2700 Highway 280, Suite 245
Birmingham, Alabama 35223
(Counsel for Plaintiff)



INSERT "A"

Exhibit A

As shown on the attached map, the property described in the foregoing is situated in the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama. The property is bounded on the north by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama; on the south by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama; on the east by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama; and on the west by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama.

The property is bounded on the north by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama; on the south by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama; on the east by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama; and on the west by the SE 1/4 of the NW 1/4 of Section 22, Township 18 North, Range 14 East, 1st Meridian, Alabama.

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NEEL-SCHAFFER
13 South Main
Shelby, Alabama 36204
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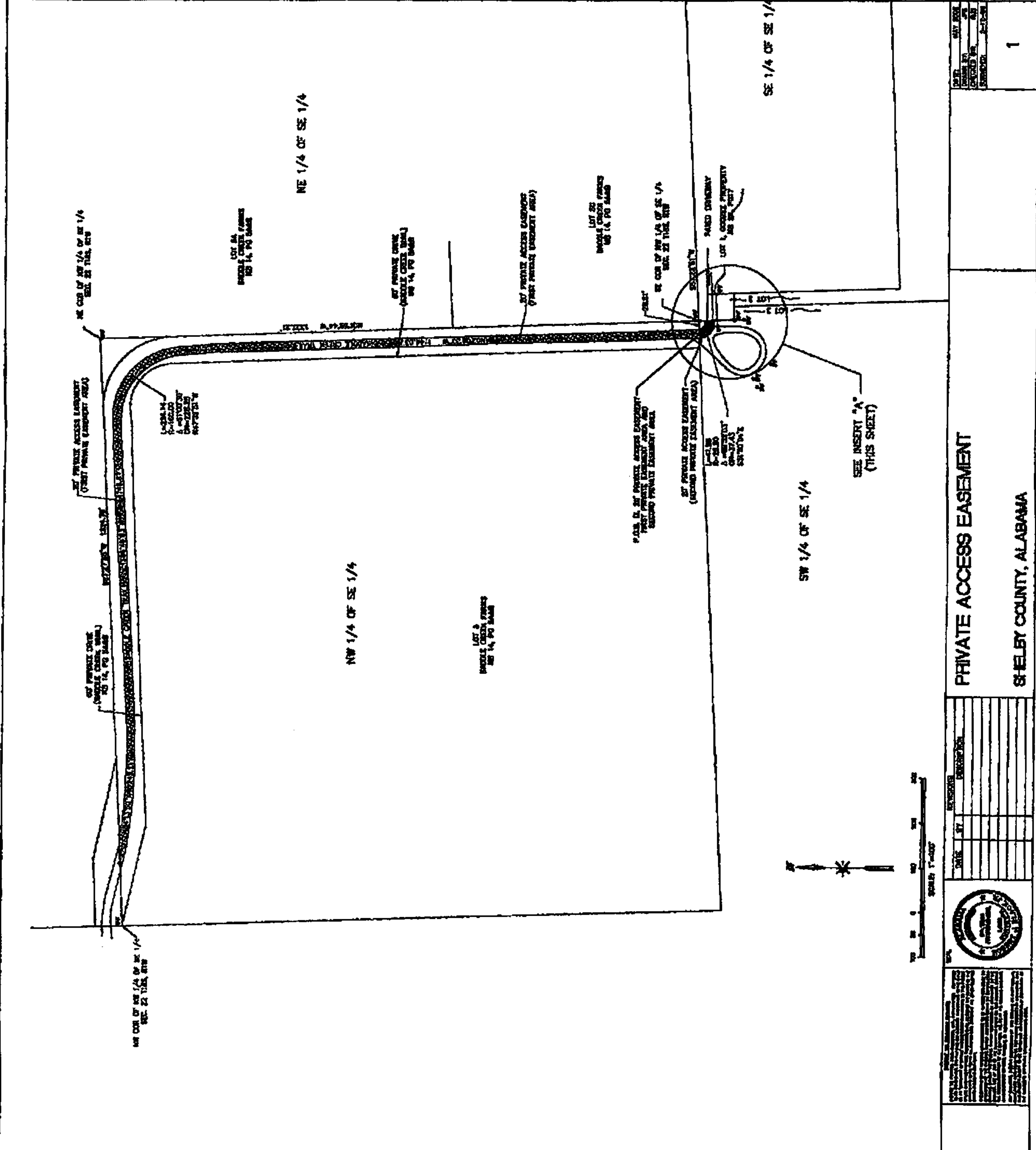
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