

20190129000030100
01/29/2019 01:32:45 PM
AGREEMNT 1/15

Instrument Prepared By:

Jerome K. Lanning, Esq.

Butler Snow LLP

1819 Fifth Avenue North, Suite 1000

Birmingham, Alabama 35203

NOVATION AGREEMENT

THIS NOVATION AGREEMENT (“Agreement”) entered into by **DAVID D. WHITE**, an Alabama resident (“White”), **JOHN E. ADAMS**, an Alabama resident, and **SMYER LAKE HOMEOWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation (the “Association”) (the “parties”, or each a “party”).

RECITALS

The parties entered into a Memorandum of Agreement dated as of May 11, 2018, a copy of which is attached hereto as Exhibit “A” and is incorporated herein by reference (the “MOA”, which contains certain defined terms used herein); and

The MOA addresses certain real estate transactions among the parties which have now been closed or consummated (the “MOA transactions”); and

The MOA transactions have superceded, replaced or rendered moot certain previous transactions or agreements among the parties or their predecessors in title involving the real property described as follows:

- (a) The “Driveway Easement”. This was an access easement granted by the Association to Linda Swalley (“Swalley”), a predecessor in title to White, pursuant to an Easement Agreement dated September 13, 2009, and recorded as Instrument No. 20090917000355130, in the Probate Office of Shelby County, Alabama, over property owned by the Association lying between property owned by Swalley and Smyer Lake Way (the “**Driveway Easement**”) which has been terminated by merger of title; and
- (b) A “Joint Driveway Use Agreement”. This was an unrecorded agreement between the parties executed dated in separate counterparts in March and April of 2016, which has been superceded in its entirety by closing of the MOA transactions (the “Joint Driveway Agreement”), and
- (c) A “Memorandum of Agreement (Drive Encroachment)” dated in October of 2015, between Henrietta W. Davis (“Davis”), a predecessor in title to White, Adams and the Association, which was executed by those parties, copies of which were recorded October 26, 2015, in the Probate office of Shelby County, Alabama, as Instruments No. 220151026000371340, 20151026000371350, and 20151026000371360, which

has also been superceded in its entirety by the closing of the MOA transaction (the "Drive Encroachment Agreement"); and

The parties desire to execute this Agreement to evidence the fact that the Driveway Easement has been terminated by the acquisition by White of both (a) the interests of Swalley and Davis as "Grantees" of the easement interest under the Driveway Easement, and (b) the fee interest of the Association, as the "Grantor" under the Driveway Easement, pursuant to the closing of the MOA transactions; and

The parties desire to execute this Agreement to further evidence the fact that the Joint Driveway Agreement and the Drive Encroachment Agreement have been superceded and replaced by the closing and consumation of the MOA Transactions.

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


1. Driveway Easement. The parties hereby stipulate and agree that the Driveway Easement has been terminated by merger of title as a result of the acquisition by White of the entire fee and easement interests of the Grantor and Grantee thereunder.

2. Joint Driveway Agreement. The parties further stipulate and agree the Joint Driveway Agreement and the Drive Encroachment Agreement have been superceded and replaced in their entirety by the closing and consumation of the MOA Transactions and have been rendered void in their entirety.

[SIGNATURES ON FOLLOWING PAGES]

[Signature page of Novation Agreement]

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

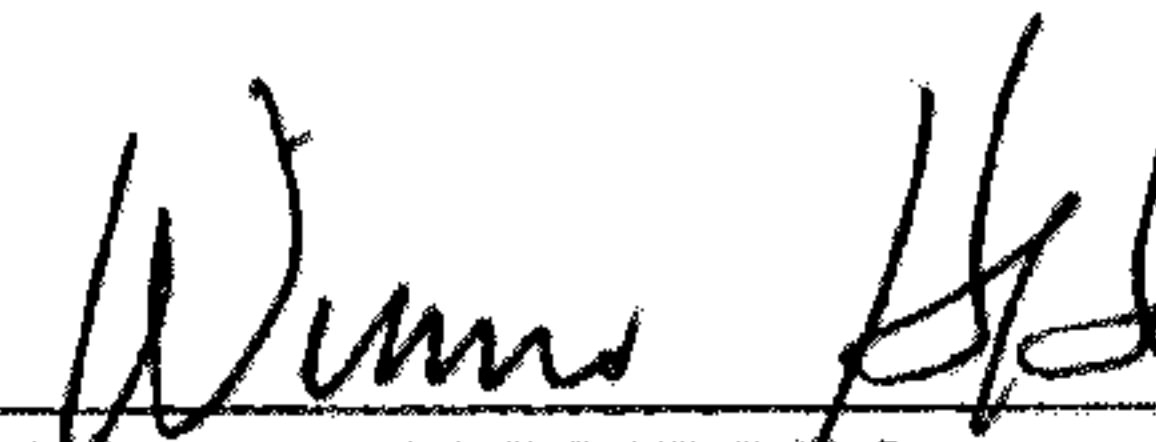


DAVID D. WHITE

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

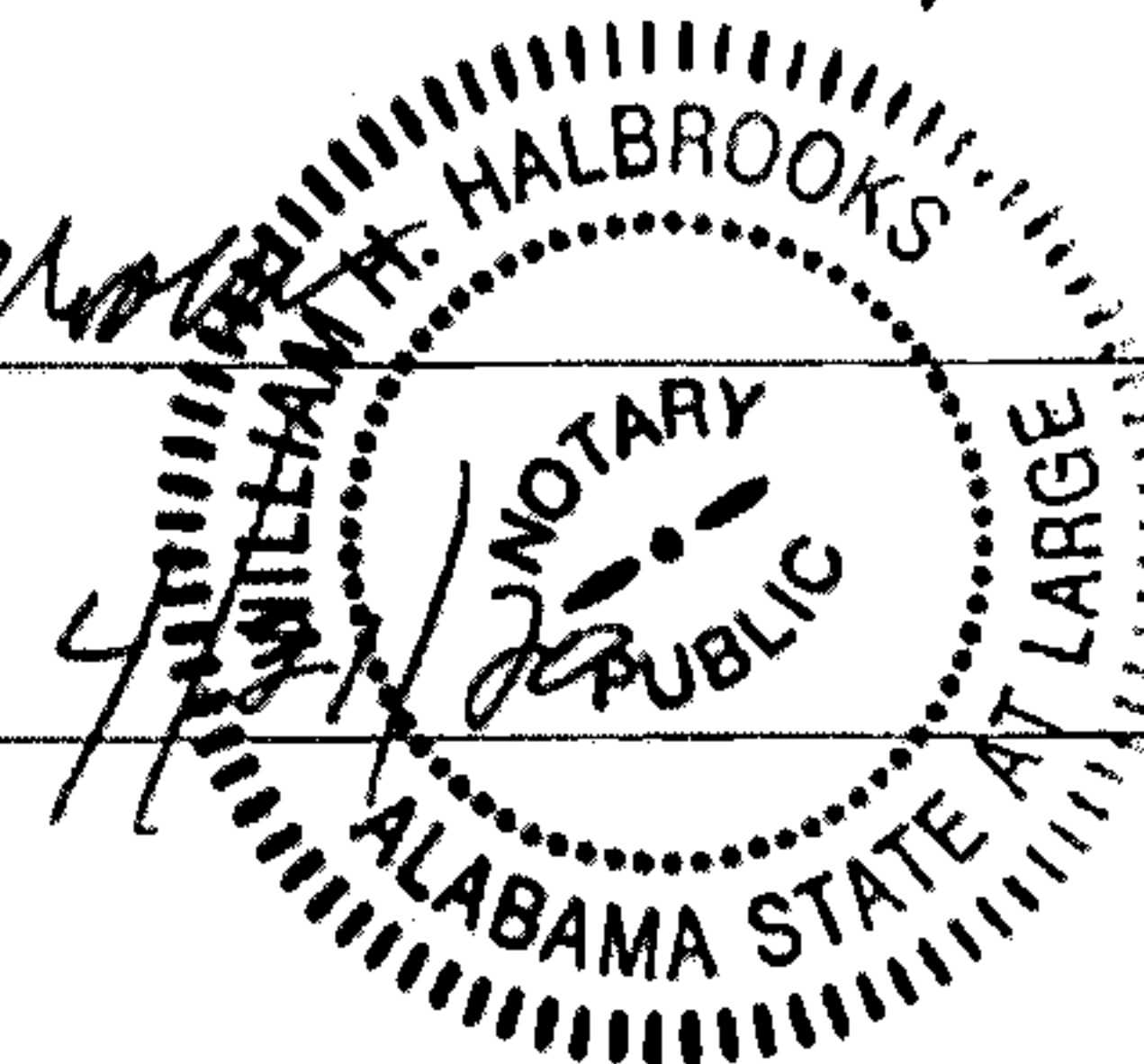
I, the undersigned, a notary public in and for said county in said state, hereby certify that **DAVID D. WHITE**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily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



[NOTARIAL SEAL]

[Signature page of Novation Agreement]

John E. Adams
JOHN E. ADAMS

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

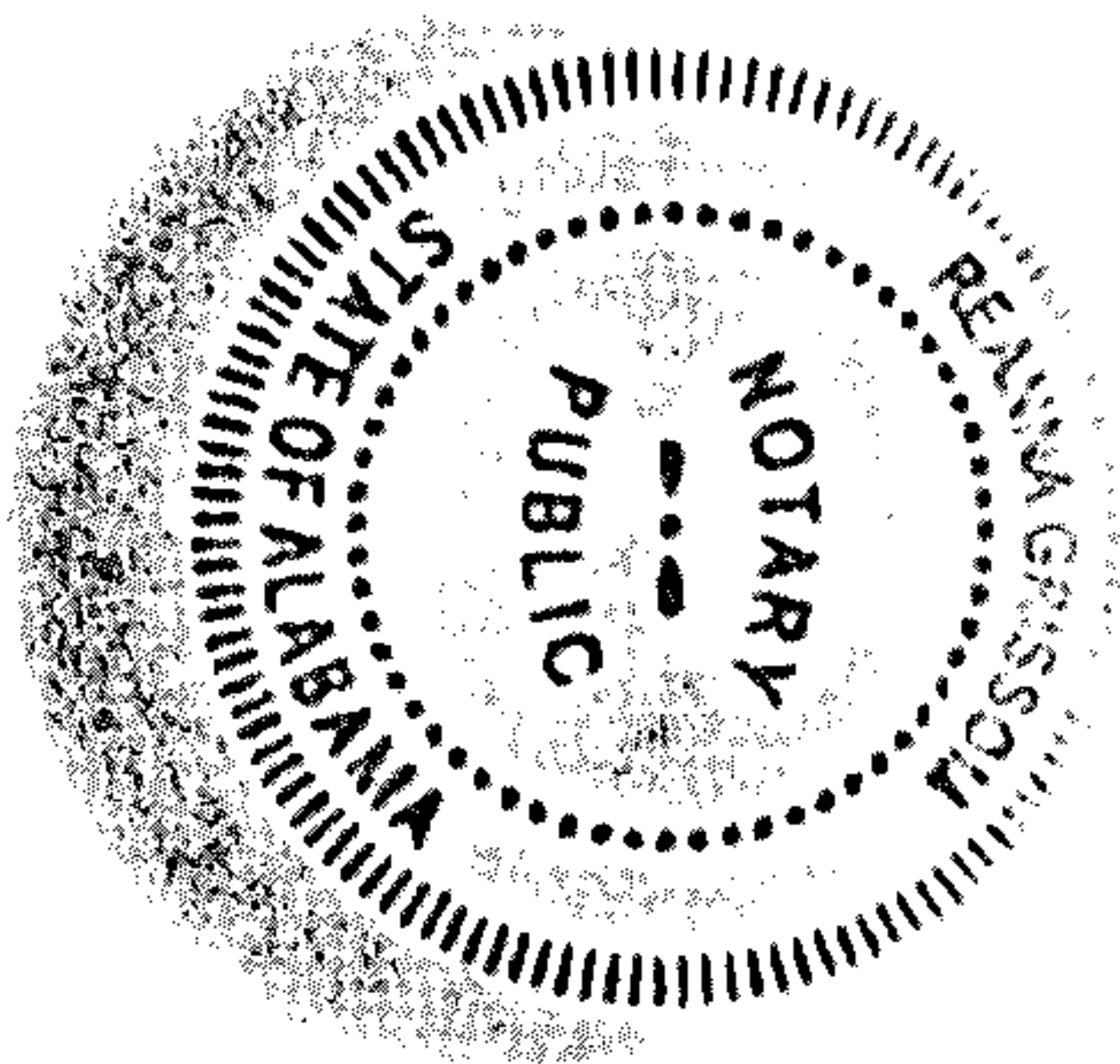
I, the undersigned, a notary public in and for said county in said state, hereby certify that **JOHN E. ADAMS**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily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

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

Oyanna Lison
NOTARY PUBLIC

My commission expires: April 26th 2020

[NOTARIAL SEAL]



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5/15 ASSOCIATION:

SMYER LAKE HOMEOWNERS ASSOCIATION, INC.
an Alabama nonprofit corporation

By: William M. Gunn

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.

Jennifer Carol Speegle
NOTARY PUBLIC

My commission expires: 11-07-2018

[NOTARIAL SEAL]



**20190129000030100 01/29/2019 01:32:45 PM AGREEMNT
6/15**

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 ^{MARCH} ~~April~~ 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

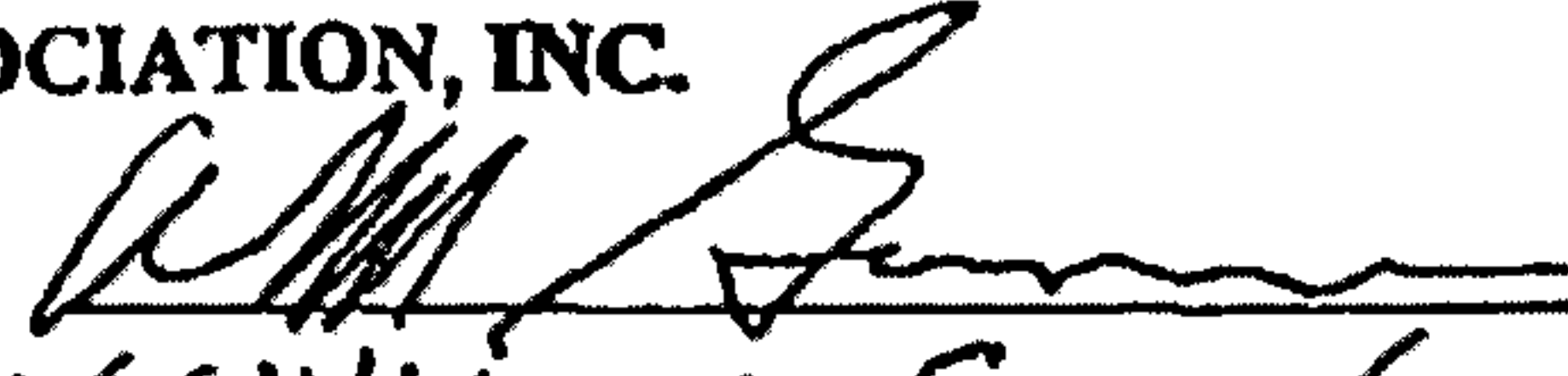

Dated: 1-24-19

JOHN E. ADAMS


Dated: 5/14/2018

[Signature page to Memorandum of Agreement]

**SMYER LAKE HOMEOWNERS
ASSOCIATION, INC.**

By: 
Name: William M. Genn
Its: President
Dated: 5-11-18

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

DAVID D. WHITE

Dated: _____

JOHN E. ADAMS

Dated: _____

**20190129000030100 01/29/2019 01:32:45 PM AGREEMNT
11/15**

EXHIBIT A

**PLAT
(attached hereto)**

Young@mustangeng.com]

11:27 PM

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

Property

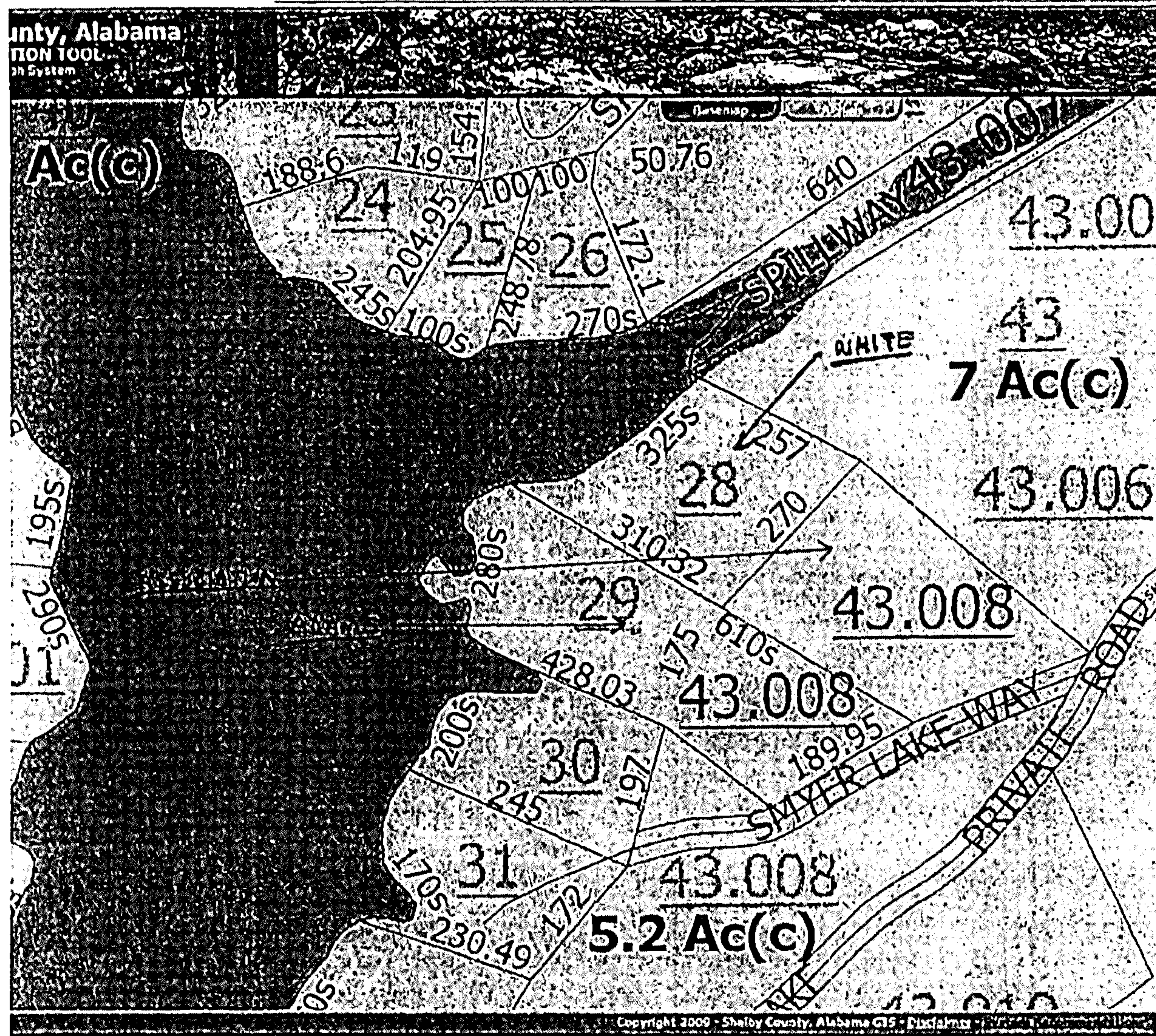
is not recorded, apparently, to Charles E Davis as I could not identify the parcels that way; however, we know the land is adjacent to Jack Adam's (see Parcel 28 which appears to consist of two lots - only one having lake frontage - this is the subject land. Adjacent Parcel 43 (7 ac) to property.

Land Information Tool - Windows Internet Explorer provided by Mustang Engineering

lbyal.com/

Tools Help

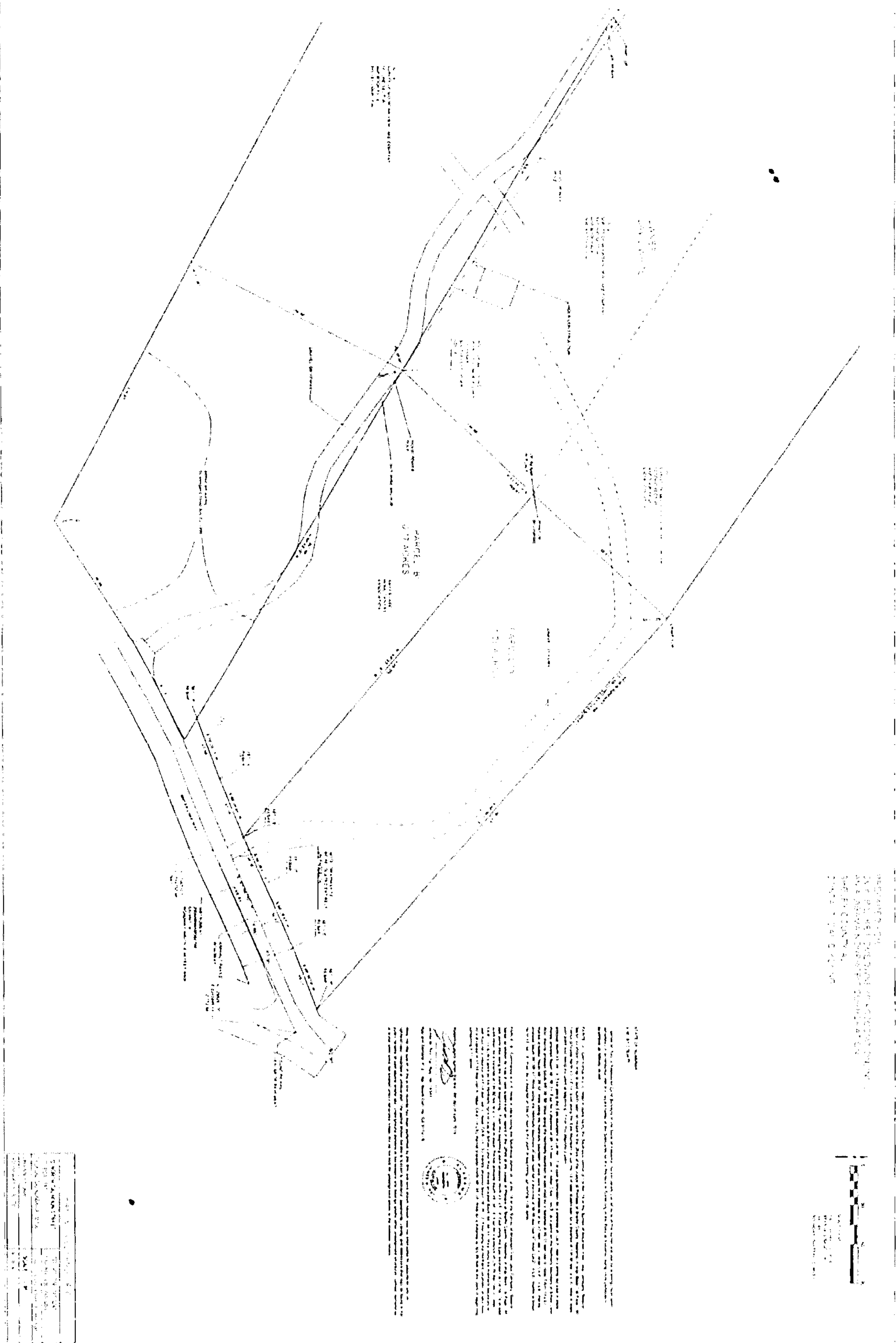
Shelby County, Alabama - Land Information Tool



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13/15

EXHIBIT B

SURVEY
(attached hereto)





Filed and Recorded
Official Public Records
Judge of Probate, Shelby County, Alabama, County
Clerk
Shelby County, AL
01/29/2019 01:32:45 PM
\$57.00 CHERRY
20190129000030100

Allen S. Bayl

*WIDE
EDGE*

YELLOW - APPROX 0.1624 ACRES

ORANGE - APPROX 0.0714 ACRES

PREPARED FOR:
SANTER LAGE HOMEOWNERS ASSOCIATION, INC.
AN ALABAMA NON-PROFIT CORPORATION
SHELBY COUNTY, AL
CONTACT: DAVID YOUNG

Shelby County, Alabama
Official Public Records
Judge of Probate, Shelby County, Alabama, County
Clerk
Shelby County, AL
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