

## DECLARATION OF RESTRICTIONS AND EASEMENTS

This Declaration of Restrictions and Easements (the "Declaration") is made and entered into as of the 18<sup>th</sup> day of January, 2005, by CALDWELL MILL, LLP, an Alabama limited liability partnership (hereinafter the "Declarant"), for the benefit of the CITY OF HOOVER, Alabama, a municipal corporation (the "City") and the WYNGATE HOMEOWNERS' ASSOCIATION (hereinafter "Wyngate") and the INVERNESS MASTER HOMEOWNERS' ASSOCIATION, INC., an Alabama not-for-profit corporation (hereinafter "Inverness").

### WITNESSETH:

Declarant is the owner of that certain real property (hereinafter the "Declarant's Property") situated in Shelby County, Alabama as more particularly described on the attached Exhibit A. The Declarant's Property is situated within the boundaries of the City. Wyngate and Inverness are associations of the owners of real properties (hereinafter the "Shelby County Properties") which are situated in unincorporated Shelby County, Alabama, some of which are adjacent to a portion of the Declarant's Property.

The Shelby County Properties are served by or connected to a system of public roads which include Wyngate Drive. Wyngate Drive extends through the Shelby County Properties and extends to the boundary between the Shelby County Properties and the Declarant's Property. Wyngate Drive has not been extended beyond said boundary through the Declarant's Property.

Declarant has determined to develop the Declarant's Property as a single family, residential subdivision, including the creation therein of residential lots and public roads. Wyngate and Inverness have requested that Wyngate Drive not be opened and extended for the free flow of traffic through the Declarant's Property. Declarant has agreed to construct the public roads within the Declarant's Property in such manner that the only connection between the public roads to be constructed within the Declarant's Property and Wyngate Drive will be a thirty (30) foot wide, gated, limited access for fire, rescue, police and emergency vehicles only (hereinafter the "Access Easement"). Declarant has further agreed to establish a buffer in the area of the connection of Wyngate Drive to Declarant's Property, for the benefit of Wyngate and Inverness, subject to the gated, limited access as described hereinabove and as further described and limited in this Declaration.

Declarant has also agreed to convey to Wyngate and Inverness, subject to the gated, limited access as described herein, a parcel of land (the "Wyngate/Inverness Strip") which is thirty (30) feet wide and ten (10) feet long, in the area depicted on the plan titled "Emergency Access Gate/Caldwell Sanctuary" prepared by Holcombe, Norton and Pritchett, Inc., consisting of one (1) page and dated December 22, 2004 (the "Plan"). A reduced copy of the Plan is attached hereto as Exhibit B. The Plan also depicts the general location of the gated, limited access between Wyngate Drive and the public roads



to be constructed within the Declarant's Property and the general location of the buffer and gate.

NOW, THEREFORE, in consideration of the foregoing recitals, the restrictions and covenants hereinafter set forth, Ten Dollars, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Declarant does hereby covenant, agree and declare as follows:

1. Restricted Access. The Declarant's Property shall be developed in such manner that the only connection between the public roads to be constructed within Declarant's Property and Wyngate Drive shall be a thirty (30) foot wide easement for ingress and egress which shall be limited to fire, rescue, police and emergency vehicles only, as generally shown on the Plan. Said limited, access easement shall not be open to the general public or available for access in any manner except to fire, rescue, police and emergency vehicles.
2. Emergency Access Gate. Declarant shall install the Emergency Access Gate (sometimes herein also referred to as the "gate") across the Access Easement, as depicted on the Plan. Access through the gate shall be designed and installed as required by the City's Fire Marshal, and shall be limited to (i) an access code, (ii) a pre-emption device which allows the strobe lights on the emergency vehicles to open the gate, and/or (iii) such other limited access device as required by the City prior to the installation thereof, which shall be made available only for use by the fire, rescue, police and emergency vehicles operated by the City or other governmental entities having jurisdiction in the area, such as the North Shelby Fire District. Said gate shall include a battery operated backup system for the operation of the gate during power outages. The Emergency Access Gate system shall also include the provision to the City of a key which may be used to open the gate in the event of any failure of the battery operated backup system. The gate shall remain closed at all times other than during access through the gate by fire, rescue, police and emergency vehicles, and shall not be made open or available to the public in general. The access code, if any, keys or other devices for the opening of the gate shall not be provided to the area residents, the members of any neighborhood association, or any other members of the general public.
3. Installation of Emergency Access Gate. Declarant shall be responsible for the installation of the Emergency Access Gate and the improvement of the Access Easement, at the expense of Declarant, in accordance with the requirements of the City.
4. Maintenance of Emergency Access Gate. Declarant shall establish an association of the owners of homes within the boundaries of Declarant's Property (the "Caldwell Sanctuary Association"). The expense of maintaining the Emergency Access Gate and the asphalt drive within the Access Easement shall be the responsibility of the Caldwell Sanctuary



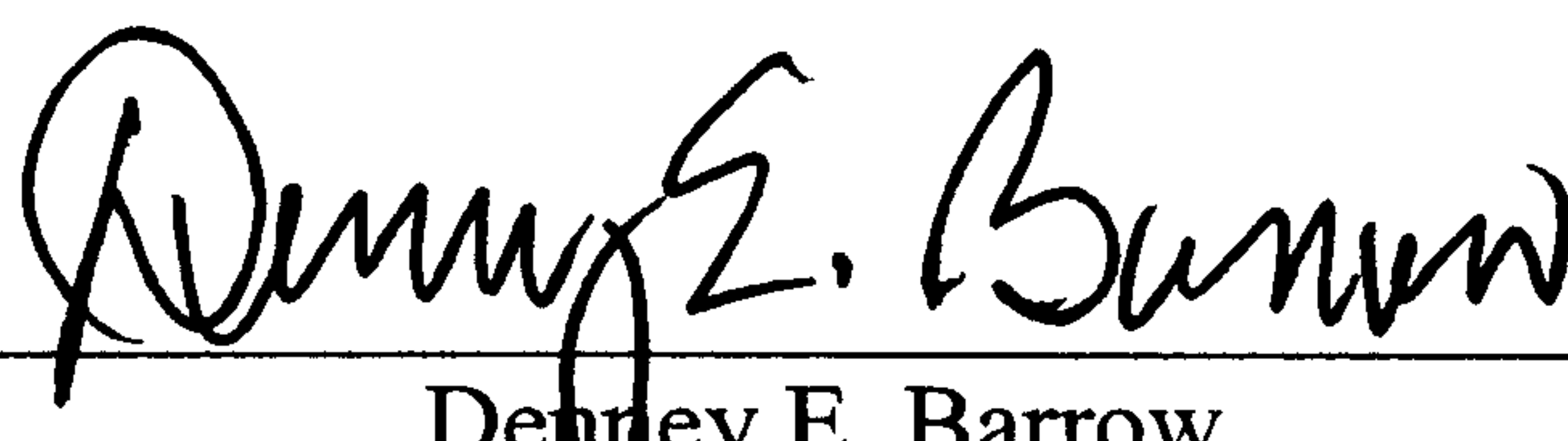
Association. In the event that the Caldwell Sanctuary Association fails to properly maintain the Emergency Access Gate, and should said failure not be remedied within seventy two (72) business hours after written notice from the City, then the City shall have the right, but not the obligation, to perform such maintenance or repair of the Emergency Access Gate as is reasonably necessary and shall have the right to recover, from the Caldwell Sanctuary Association, its reasonable out-of-pocket expenses incurred in connection therewith. The Caldwell Sanctuary Association shall properly maintain the asphalt drive within the Easement Area, and shall remedy any failure to do so within a reasonable time after written notice from the City.

5. Access Easement. Declarant does hereby establish, grant, bargain, sell and convey unto the City, for the benefit of the City and any other governmental entity referenced in paragraph 2 hereof, an easement, subject to the limitations, terms and provisions of this Declaration, for the limited purpose of access by the fire, rescue, police and emergency vehicles, as described herein, over and across the Access Easement. The exact location and legal description of the Access Easement shall be fixed and incorporated into a plat to be approved by the City and recorded in the Office of the Judge of Probate of Shelby County, Alabama.
6. Liability Insurance. The Caldwell Sanctuary Association shall maintain a policy of liability insurance in which the Association and the City are named insureds, in at least the amounts of the limits of liability of the City pursuant to Section 11-93-2, Code of Alabama 1975, as same might be amended, which limits are presently set at \$100,000 per person and \$300,000 per occurrence.
7. Binding Effect. The terms and provisions of this Declaration shall bind and run with the Declarant's Property forever and shall inure to the benefit of, and shall be enforceable by, Wyngate, Inverness and the City.
8. Amendment. The provisions of this Declaration may not be amended without the consent of Declarant, Wyngate, Inverness and the City.
9. Rezoning Conditions. Any petition for the rezoning of Declarant's Property by the City shall include and require the execution, delivery, and recordation of this Declaration, and shall further require the installation of the Emergency Access Gate during the course of the construction of improvements to Declarant's Property, in such manner that (a) there is no connection between Wyngate Drive and the public roads to be constructed within Declarant's Property until the gate has been installed, and (b) the gate shall be installed and operational prior to the commencement of the construction of homes within the Property. Any such rezoning by the City shall also require the conveyance of the Wyngate/Inverness Strip to Wyngate and Inverness, subject to the provisions of this Declaration and the easements herein established. The Wyngate/Inverness Strip may not be occupied, altered, improved or maintained by Wyngate or Inverness in

any manner, nor may the interest held by Wyngate or Inverness in the Wyngate/Inverness Strip be conveyed by Wyngate or Inverness to any other entities; the purpose of the Wyngate/Inverness Strip being to prevent any attempt to extend Wyngate Drive through the Wyngate/Inverness Strip without the prior written approval thereof by Wyngate, Inverness and the City. This Declaration and all documents required of Declarant pursuant to this section 9 shall be executed and recorded in the Office of the Judge of Probate of Shelby County, Alabama, within fourteen (14) days after the final approval of Declarant's petition for rezoning of Declarant's Property for residential use in accordance with plans presented by Declarant to the City and in accordance with the Plan attached as Exhibit B to this Declaration. A signed, recorded copy of the Declaration shall be returned to each party hereto within a reasonable time.

Executed by the undersigned effective this the same date as first hereinabove written.

CALDWELL MILL, LLP

By   
Denney E. Barrow  
Its Managing Partner

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that DENNEY E. BARROW, whose name as Managing Partner of CALDWELL MILL, LLP, an Alabama limited liability partnership, 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 Managing Partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 31st day of January, 2005.

Kaye D. Neph  
Notary Public

[NOTARIAL SEAL]

My commission expires: 6-25-08



EXHIBIT A  
Page 1 of 2

State of Alabama)  
Shelby County)

BOUNDARY LINE SURVEY

I, Laurence D. Weygand, a registered Engineer-Land Surveyor or Ray Weygand, a Registered Land Surveyor, certify that I have surveyed the land shown hereon and described below; that I have consulted the Federal Insurance Administration Flood Hazard Boundary Map and found that this property is not located in a special flood hazard area; I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for surveying in the State of Alabama to the best of my knowledge, information and belief; and that the correct description is as follows:

Part of the N  $\frac{1}{4}$  of Section 10, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing 3" capped iron pipe being the locally accepted NW corner of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of said Section 10, run in an easterly direction along the north line of said section for a distance of 276.08 feet to an existing iron rebar set by J.A. Gay; thence turn an angle to the left of 0°-00'-54" and run in an easterly direction for a distance of 214.93 feet to an existing #5 iron rebar; thence turn an angle to the right of 0°-00'-39" and run in an easterly direction for a distance of 436.36 feet to an existing iron rebar set by J.A. Gay; thence turn an angle to the right of 0°-0'-6" and run in an easterly direction for a distance of 210.68 feet to an existing iron rebar set by J.A. Gay; thence turn an angle to the left of 0°-0'-41" and run in an easterly direction for a distance of 187.86 feet to an existing #5 iron rebar being the locally accepted northeast corner of said Section 10; thence turn an angle to the right of 89°-00'-46" and run in a southerly direction for a distance of 36.47 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 0°-13'-35" and run in a southerly direction for a distance of 287.10 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 0°-1'-17" and run in a southerly direction for a distance of 94.41 feet to an existing iron rebar; thence turn an angle to the right of 21°-41'-39" and run in a southwesterly direction for a distance of 34.28 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 69°-32'-55" and run in a westerly direction for a distance of 586.87 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 17°-35'-52" and run in a northwesterly direction for a distance of 94.63 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 5°-24'-08" and run in a northwesterly direction for a distance of 100.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 32°-0' and run in a westerly direction for a distance of 80.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 17°-03'-01" and run in a southwesterly direction for a distance of 125.62 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 26°-03'-01" and run in a westerly direction for a distance of 1327.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 20°-05'-43" and run in a southwesterly direction for a distance of 43.66 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 69°-54'-17" and run in a southerly direction for a distance of 80.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 51°-15' and run in a southwesterly direction for a distance of 180 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 103°-0' and run in a northwesterly direction for a distance of 164.0 feet to an existing iron rebar set by Weygand and the point of beginning of a curve, said curve being concave in a northeasterly direction and having a central angle of 37°-31'-44" and a radius of 50.0 feet; thence turn an angle to the left (12°-29'-08" to the chord of said curve) and run in a northwesterly direction along the arc of said curve for a distance of 32.75 feet to a point of reverse curve, said latest curve being concave in a southwesterly direction and having a central angle of 70°-31'-44" and a radius of 25.0 feet; thence turn an angle to the left and run in a northwesterly and westerly direction along the arc of said curve for a distance of 30.77 feet to an existing iron rebar set by Weygand; thence run in a westerly direction along a line tangent to the end of said curve for a distance of 66.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 90° and run in a southerly direction for a distance of 138.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 76°-0' and run in a southwesterly direction for a distance of 32.95 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 40°-44'-28" and run in a





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Shelby Cnty Judge of Probate, AL  
04/13/2005 07:59:36AM FILED/CERT

EXHIBIT A

Page 2 of 2

southwesterly direction for a distance of 58.85 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 23°-03'-09" and run in a southwesterly direction for a distance of 67.21 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 18°-54'-40" and run in a southwesterly direction for a distance of 57.72 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 1°-26'-06" and run in a southwesterly direction for a distance of 64.67 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 7°-18'-54" and run in a westerly direction for a distance of 44.23 feet to an existing #4 iron rebar; thence turn an angle to the right of 94°-55'-33" and run in a northerly direction for a distance of 195.43 feet to an existing Farmer rebar; thence turn an angle to the left of 89°-50'-20" and run in a westerly direction for a distance of 194.77 feet to an existing Farmer rebar; thence turn an angle to the left of 90°-07'-29" and run in a southerly direction for a distance of 246.85 feet to an existing Farmer rebar; thence turn an angle to the right of 63°-28'-39" and run in a southwesterly direction for a distance of 56.73 feet to an existing Weygand rebar; thence turn an angle to the left of 13°-13'-42" and run in a southwesterly direction for a distance of 273.17 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 10°-36'-25" and run in a southwesterly direction for a distance of 90.54 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 12°-24'-50" and run in a southwesterly direction for a distance of 73.86 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 23°-02'-35" and run in a westerly direction for a distance of 19.11 feet to an existing iron rebar set by Weygand and being on the northeast right-of-way line of Caldwell Mill Road, said northeast right-of-way line being on a curve, said curve being concave in a westerly direction and having a central angle of 22°-24'-55" and a radius of 1669.72 feet; thence turn an angle to the right (60°-02'-46" to the chord of said curve) and run in a northerly and northwesterly direction along the northeast right-of-way line of said Caldwell Mill Road for a distance of 653.23 feet to an existing iron rebar set by Weygand; thence turn an angle to the left and run in a northwesterly direction along a line tangent to the end of said curve and along the northeast right-of-way line of said Caldwell Mill Road for a distance of 593.80 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 88°-27'-28" and run in a northeasterly direction for a distance of 46.72 feet to an existing iron rebar set by Weygand and still being on the northeast right-of-way line of said Caldwell Mill Road; thence turn an angle to the left of 90° and run in a northwesterly direction along the northeast right-of-way line of said Caldwell Mill Road for a distance of 11.99 feet to an existing iron rebar set by Weygand and being the southwest corner of Lot 132, Phase Three Caldwell Crossings 2<sup>nd</sup> Sector, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 31, Page 32; thence turn an angle to the right of 128°-18'-49" and run in an easterly direction along the south line of Lots 132, 130 in said Caldwell Crossings Phase Three 2<sup>nd</sup> Sector and along the south line of Lot 122, Phase Five Caldwell Crossings 2<sup>nd</sup> Sector, as recorded in Map Book 32, Page 103 A&B, in said Probate Office, for a distance of 204.49 feet, more or less, to the northwest corner of the NE ¼ of the NW ¼ of said Section 10; thence turn an angle to the left of 0°-4'-29" and run in an easterly direction along the north line of said section for a distance of 1322.30 feet to the northeast corner of the NE ¼ of the NW ¼ of said Section 10; thence turn an angle to the right of 0°-11'-07" and run in an easterly direction along the north line of said section for a distance of 1329.74 feet, more or less, to the point of beginning. Containing 52.12 acres, more or less.

According to my survey of: JAN. 22, 2005

Order No.: \_\_\_\_\_

Purchaser: \_\_\_\_\_

Address: \_\_\_\_\_

Flood Zone: "C" C.P. #010191 0095B

Survey invalid if not sealed in red

Laurence D. Weygand  
Laurence D. Weygand

Reg. P.E.-L.S. #10373

Ray Weygand, Reg. L.S. #24973

169 Oxmoor Road PH: 942-0086

Homewood, AL 35209

*Weygand*



