

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**FIRST AMENDMENT TO
AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS FIRST AMENDMENT TO AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Amendment") is made and entered into as of the 25th day of September, 2008 by **DANIEL SENIOR LIVING OF INVERNESS II, LLC**, an Alabama limited liability company ("Developer"), and **LAKE HEATHER HOMEOWNERS' ASSOCIATION, INC.**, an Alabama nonprofit corporation (the "Association").

RECITALS:

Developer and the Association have heretofore entered into an Agreement and Declaration of Restrictive Covenants dated effective as of May 1, 2008 (the "Agreement") which has been recorded in Instrument 20080501000179670 in the Office of the Judge of Probate of Shelby County, Alabama.

Developer and the Association desire to amend the Agreement in the matter hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the Association do hereby agree as follows:

1. Paragraph 17 of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“17. No blasting shall be allowed on the Development Property by Developer or its contractors, agents or assigns.”

2. Paragraph 19 of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“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 22nd day of November 12, 2007, 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. Separate garage doors will be required for each parking area within a garage. 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.”

3. Paragraph 6 of the Agreement is amended as follows:

“Subject to the provisions of paragraph 7 of the Agreement and paragraph 30 below, which is being added to the Agreement by this Amendment, the landscaping and irrigation within the Lake Heather Drive Buffer shall be maintained by Developer, unless and until it is conveyed to the Association as set forth in paragraph 30 below.

(a) If Developer fails to promptly and adequately maintain the Lake Heather Drive Buffer, the Association shall have the right, upon 30 days prior written notice to the Developer, to enter upon the Lake Heather Drive Buffer and cause all such maintenance and repair work to be completed, in which event the Developer will, on demand, reimburse the Association for all reasonable costs and expenses incurred in connection therewith, together with interest thereon at the rate of 12% per annum.

(b) All costs and expenses paid or incurred by the Association in enforcing the terms and provisions of this paragraph regarding the irrigation, landscaping and maintenance of the Lake Heather Drive Buffer shall also, including, without limitation reasonable attorneys’ fees and expenses, will be due and payable on demand by the Developer.

(c) To the extent that any landscaping, irrigation or maintenance of the Lake Heather Drive Buffer is precluded by the actions of the State or local government (e.g., a drought order), the Association shall not have any rights to enforce the provisions of this paragraph.”

4. The Agreement is amended by adding the following thereto as Paragraph 30:

“30. Upon completion of all improvements contemplated to be made by Developer to the Development Property and the closing of the sale of **all** homes constructed on all of those lots which are directly adjacent to or which otherwise physically abut the Lake Heather Drive Buffer (more specifically identified as lots 15, 16, 17, 18 and 19 on the Preliminary Plat

of Inverness Senior Community prepared by Walter Schoel Engineering February 2008 and attached as Exhibit A), Developer shall convey to the Association by quit claim deed (the “Deed”) the Lake Heather Drive Buffer, subject to all easements, restrictions, reservations, rights-of-way and other matters of record and the following additional terms and conditions:

(a) The aforesaid conveyance shall be made only if, following the conveyance, none of the lots abutting the Lake Heather Drive Buffer will violate (or require a variance for) minimum lot size requirements, minimum set back requirements and any other zoning or subdivision requirements of the City.

(b) The Deed shall specifically incorporate all of the terms and provisions of Paragraphs 6 and 7 above of this Agreement requiring the Association to at all times maintain the Lake Heather Drive Buffer in good condition and repair (subject to the provisions of Paragraph 7 hereof).

(c) The Deed will provide that to the extent any landscaping on the Lake Heather Driver Buffer dies, becomes diseased or is otherwise damaged or destroyed, then, except as provided in Paragraph 7 of this Agreement, the same shall be promptly replaced by the Association with landscaping materials and plant life which are substantially equal to that which died, was damaged or was otherwise destroyed. The Deed shall provide that no further improvements of any nature shall be allowed within the Lake Heather Drive Buffer and that any changes in the landscaping plant material within the Lake Heather Drive Buffer must be approved by Developer (or its successors or assigns), to which such approval shall not be unreasonably withheld.

(d) The Deed shall provide that if the Association fails to promptly and adequately maintain the Lake Heather Drive Buffer, Developer (or its successors and assigns) shall have the right, upon 30 days prior written notice to the Association, to enter upon the Lake Heather Drive Buffer and cause all such maintenance and repair work to be completed, in which event the Association will, on demand, reimburse Developer (or its successors and assigns) for all reasonable costs and expenses incurred in connection therewith, together with interest thereon at the rate of 12% per annum.

(e) The Deed will also provide that all costs and expenses paid or incurred by Developer (or its successors and assigns) in enforcing the terms and provisions of the Deed regarding maintenance of the Lake Heather Drive Buffer shall also, including, without limitation

reasonable attorneys' fees and expenses, will be due and payable on demand by the Association.

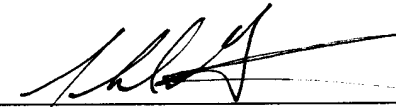
(f) To the extent that any landscaping, irrigation or maintenance of the Lake Heather Drive Buffer is precluded by the actions of the State or local government (e.g., a drought order), the Developer shall not have any rights to enforce the provisions of this paragraph."

5. **Full Force and Effect.** Except as expressly modified and amended herein, all of the terms and provisions of the Agreement shall remain in full force and effect and are hereby ratified, confirmed and approved by Developer and the Association.

IN WITNESS WHEREOF Developer and the Association have executed this Amendment as of the day and year 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


20081006000394050 4/7 \$29.00
Shelby Cnty Judge of Probate, AL
10/06/2008 11:37:07AM FILED/CERT

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 25TH day of September, 2008.

Chris C. Tortrici
Notary Public

[NOTARIAL SEAL]

My commission expires: March 3, 2012

LAKE HEATHER HOMEOWNERS'
ASSOCIATION, INC.

By: Terry Ponder
Name: TERRY PONDER
Its: PRESIDENT



2008100600394050 5/7 \$29.00
Shelby Cnty Judge of Probate, AL
10/06/2008 11:37:07AM FILED/CERT

STATE OF ALABAMA)

COUNTY OF Shelby)


I, the undersigned, a notary public in and for said county in said state, hereby certify that ~~At 6:00 AM~~ Terry Ponder, whose name as Terry Ponder 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 25 day of September, 2008.


Notary Public

[NOTARIAL SEAL]

My commission expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**
MY COMMISSION EXPIRES: Nov 6, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS


20081006000394050 6/7 \$29.00
Shelby Only Judge of Probate, AL
10/06/2008 11:37:07AM FILED/CERT

This instrument prepared by:
Michael Brown
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104

**A PRELIMINARY PLAT OF
INVERNESS SENIOR COMMUNITY**
BEING A SUBDIVISION OF ACREAGE SITUATED IN THE
SW 1/4 OF SECTION 36, TOWNSHIP 8 SOUTH, RANGE 2 WEST OF
SHELBY COUNTY, ALABAMA

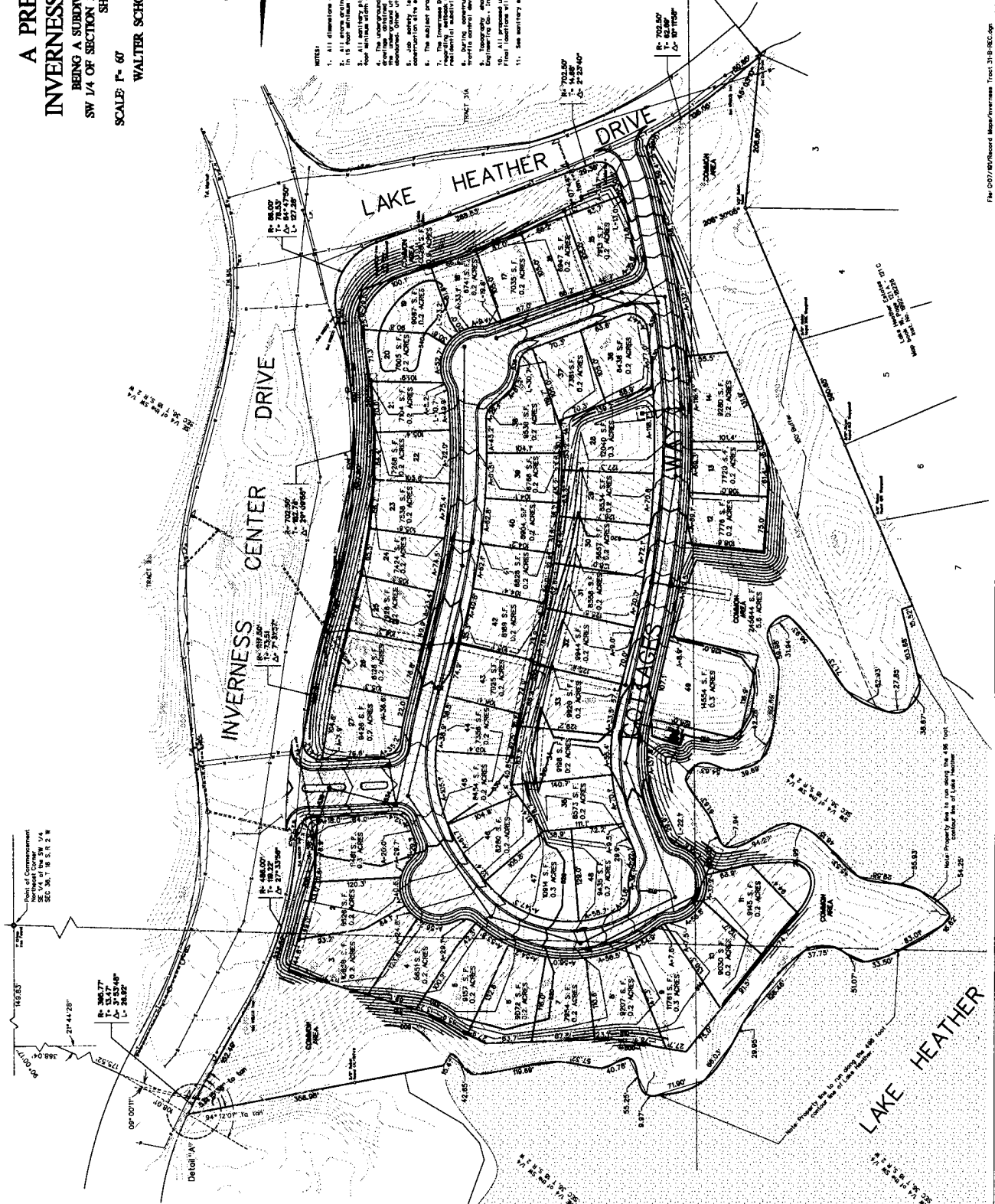
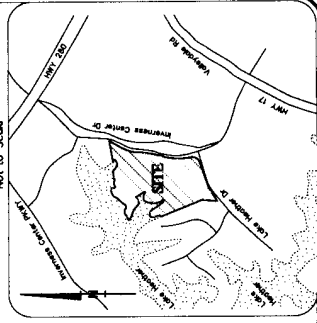
SCALE: 1" = 60'
FEBRUARY 2008
WALTER SCHEEL ENGINEERING COMPANY, INC.

CONSULTING ENGINEERS
FOR THE PROJECT
DATE: FEBRUARY 2008
PROJECT NO.: 08027-008



- NOTES:**
- All dimensions are approximate.
 - All areas of coverage shown on these plans are located within road right-of-way will be in 15 foot wide easements with easements.
 - How utilities are shown on these plans are not located within road right-of-way will be in 20 foot wide easements with easements.
 - The underground utilities shown have been located from state records, inspection and existing utility records. The utility records are not guaranteed to be correct. The engineer is responsible for determining the location and depth of all utilities. The engineer is responsible for determining the location and depth of all utilities. The engineer is responsible for determining the location and depth of all utilities.
 - The subject property is owned by the "S" family.
 - The Inverness Development Control Committee will adopt and enforce rules and regulations pertaining to the development of this site. Each addition and site improvements may vary from one lot to another. The engineer is responsible for determining the location and depth of all utilities.
 - During construction all traffic control shall be in accordance with the annual or alternate traffic control plan. The engineer is responsible for determining the location and depth of all utilities.
 - All proposed utilities are shown as preliminary and based on utility companies. The engineer is responsible for determining the location and depth of all utilities.
 - See utility easer design package for details on utility easer construction.

VICINITY MAP
Not to Scale



File: 00789/Record Map/Inverness - Tract 31-B-REC.dwg



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Shelby Cnty Judge of Probate, AL
10/06/2008 11:37:07AM FILED/CERT