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Shelby Cnty Judge of Probate: AL
10/26/2015 09:19:46 AM FILED/CERT

MEMORANDUM OF AGREEMENT (DRIVE ENCROACHMENT)

AGREEMENT (“**Agreement**”) entered into as of the 20 day of October, 2015, between, **HENRIETTA W. DAVIS**, an Alabama resident (“**Davis**”), **JOHN E. ADAMS**, an Alabama resident (“**Adams**”), and **SMYER LAKE HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation (the “**Association**”).

RECITALS

Davis is the owner of Lot 18, according to the map and survey of Mountain View Lake Company, Second Sector, as recorded in Map Book 3, Page 150, in the Office of the Judge of Probate of Shelby County, Alabama (the “**Davis Lot**” and the “**Plat**”, respectively), and

Adams is the owner of Lot 19 according to the Plat, which adjoins the Davis Lot, as well as a parcel of land lying between his Lot 19 and Smyer Lake Way as described and shown in a survey prepared by Weygand Surveyors dated July 23, 1998, partial copies of which are attached to this Agreement as Exhibit “A” (the “**Adams Property**” and the “**Survey**”, respectively); and

The Association is the owner of a parcel of land which adjoins both the Davis and Adams Properties to the north and east, which lies between the Davis Lot and Smyer Lake Way (the “**Association Property**”); and

The predecessor in title to the Adams Property constructed a gravel driveway connecting Adam’s Lot 19 and Smyer Lake Way (the “**Adams’ Drive**”), portions of which extend onto both the Davis Lot and the Association Property, which are identified as the “**Encroachment Areas**” on the Survey; and

Davis and the Association entered into an Easement Agreement recorded at Book 298, Page 839 in the Probate Office of Shelby County, Alabama (the “**Davis Easement**”) which provided for a right for Davis to connect his Lot 18 with Smyer Lake Way for access purposes, and contained a “**Relocation Option**” in favor of the Association to have Davis relocate the “**Proposed Stone Drive**” made on Exhibit “C” to the Davis Easement to an alternative location over the Association Property approved by the Association; and

Davis has not yet constructed a permanent access drive over the Proposed Stone Drive described in the Easement, and Davis would like to enter into an agreement with Adams to permit him to instead use that portion of the Adams’ Drive which lies between Smyer Lake Way and the point where it abuts the southwest corner of his Lot 18 marked on the Survey as an “old rebar” at “Elevation 743.55” (the “**End Point**”) for his access;

Adams would like to secure the agreement of both Davis and the Association to the continued use of the portions of the Adams’ Drive which lie within the Encroachment Areas, and would be willing to enter into a joint driveway use agreement with Davis as to the portion of his



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Drive lying between Smyer Lake Way and the End Point (the “**Joint Drive Segment**”), upon the terms provided for in this Agreement; and

The Association would like to amend the Davis Easement to remove the current description of the location of Davis’ “Proposed Stone Drive” in Exhibit “C” of the Easement to an alternative “**Relocation Easement**” location to minimize its interference with any potential future use of the Association Property, effective upon the execution of this Agreement by all parties;

NOW, THEREFORE, the premises considered, and for good and valuable consideration to each of the parties to this Agreement, the receipt of which is acknowledged, the parties do agree as follows:

1. **Joint Drive Segment Use.** Subject to the terms and conditions herein, Adams and Davis agree that Davis shall have the right to use the Joint Drive Segment in order to provide access, both ingress and egress, to and from his Lot 18 and Smyer Lake Way (the “**Drive Use Right**”), subject to the following terms and conditions:

(a) **Location and Use.** The Drive Use Right shall provide the necessary connectivity between Davis’ Lot 18 and Smyer Lake Way over the Joint Drive Segment in order to serve Davis’ Lot 18 and any residential structure built on Lot 18 by the construction of a continuation drive from the End Point located wholly within Lot 18.

(b) **No Title Interest.**

(i) **Adams.** Adams stipulates and agrees that she has not acquired any title interest or claim with respect to any portions of either the Davis Lot or the Association Property by virtue of the construction or use of the Adams’ Drive by him or his predecessors in title.

(ii) **Davis.** Davis covenants and agrees that he will not obtain or come to own any title interest or claim with respect to any portion of the Adams’ Property by virtue of any construction or use by her of the Joint Drive Segment pursuant to this Agreement.

(iii) **Adams and Davis.** Both Adams and Davis covenant and agree that neither of them will obtain or come to own any portion of the Association Property by virtue of any reconstruction or use by either of them of the Adams’ Drive, or any relocation thereof, whether pursuant to the terms of this Agreement or otherwise, and that any current or future use by either of them of the Adams’ Drive or any extension or relocation thereof shall only be allowed pursuant to the terms of this Agreement.

(c) **Terms and Conditions.** The joint use by Adams and Davis of the Joint Drive Segment shall be upon the following terms and conditions:

(i) **Expenses.** Adams and Davis shall share equally in all expenses related to the maintenance and repair of the Joint Drive Segment of the Adams’ Drive. Adams



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shall have the responsibility and authority to make determinations as to any needed repairs and maintenance of the Adams' Drive, and to enter necessary contracts for that purpose, and will submit an itemized statement to Davis for one-half of the portion of any such expenses attributable to the Joint Use Segment, which shall be payable by Davis within thirty days of receipt.

(ii) Relocation Option. Adams shall have the right to relocate the Adams' Drive, provided that (1) he bears all related expenses, (2) other than the removal of any portion of the Drive lying within the Association Property, the relocated drive and related construction operations shall not affect the Association Property, (3) the new location would continue to allow Davis access to Adams' Drive (or some portion thereof) at the current End Point of the existing drive, or at some other mutually acceptable location, and (4) Adams would agree to indemnify the Association and/or Davis with respect to any claims, damages or liability arising out of any related construction operations conducted upon the Davis or the Association properties.

(iii) Mutual Indemnity. Davis and Adams each agree to indemnify and hold the Association and the other harmless against any loss, claim, liability, damages or expense, including reasonable attorneys' fees and costs, arising out of or pertaining to the use of any portion of the Adams' Drive by them or their respective guests, contractors and invitees.

2. Easement Amendment. As a condition to the execution of this Agreement, Davis and the Association agree to execute and record an amendment to the Easement Agreement to relocate the Proposed Stone Drive from the approximate location reflected on Exhibit "C" to an alternative location extending from the point on the Association Property adjacent to the End Point and running generally parallel to the common property line separating the Association and the Adams Property to Smyer Lake Way.

3. Covenants Run With Termination; Land. Insofar as the Encroachment upon the Association Property is concerned, the terms of this Agreement shall remain in effect as to those Encroachment Areas that affect the Association Property as long as the Adams' Drive exists in its present location to serve either or both of the Adams' Property and/or Davis Lot. All other provisions of this Agreement represent shall constitute covenants running with the Land, and shall be binding upon and inure to the benefit of the parties to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]



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EXECUTED BY ALL PARTIES AS OF THE DATE FIRST ABOVE WRITTEN.

**SMYER LAKE HOMEOWNERS'
ASSOCIATION, INC.**

By: 
Name: PAUL D. STIVENDER
Its: BOARD PRESIDENT

DAVIS:

Henrietta S. Davis

ADAMS:

John Ellis Adams, Jr.

STATE OF ALABAMA)

COUNTY OF Jefferson)

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I, the undersigned Notary Public in and for said County, in said State, hereby certify that Paul D. Stivender, whose name as Board President of the **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/she, as an officer of the Smyer Lake Homeowners' Association, Inc., and with full authority, executed the same voluntarily for and as the act of said nonprofit corporation on the day the same bears date.

Given under my hand and official seal, this 20th day of October, 2015.

Donna McDaniel
Notary Public

[AFFIX SEAL]

My Commission Expires:

Donna McDaniel
My Commission Expires
September 25, 2018

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that **Henrietta S. Davis**, 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 _____ day of _____, 2015.

Notary Public

My Commission Expires: _____



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STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that **John Ellis Adams, 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 _____ day of _____, 2015.

Notary Public
My Commission Expires: _____