

STATE OF ALABAMA)
 :
SHELBY COUNTY)

AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS AGREEMENT (this "Agreement") is entered into effective the 1st day of May, 2008, by the undersigned Daniel Senior Living of Inverness II, LLC ("Developer") and Lake Heather Homeowners' Association, Inc. (the "Association").

WITNESSETH:

Developer has contracted to purchase that certain parcel of real property located in the City of Hoover, Alabama (the "City"), comprising approximately nineteen and forty-four one-hundredth (+19.44) acres more or less, which is more particularly described on the attached Exhibit A and Exhibit A-1 (the "Development Property").

The Development Property is situated immediately adjacent to a single-family residential development known as Lake Heather Estates, which is managed by the Association and occupied by the members of the Association. The record map for Lake Heather Estates ("Lake Heather Estates") is recorded in Map Book 16 pages 121A, 121B and 121C, and has been amended by resurveys recorded in Map Book 17 page 24, Map Book 21 page 129, Map Book 26 pages 70 and 71, and Map Book 29 page 41, in the Office of the Judge of Probate of Shelby County, Alabama.

The Association is the property owners' association established for Lake Heather Estates and whose members comprise all of the owners of the lots within Lake Heather Estates.

Developer desires to rezone the Development Property from Planned Office (PO) to Planned Residential Single Family (PR-1 Detached) to accommodate detached single-family "garden-style" homes which will complement a congregate retirement facility the Developer intends to develop on property across Inverness Center Drive from the Development Property (the "Rezoning and Development").

In an effort to promote harmonious relations among the Association, Developer, and the present and future owners of the real property in Lake Heather Estates and the Development Property, Developer has agreed to the following covenants and restrictions with respect to the Development Property and the Association has agreed to support the Rezoning and Development.

NOW, THEREFORE, in consideration of the foregoing recitals, Ten Dollars (\$10) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby covenant, declare and agree as follows:

Development Property Access

1. The Development Property shall have only one primary access which shall be from Inverness Center Drive (the "Primary Access") as shown on the plan attached hereto as Exhibit B.
2. The Development Property shall have one secondary access which shall be from Lake Heather Drive (the "Secondary Access") as shown on the plan attached hereto as Exhibit B. The Secondary Access shall provide for emergency vehicle access and resident access

to and from the Development Property only. No public use of the Secondary Access shall be permitted. The Secondary Access must be constructed in accordance with all requirements of the City for the construction of public roadways except that the Secondary Access will be gated as hereinafter provided and use of the Secondary Access will be restricted as provided herein. The Secondary Access will be gated which gate (the "Secondary Access Gate") will be designed in accordance with the standards of the City's fire department. The Secondary Access Gate will remain closed at all times but will be accessible at all times for use by all residents of the Development Property and any emergency vehicles. To the extent landscaping is allowed by the City's fire department within the Secondary Access, then Developer will install the same at its sole cost and expense.

3. Construction access to the Development Property shall be limited solely to the Primary Access only and shall not be permitted through the Secondary Access or any other areas of the Development Property.
4. Developer shall seek approval from the City to install four-way stop signs at the intersection of the Primary Access and Inverness Center Drive, and at the intersection of Lake Heather Drive and Inverness Center Drive. In the event Developer secures approval from the City for such installation, Developer shall install such stop signs at its sole cost and expense.
5. Developer shall seek approval from the City to allow the roads within the Development Property to be private roadways and for an entrance gate (the "Entrance Gate") to be installed at the Primary Access. In the event Developer secures approval from the City for installation of the Entrance Gate, then such Entrance Gate will not be manned but will be designed in such a manner so that the Entrance Gate will (a) be closed during non-daylight hours only and, during such non-daylight hours, could be opened by card, code, telephone or other means of security activation and (b) remain open during daylight hours.

Provision of Buffers

6. Prior to the recordation of the final subdivision plat for the Development Property, Developer shall convey to the Association, a perpetual non-exclusive easement, covering a strip of land twenty-five (25) feet in width along the entire northerly boundary of Lake Heather Drive, from its intersection with Inverness Center Drive to the entry into Lake Heather Estates (the "Lake Heather Drive Buffer"). Subject to the remaining terms and provisions of this paragraph 6, the aforesaid easement shall be limited to the use and enjoyment of and benefit to the Association for the purposes set forth below. A landscaped berm (with landscaping and irrigation) shall be installed by and at the expense of Developer within the Lake Heather Drive Buffer to match the landscaped berm on the southerly boundary of Lake Heather Drive. The Secondary Access, as described in paragraph 2 above, shall also be constructed by Developer within the Lake Heather Drive Buffer. The Association hereby authorizes Developer to connect the irrigation for the Lake Heather Drive Buffer to the irrigation system used by the Association for Lake Heather Estates. Subject to the provisions of paragraph 7 below, the landscaping and irrigation within the Lake Heather Drive Buffer shall be maintained by and at the expense of the Association. The Lake Heather Drive Buffer shall be restricted to the forgoing uses only. No additional improvements or uses shall be allowed on or within the Lake Heather Drive Buffer except as authorized by this paragraph 6.

7. In the event any damage to or destruction of any landscaping or irrigation within the Lake Heather Drive Buffer is caused by use of the Secondary Access by either residents of the Development Property or any emergency vehicles, then Developer (or the owners' association for the Development Property) shall, at its sole cost and expense, replace any damage to or destruction of such landscaping, irrigation or the Perimeter Fence (if constructed) with materials substantially similar in quality and quantity as the original landscaping or irrigation system.
8. Developer shall maintain a thirty (30) foot wide buffer along the boundary of the Development Property that abuts Lake Heather (the "Lake Heather Buffer"). Developer shall leave Lake Heather Buffer in its natural undisturbed state wherever physically practical. No buildings shall be permitted within the Lake Heather Buffer; however, subject to the limitations and restrictions set forth in Paragraphs 9 and 10 below, general maintenance, cleaning and passive uses such as picnic areas and walking trails shall be permitted. Such use shall not constitute a right to access Lake Heather.
9. Along the peninsula located on that portion of the Development Property directly across Lake Heather from Lot 9 Lake Heather Estates ("Lake Heather Lot 9"), Developer shall maintain, in addition to the Lake Heather Buffer, an additional buffer (the "Peninsula Buffer") along Lake Heather in its natural undisturbed state as more particularly shown and identified as "Peninsula Buffer" on Exhibit C hereto. Notwithstanding anything to the contrary provided in Paragraph 8 above, no improvements may be made nor shall any use or occupancy be allowed within the Peninsula Buffer (or any portion of the Lake Heather Buffer lying within the Peninsula Buffer), including lighting, walking trails, or any other use or activity.
10. Developer shall maintain a natural undisturbed buffer of a minimum of one hundred (100) feet in width along the boundary of the Development Property and Lake Heather Estates (the "Lake Heather Estates Buffer"), as more particularly shown on Exhibit B hereto. Notwithstanding anything to the contrary provided in Paragraph 8 above, no improvements may be made nor shall any use or occupancy be allowed within the Lake Heather Estates Buffer (or any portion of the Lake Heather Buffer lying within the Lake Heather Estates Buffer), including lighting, walking trails, or any other use or activity.
11. In the event that an Entrance Gate is approved by the City, Developer shall have right, at its sole option, to install a continuous six (6) foot tall fence or wall along the entire length of the Lake Heather Drive Buffer and the entire length of the property boundary along Inverness Center Drive (collectively, the "Perimeter Fence"). The Perimeter Fence may be constructed of masonry construction, earth tone in color or of decorative metal or aluminum which may not be visually impervious so long as such the Perimeter Fence provides continuous privacy to discourage intrusion.
12. The covenants and owners' association documents for the Development Property shall require that the owners' association own and maintain, at its expense, the Lake Heather Buffer and the Lake Heather Estates Buffer, including the Entrance Gate, the Perimeter Fence, if constructed, and all other common areas within the Development Property.

Use of Lake Heather

13. Appropriate onsite detention and sedimentation and erosion controls shall be implemented to detain water falling within the rights of ways within the Development

Property from directly entering Lake Heather ("Lake Heather"), but after detention will allow overflow from such detention ponds into Lake Heather. The plan for on-site detention shall be approved by the City, and erosion and sedimentation controls shall be approved by the Alabama Department of Environmental Management ("ADEM"), and copies of such plans shall be provided by Developer to the Association promptly upon Developer's receipt of approval thereof by the City or ADEM.

14. Public access to Lake Heather shall not be permitted through the Development Property. Neither the Development Property nor any owner, occupant, or guest thereof shall have any right to enter into, access or use Lake Heather in any manner, except where access or use is permitted by the Association, in its sole discretion, and in accordance with such rules and regulations as shall be determined by the Association from time to time. Notwithstanding the foregoing, owners within the Development Property shall maintain the same rights as the general public to purchase lake use permits that may be made available by the Association from time to time. No boat launches, docks or piers shall be installed on the Development Property.

Development of the Development Property

15. Prior to the recordation of the final subdivision plat for the Development Property, Developer shall install a sidewalk along the boundary of the Development Property which abuts Inverness Center Drive from the intersection of the Primary Access to the intersection of Lake Heather Drive. The sidewalk shall be constructed in accordance with the requirements and specifications of the City.
16. No burning shall be allowed during the development of the Development Property.
17. No blasting shall be allowed on the Development Property by Developer or its contractors, agents, or assigns except as permitted by the City.
18. All exterior lighting within any portion of the Development Property shall be designed to avoid spillage onto adjacent properties and shall be directed away from Lake Heather Estates.
19. Development of the Development Property shall be restricted to single-family detached residential dwellings, consistent with the site development plan prepared by Lappas + Havener, PA dated the 30th day of April, 2008, a copy of which is attached hereto as Exhibit B. Said residential dwellings shall meet the following restrictions: the minimum square footage of each single family home shall be 1600 square feet of heated and cooled space for each detached single story home and 2000 square feet of heated and cooled space for each detached two story home. All homes within the Development Property shall be designed in such manner that there is a variety of roof configurations and designs. With respect to any lots which directly abut either the Lake Heather Estates Buffer or the Lake Heather Drive Buffer, no garage doors shall face either the Lake Heather Estates Buffer or the Lake Heather Drive Buffer. No garage doors shall face the front property line of a lot except where certain lot configurations (such as a corner lot) necessitate or where such front facing garage may provide aesthetic benefit to the overall development of the Development Property; provided, however, that in no event shall more than twelve (12) homes within the Development Property be allowed to have garage doors facing the front property line of any lot. The dwellings within the Development Property shall be constructed with natural materials limited to brick,

masonry, wood, cementitious plank, stucco and stone; and the rear surfaces of the dwellings must be consistent with the front and sides in quality and materials.

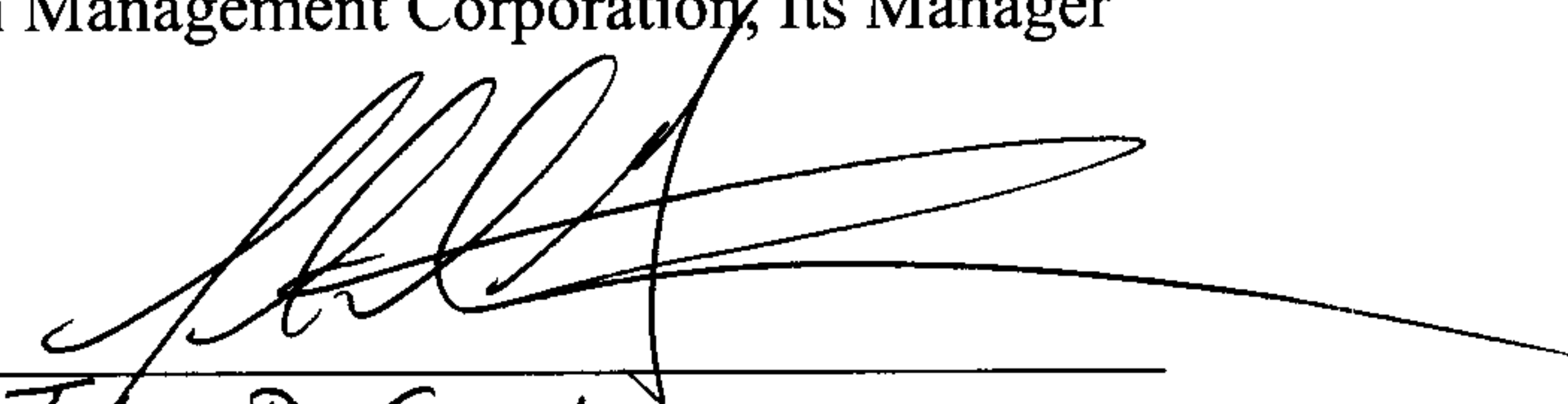
20. The age restrictions imposed upon the single-family residential dwellings cannot change without approval of the Association.
21. An orange construction fence shall be installed by Developer along the edges of all undisturbed areas along the entire northerly boundary of the Lake Heather Drive Buffer, the interior boundary of the Lake Heather Buffer, the easterly boundary of the Lake Heather Estates Buffer and the Peninsula Buffer, prior to the commencement of any site work or other alteration upon the Development Property, and shall remain in place until the completion of construction or site work in such areas.
22. The terms and provisions of this Agreement shall bind and run with the land, may be amended only by an instrument executed by Developer and the Association and may be enforced by the Association or any one or more of the members of the Association; provided, however, that any amendments to Paragraph 9 above must also be approved in writing by the then owner of Lake Heather Lot 9.
23. In the event that legal proceedings are required to enforce the provisions of this Agreement, the prevailing party in said proceedings shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith from the other party.
24. Developer shall provide payment of the reasonable attorneys' fees and costs incurred by the Association in connection with the Association's negotiations and preparation of this Agreement with Developer and its attorneys and agents.
25. The Association does hereby consent to the Rezoning and Development and covenants and agrees to fully support the Rezoning and Development.
26. Following the recordation of the final plat for the Development Property and the completion of installation of the landscaping and irrigation for the Lake Heather Drive Buffer and construction of the Secondary Access, Developer shall have the right to transfer and assign all of its rights and obligations under this Agreement to an owners' association established for the Development Property, in which event such owners' association shall assume all of Developer's rights and obligations under this Agreement from and after the effective date of such transfer and assignment, Developer shall be released from and shall have no further obligations or liability under this Agreement and, from and after such assignment, the Association agrees to look solely to the owners' association established for the Development Property for the performance of all obligations of Developer hereunder. Notwithstanding anything provided herein to the contrary, the terms and provisions of this paragraph 26 shall not release or relieve Developer from any obligations of Developer under this Agreement which should have been performed by Developer prior to the transfer and assignment of such rights and obligations by Developer to any such owners' association.
27. The Secondary Access, Lake Heather Drive Buffer, the Lake Heather Buffer, the Peninsula Buffer and the Lake Heather Estates Buffer shall also be reflected on the final subdivision plat for the Development Property.

28. This Agreement shall take effect only after the Rezoning and Development receives approval by the City and is contingent upon Developer acquiring the Development Property.
29. This Agreement shall be recorded at Developer's expense prior to the issuance of any building permit by the City for any site work or other improvements of any nature to be made to the Development Property and prior to the recordation of any mortgages, liens or other encumbrances by, through or as result of acts of Developer.

EXECUTED by the undersigned effective the same date as first above written.

DANIEL SENIOR LIVING OF INVERNESS II,
LLC

By: Daniel Management Corporation, Its Manager

By: 
Name: John D. Gunderson
Its: Senior Vice President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John D. Gunderson, whose name as Senior Vice President of DANIEL MANAGAGEMENT CORPORATION, an Alabama corporation, as Manager of DANIEL SENIOR LIVING OF INVERNESS II, LLC, an Alabama limited liability company, 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 such corporation in its capacity as Manager of the aforesaid limited liability company.

Given under my hand and official seal this 1st day of May, 2008.

Chris Tortorelli
Notary Public

[NOTARIAL SEAL]

My commission expires: March 3, 2008

LAKE HEATHER HOMEOWNERS'
ASSOCIATION, INC.

By: [Signature]
Name: TERRY PUNDER
Its: PRESIDENT

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Terry Ponder, whose name as President of Lake Heather Homeowners' Association, Inc. an Alabama not-for-profit 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 19th day of February, 2008.

[Signature]

Notary Public STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 6, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

[NOTARIAL SEAL]

My commission expires: _____

This instrument prepared by:
Charles A. J. Beavers, Jr.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104

EXHIBIT A

Development Property

See Exhibit A-1 for Legal Description



20080501000179670 9/12 \$44.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:41PM FILED/CERT

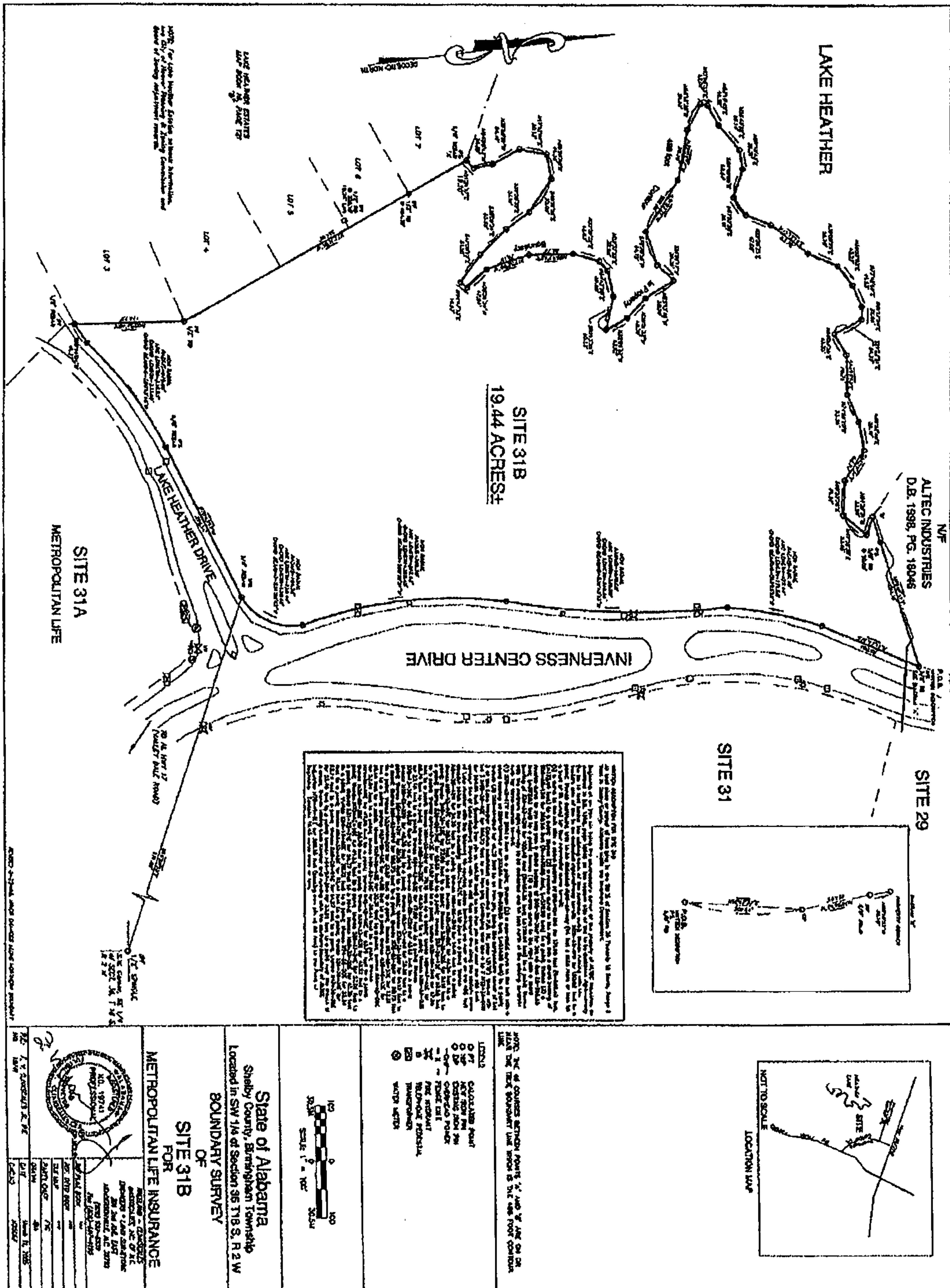


EXHIBIT A-1

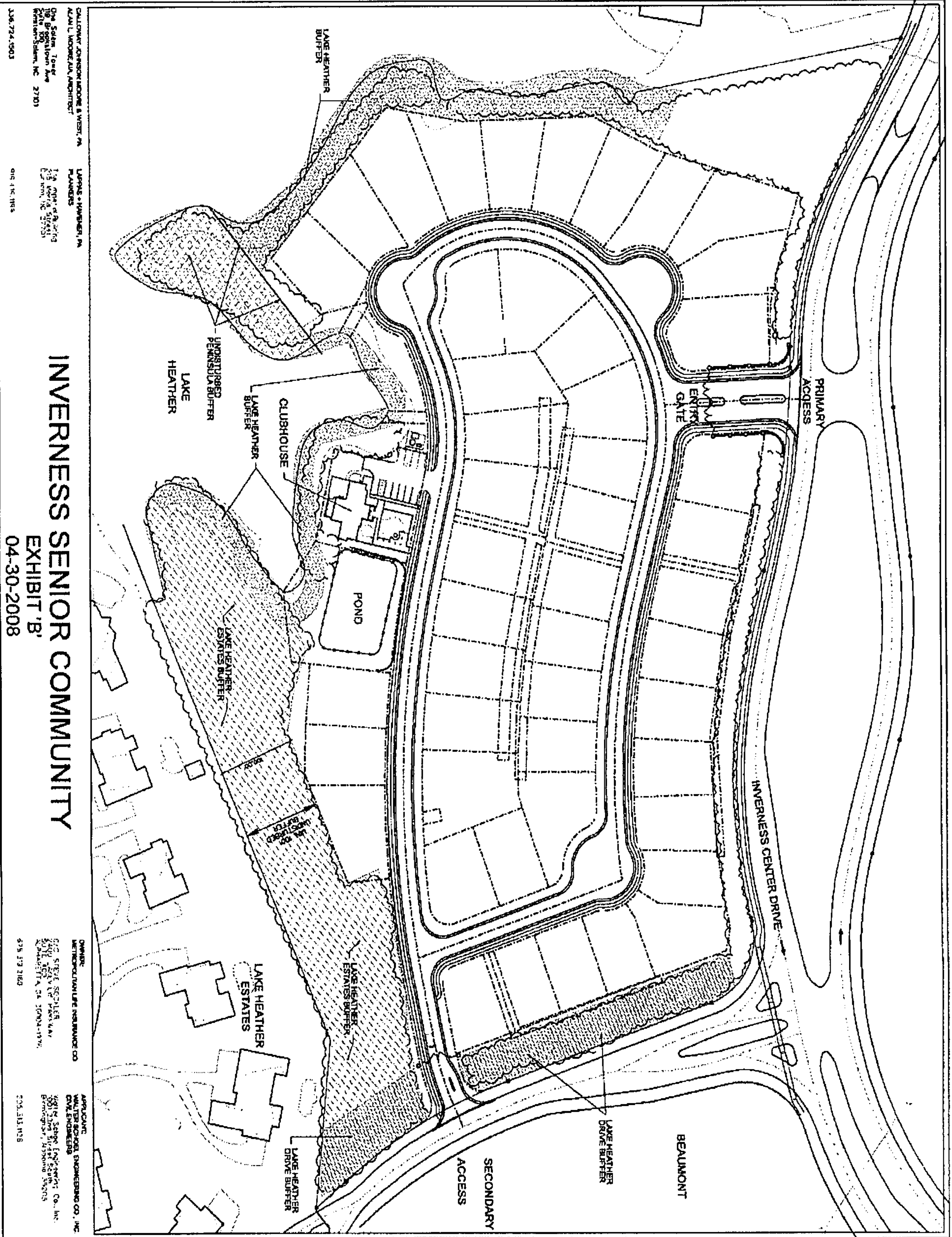
Legal Description

All that piece or parcel of land known as Inverness Parcel 31B lying in the SW $\frac{1}{4}$ of Section 36 Township 18 South, Range 2 West in Shelby County, Alabama within the Inverness Development;

Beginning at an iron pin being the southeastern corner of the property of ALTEC Industries as described in D.B. 1998, page 18046 on the western side of the to be dedicated right-of-way (to be 14 feet behind the existing back of the concrete curb); thence running with the western side of the to be dedicated right-of-way to-wit: S29-43-41W for 190.02 feet to a point; thence continuing with to be dedicated right-of-way (14 feet a little more or less for a best of fit curve) for four non-radial curve to-wit:

(1) a curve to the left with a chord bearing of S18-15-19W for 171.98 feet (R=680.40 feet, L=172.44 feet) to a point; thence (2) a reverse curve to the right with a chord bearing of S08-43-13W for 398.66 feet (R=1470.08 feet, L=399.90 feet) to a point; thence (3) a reverse curve to the left with a chord bearing of S00-32-31W for 369.45 feet (R=786.55 feet; L=372.93 feet) to a point; thence (4) a reverse curve to the right with a chord bearing of S31-39-42W for 120.48 feet (R=104.35 feet; L=128.44 feet) to a point; thence with the northern right-of-way to be dedicated and 14 feet north of the existing concrete curb for three courses to-wit:

(1) S70-43-17W for 299.14 feet to a point; thence (2) a non-radial curve to the left with a chord bearing of S60-13-46W for 233.66 feet (R=679.06 feet; L=234.83 feet) to a point; thence (3) S63-44-04W for 41.27 feet to an iron pin, being the northeastern corner of Lot 3 of the Lake Heather Estates subdivision as recorded in P.B. 16, page 121"B"; thence with lot 3 N05-39-40E for 194.75 feet to an iron pin; Continuing with lots 4 to 7 N22-31-01W for 594.01 feet (passing iron pin at 464.79 feet) to an iron pin at or near the 496 foot contour line of Lake Heather; thence with the 496 foot contour line along the eastern shore of Lake Heather with the following 46 courses whose terminus are near or on the 496 foot contour which is the true boundary; N51-24-17E for 19.10 feet to a point; thence N04-26-42W for 34.35 feet to a point; thence N21-50-01W for 54.41 feet to a point; thence N17-13-07E for 50.13 feet to a point; thence N85-26-08E for 44.34 feet to a point; thence S48-31-28E for 72.09 feet to a point; thence S29-30-32E for 51.11 feet to a point; thence S38-09-34E for 65.69 feet to a point; thence S47-26-13E for 61.55 feet to a point; thence N44-47-13E for 14.92 feet to a point; thence N35-56-34W for 47.94 feet to a point; thence N11-52-06W for 79.19 feet to a point; thence N05-47-43E for 80.74 feet to a point; thence N22-35-22E for 48.63 feet to a point; thence N55-37-22E for 22.98 feet to a point; thence N84-42-53E for 47.09 feet to a point; thence S70-13-35E for 60.52 feet to a point; thence N22-09-52W for 43.62 feet to a point; thence N39-01-52W for 48.39 feet to a point; thence N25-13-49W for 58.50 feet to a point; thence S51-51-17W for 39.26 feet to a point; thence S78-28-56W for 64.12 feet to a point; thence N51-03-21W for 108.73 feet to a point; thence N72-03-56W for 90.75 feet to a point; thence N55-18-38W for 51.87 feet to a point; thence N13-46-53E for 12.01 feet to a point; thence N67-19-49E for 41.92 feet to a point; thence N56-46-12E for 56.14 feet to a point; thence N87-18-43E for 35.31 feet to a point; thence S64-40-09E for 52.84 feet to a point; thence N61-52-56E for 38.41 feet to a point; thence N29-36-25E for 47.08 feet to a point; thence N45-12-16E for 83.76 feet to a point; thence N30-00-25E for 58.70 feet to a point; thence N59-52-03E for 43.22 feet to a point; thence N73-42-59E for 41.53 feet to a point; thence S81-17-24E for 22.66 feet to a point; thence S21-22-21E for 54.27 feet to a point; thence N68-33-55E for 43.35 feet to a point; thence S84-10-59E for 70.72 feet to a point; thence N74-56-20E for 53.34 feet to a point; thence N86-32-48E for 52.41 feet to a point; thence S51-28-34E for 62.74 feet to a point; thence S80-20-26E for 61.27 feet to a point; thence N47-39-55E for 53.46 feet to a point; thence N64-27-31W for 36.00 feet to a point near the mouth of a creek; thence leaving Lake Heather and running with the southern boundary of ALTEC Industries N79-41-41E for 282.16 feet (passing iron pin at 50 feet) to the Point of Beginning. Contains 19.44 acres more or less.





20080501000179670 12/12 \$44.00
Shelby Cnty Judge of Probate, AL
05/01/2008 04:14:41PM FILED/CERT

