



**IN THE CIRCUIT COURT OF SHELBY COUNTY,**

**LARRY BRISTOW, et al.,**

**Plaintiffs.**

**v.**

**MICHELLE COOK, et al.,**

**Defendants.**

**Civil Action No. CV-2010-207**

**M & T MORTGAGE CORPORATION  
and M&T BANK**

**Third Party Plaintiffs,**

**v.**

**GE MONEY BANK**

**Third Party Defendant.**

**DECREE OF PERMANENT INJUNCTION AND DECLARATION OF RIGHTS  
OF THE DEFENDANTS AND THIRD PARTY DEFENDANT**

This action comes before the Court on the Plaintiffs complaint for permanent injunction against the Defendants and the Defendants, M & T Mortgage Corporation and M & T Bank, Third-Party Complaint against the Third-Party Defendant, GE Money Bank. The facts of the case are as follows:

**FACTS OF THE CASE**

1. The defendant, Michelle Cook a/k/a Michelle L. Phillips, was the grantee in a warranty deed dated the 12<sup>th</sup> day of August, 2004 for real estate located in the Southwest quarter of Section 17, Township 21, Range 1 East, Shelby County, Alabama as recorded in the Shelby County, Alabama, Judge of Probate, instrument number 20040901000489490, filed September 1, 2004 more particularly described in **Exhibit One** attached to this order.



2. Said warranty deed (**Exhibit One**) contains covenants and restrictions and restrictions on lake usage, three of which are as follows:

*2. There shall be no further division of lands herein described.*

*8. If any person shall violate or attempt to violate any of the covenants and restrictions contained herein, it shall be lawful for any person or persons owning any of the adjoining parcels to prosecute any proceedings at law or in equity, against the person or persons violating any such covenants and restrictions, and either to prevent him or them from doing or to recover damages for such violation. It being understood that this right extends not only to the present owners of said property, but also to any future property owners therein.*

*1. No Persons other than owners of property which touches the lake, or members of their household, may use the lake.*

3. The Plaintiffs are owners of parcels of land adjoining the land that the Defendant, Michelle Cook a/k/a Michelle L. Phillips, owns.

4. The Defendants, Michelle Cook, a/k/a Michelle L. Phillips, M & T Mortgage Corporation, M & T Bank, Paul Garris d/b/a Redemption Realty and the Third-Party Defendant, GE Money Bank have violated said covenants and restrictions and restrictions on lake usage listed in **Exhibit One** as follows:

a. The Defendant, Michelle Cook, divided the 32 acre parcel into three separate parcels, created additional interest in the lake, mortgaged 16 of 32 acres to Defendants, M& T Mortgage Corporation and M&T Bank, retained title to the remaining 16 acres and mortgaged the remaining 16 acres to the Third-Party Defendant, GE Money Bank all in violation of the covenants and restrictions and restrictions on lake usage in **Exhibit One** and in violation of the Subdivision Regulations of Shelby County, Alabama.

b. Defendants, M & T Mortgage Corporation and M&T Bank took a mortgage on 16 acres of the 32, foreclosed on 16 of the 32 acres, attempted to sell 16 of the 32 acres and created additional interest in the lake all in violation of said covenants and restrictions, restrictions on lake usage in





**Exhibit One** and in violation of the Subdivision Regulations of Shelby County Alabama.

c. The Defendant, Paul Garris, attempted to sell 16 acres on behalf of the Defendants, M&T Mortgage Corporation and M&T Bank, in violations of said covenants and restrictions, restriction on lake usage in **Exhibit One** and in violation of the Subdivision Regulations of Shelby County Alabama.

d. The Third Party Defendant, GE Money Bank, received a Mortgage on the remaining 16 acres all in violation of the said covenants and restrictions, restrictions on lake usage in **Exhibit One** and the Subdivision Regulations of Shelby County, Alabama. Said Defendant was served with the Third-Party Complaint and has failed to respond as required by law.

**DECLARATION OF THE RIGHTS OF THE DEFENDANTS AND**  
**JUDGMENT FOR THE PLAINTIFFS**

**IT IS HEREBY ORDERED** as follows:

1. Any title and interest the Defendants, Michelle Cook a/k/a Michelle L. Phillips and her spouse, Donny E. Phillips have in the parcel of land set out in **Exhibit One** is transferred to the Defendant, M&T Bank.
2. Any title and interest the Defendant, M&T Mortgage Corporation has in the parcel of land set out in **Exhibit One** is transferred to M&T Bank.
3. Judgment by Default is entered against the Third-Party Defendant, GE Money Bank. The mortgage of the Defendant, Michelle Cook a/k/a Michelle L. Phillips to the Third-Party Defendant, GE Money Bank, is null and void.
4. All of the title and interest in said real estate in **Exhibit One**, both legal and equitable, are vested solely in the Defendant, M&T Bank.



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Shelby Cnty Judge of Probate, AL  
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5. The Defendants and Third-Party Defendant are permanently enjoined from selling or mortgaging the said property set out in **Exhibit One** in violation of the covenants and restrictions, restrictions on lake usage set out in **Exhibit One** and from violating the Subdivision Regulations of Shelby County, Alabama. Said parties are further permanently enjoined from granting title to said property that transfers less than the whole 32 acres in **Exhibit One** to a grantee(s) and/or in any form that creates a division of said property. The Defendants and Third-Party Defendant are further permanently enjoined from granting title to said property to a grantee(s) without inclusion in the instrument of transfer that said property is subject to the covenants and restrictions and restrictions on lake usage of record set out in **Exhibit One** as recorded in the Office of the Judge of Probate of Shelby County, Alabama, instrument number 20040901000489490. This decree is not intended to enlarge the enforceability or duration of the covenants beyond their enforceability and duration under law and equity.

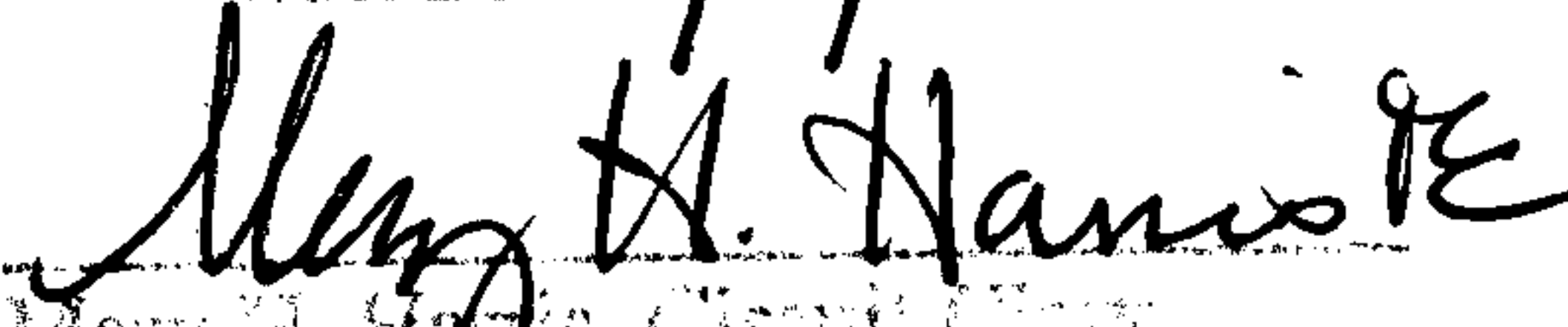
6. The Defendant, M&T Bank, may record this order and it shall be evidence of grants from the other Defendants and the Third-Party Defendant of any and all title, both legal and equitable, they have to Defendant, M&T Bank, as set out above.

Costs of court are taxed as paid.

DONE this the 30<sup>th</sup> day of July, 2010.

  
Hewitt L. Conwill  
Circuit Judge

Certified a true and correct copy  
Date: 9/1/10

  
Mary H. Harris, Circuit Clerk  
Shelby County, Alabama



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# EXHIBIT ONE

20040801000489480 Pg 1/4 191.50  
Shelby Cnty Judge of Probate, AL  
09/01/2004 10:44:00 FILED/CERTIFIED

This instrument was prepared by:

Grantees' address:  
145 Southern Hills Circle  
Calera, AL 35040

William R. Justice  
P.O. Box 1144 Columbiana, Alabama 35051

I certify this to be a true and  
correct copy. *[Signature]*  
04/23/2010 Probate Judge  
Hpg KM Shelby County

## WARRANTY DEED

STATE OF ALABAMA

SHELBY COUNTY KNOW ALL MEN BY THESE PRESENTS,

That in consideration of Two Hundred Twelve Thousand Sixty and no/100 DOLLARS (\$212,060.00) to the undersigned GRANTOR in hand paid by the GRANTEE herein, the receipt whereof is acknowledged, the undersigned Carolyn Edith Yawn Mann, married, and Margie Lynn Driver Yawn, as Trustee for Thomas Ray Yawn, Hollie Elizabeth Yawn, and Jessica Lynn Yawn under the will of Robert Hollis Yawn, deceased (herein referred to as GRANTOR, whether one or more) do grant, bargain, sell and convey unto Michelle Cook (herein referred to as GRANTEES) the following described real estate situated in SHELBY County, Alabama to-wit:

See attached Exhibit A for legal description

Subject to easements, rights of way, and reservations of mineral and mining rights of record. Subject to covenants and restrictions set out on attached Exhibit B.

The above described property does not constitute any part of the homestead of GRANTOR or GRANTOR'S spouse, if any.

\$48,000.00 of the consideration stated above was paid by a purchase money mortgage executed simultaneously herewith.

TO HAVE AND TO HOLD to the said GRANTEE and her heirs and assigns in fee simple forever.

And GRANTOR does for GRANTOR and for GRANTOR'S heirs, executors, and administrators covenant with the said GRANTEE, her heirs, and assigns, that GRANTOR is lawfully seized in fee simple of said premises; that they are free from all encumbrances unless otherwise noted above; that GRANTOR has a good right to sell and convey the same as aforesaid; that GRANTOR will and GRANTOR'S heirs, executors, and administrators shall warrant and defend the same to the said GRANTEE, her heirs, and assigns forever, against the lawful claims of all

*35c / Real Est*

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**EXHIBIT ONE**

persons.

IN WITNESS WHEREOF, GRANTOR has hereunto set GRANTOR'S hand and seal, this

27<sup>th</sup> day of August, 2004.

*Wilbur Campbell*

Witness to Carolyn Edith Yawn Mann  
Witness printed name: Wilbur Campbell

*Flourene Patnode*

Witness to Carolyn Edith Yawn Mann  
Witness printed name: Flourene Patnode

*Margie Lynn Driver Yawn*

Margie Lynn Driver Yawn, as Trustee for  
Thomas Ray Yawn under the Will of Robert  
Hollis Yawn, deceased

*Carolyn Edith Yawn Mann*  
Carolyn Edith Yawn Mann

*Margie Lynn Driver Yawn*

Margie Lynn Driver Yawn, as Trustee for  
Hollie Elizabeth Yawn under the Will of  
Robert Hollis Yawn, deceased

*Margie Lynn Driver Yawn*

Margie Lynn Driver Yawn, as Trustee for  
Jessica Lynn Yawn under the Will of Robert  
Hollis Yawn, deceased

STATE OF FLORIDA

BAY

COUNTY

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August, 2004, by  
Carolyn Edith Yawn Mann, married, who is personally known to me or who has produced \_\_\_\_\_  
as identification.



Rosemarie Matteson  
My Commission DD133588  
Expires August 08, 2008

*Rosemarie Matteson*  
Notary public  
Notary printed name ROSEMARIE MATTESON

My commission expires:

8/9/06

STATE OF ALABAMA  
COUNTY OF SHELBY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that  
Margie Lynn Driver Yawn, whose name as Trustee for Thomas Ray Yawn, Hollie Elizabeth Yawn,  
and Jessica Lynn Yawn, under the will of Robert Hollis Yawn, deceased, is signed to the foregoing  
conveyance, and who is known to me, acknowledged before me on this day that, being informed of  
the contents of the conveyance, she, in her capacity as such Trustee, executed the same voluntarily  
on the day the same bears date.

Given under my hand and official seal, this the 27<sup>th</sup> day of August, 2004.

*William R. Jentz*  
Notary Public




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## EXHIBIT ONE

A parcel of land situated in the Southwest quarter of Section 17, Township 21 South, Range 1 East, Shelby County, Alabama, being more particularly described as follows:

Begin at a 3/8 inch rebar found locally accepted to be the Northwest corner of the Northwest quarter of the Southwest quarter of said Section 17; thence run East along the North line of said quarter-quarter Section for a distance of 1,328.66 feet to a 3/8 inch rebar found locally accepted to be the Northwest corner of the Northeast quarter of the Southwest quarter of said Section 17; thence turn an angle to the left of 00 degrees, 24 minutes, 00 seconds and run in an Easterly direction along the North line of said quarter-quarter Section for a distance of 379.11 feet to an iron pin found; thence turn an angle to the right of 78 degrees, 32 minutes, 39 seconds and run in a Southeasterly direction for a distance of 348.82 feet to a point; thence turn an angle to the right of 09 degrees, 51 minutes, 31 seconds and run in a Southerly direction for a distance of 579.65 feet to a point; thence turn an angle to the right of 74 degrees, 51 minutes, 24 seconds and run in a Southwesterly direction for a distance of 467.66 feet to a point; thence turn an angle to the right of 14 degrees, 19 minutes, 34 seconds and run in a Westerly direction for a distance of 370.88 feet to a point; thence turn an angle to the right of 91 degrees, 43 minutes, 28 seconds and run in a Northerly direction for a distance of 200.00 feet to a point; thence turn an angle to the left of 51 degrees, 52 minutes, 17 seconds and run in a Northwesterly direction for a distance of 629.30 feet to a point; thence turn an angle to the left of 38 degrees, 07 minutes, 43 seconds and run in a Westerly direction for a distance 466.68 feet to an iron pin set on the West line of said Section 17; thence turn an angle to the right of 90 degrees, 00 minutes, 00 seconds and run in a Northerly direction along said East line for a distance of 504.00 feet to the point of beginning; said parcel of land containing 32.01 acres, more or less.

  
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# **EXHIBIT ONE**

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## **EXHIBIT B**

### **COVENANTS & RESTRICTIONS**

1. Minimum building set back line shall be no less than 100 feet from any property line.
2. There shall be no further division of lands herein described.
3. It shall be the responsibility of each owner to prevent the occurrence of any unclean, unsightly refuse or garbage on the described parcels.
4. No one story dwelling house of less than 2000 square feet of heated area, exclusive of porches, carports, basements and decks or terraces and no one and one-half or two story dwellings having less than 2600 square feet of heated area shall be erected on any parcel.
5. No detached outbuilding, storage building or garage shall be erected closer to the street than the front of the dwelling, except that a barn may be erected on the Alston Farm Road side of the dwelling so as not to be located between the dwelling and the lake.
6. No trailers, temporary buildings, garages or other buildings shall be built and used for residence purposes prior to the completion of a dwelling on said lots. All residences shall be site-built homes. No mobile homes, modular homes or manufactured homes are allowed.
7. No unused or inoperable vehicles or water craft shall be stored on the property unless stored in a garage or outbuilding.
8. If any person shall violate or attempt to violate any of the covenants and restrictions contained herein, it shall be lawful for any person or persons owning any of the adjoining parcels to prosecute any proceedings at law or in equity, against the person or persons violating any such covenants and restrictions, and either to prevent him or them from doing or to recover damages for such violation. It being understood that this right extends not only to the present owners of said property, but also to any future property owners therein.
9. Property shall be used for residential purposes only. No commercial uses are permitted.

### **RESTRICTIONS ON LAKE USAGE**

1. No persons other than owners of property which touches the lake, or members of their household, may use the lake.
2. No mechanically-powered devices, including but not limited to gasoline powered motors, personal watercraft, and jetskis, may be used on the lake. Canoes and johnboats are permitted. No vessels longer than 16 feet are permitted.
3. No irrigation systems or similar equipment may pump water from the lake.
4. No boathouses or other structures may be built which project into the lake, other than a pier or walk which may project no more than three (3) feet into the lake and which are no larger than 60 square feet in surface area per lot. No other above-ground structure may be placed closer than 100 feet to the shore of the lake without specific written approval of the majority of the property owners entitle to use the lake..
5. Maintenance of the lake shall be shared by owners of property adjoining the lake. They shall contribute ratably to the cost of any materials and labor used in the repair and maintenance of the lake and structures associated therewith.



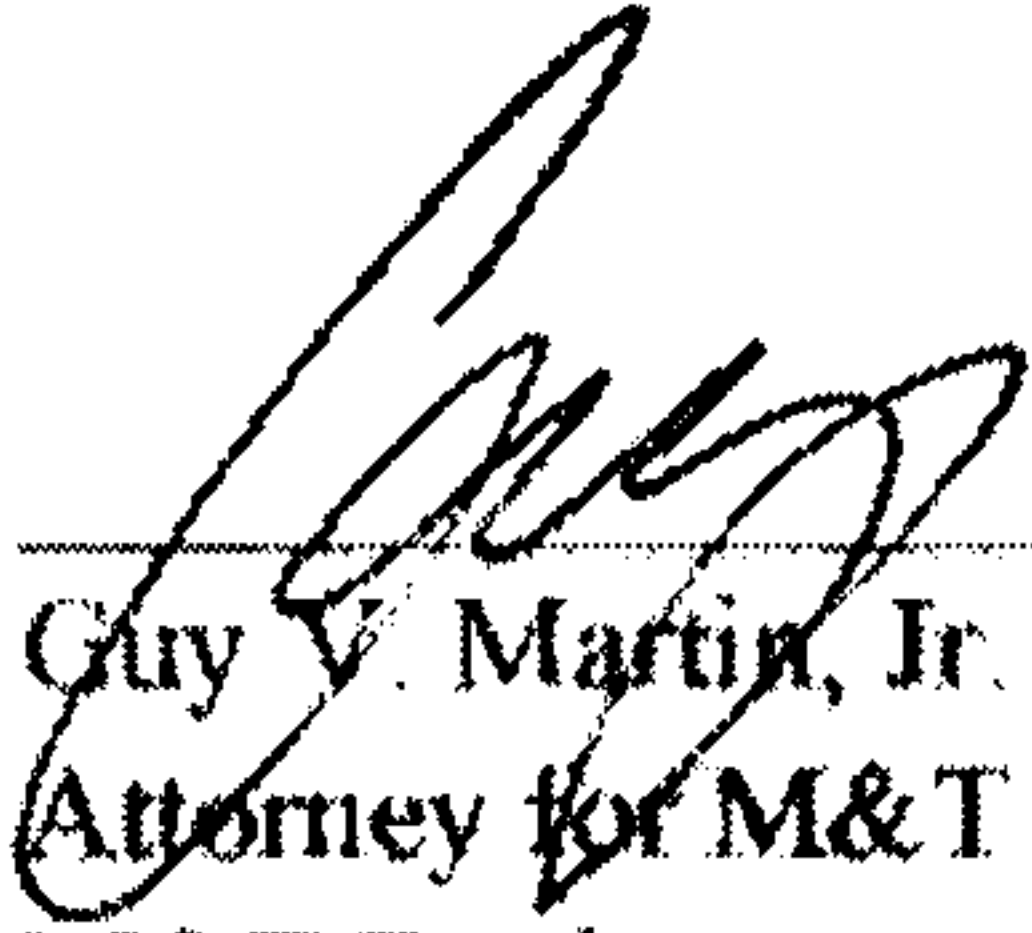
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We the undersigned agree to the foregoing DECREE OF PERMANENT INJUNCTION  
AND DECLARATION OF RIGHTS OF THE DEFENDANTS AND THIRD-PARTY  
DEFENDANT:



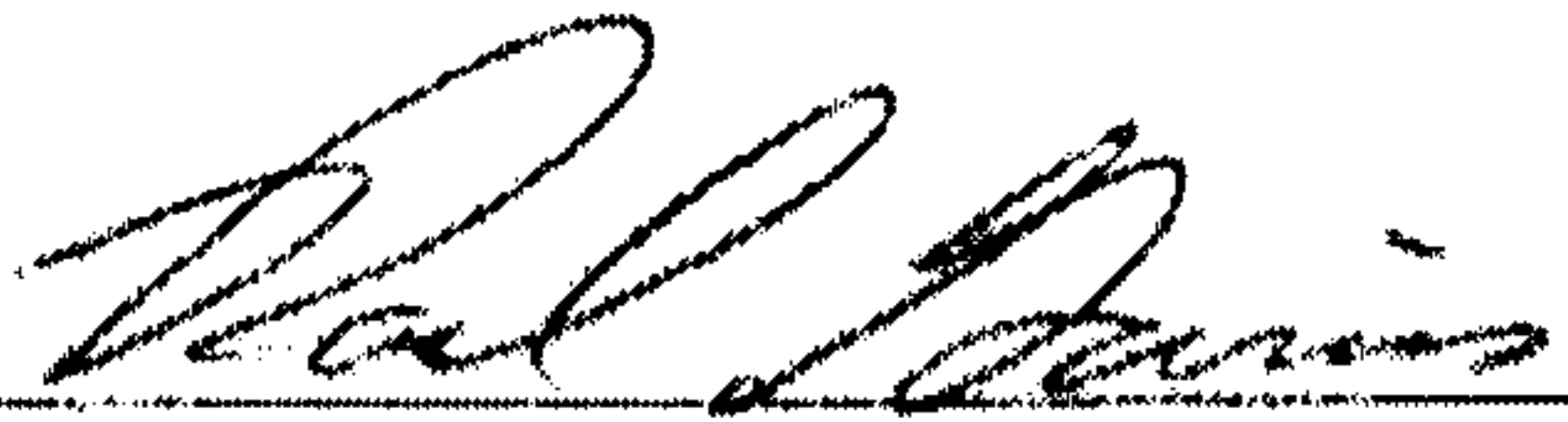
P. Wayne Thorn  
Attorney for Plaintiffs



Guy V. Martin, Jr.  
Attorney for M&T Mortgage Corporation and  
M&T Bank



Barry Alvis  
Attorney for Michelle Cook a/k/a Michelle L.  
Phillips and spouse, Donny E. Phillips



Paul Garriss d/b/a Redemption Realty



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