

ARTICLES OF INCORPORATION

OF

WEATHERLY SWIM & TENNIS CLUB, INC.

STATE OF ALABAMA)

COUNTY OF SHELBY)

The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Act (Code of Alabama (1975) 10-3A-1, et. seq.) hereby adopts the following Articles of Incorporation and certify as follows:

1. NAME. The name of the corporation is **WEATHERLY SWIM & TENNIS CLUB, INC.** (the "Club").

2. DURATION. The period of duration of the Club shall be perpetual.

3. PURPOSES. The purpose for which the Club is organized is to operate as a private club for the social and athletic pleasure, recreation, benefit and other nonprofit purposes of its Members, including, without limitation, to transact any or all lawful business for which corporations may be incorporated under the Alabama Nonprofit Corporation Act, as amended.

THIS CLUB DOES NOT CONTEMPLATE PECUNIARY GAIN OR PROFIT FOR THE MEMBERS THEREOF AND THE FUNDS OF THE CLUB, WHETHER RECEIVED BY GIFT OR OTHERWISE, REGARDLESS OF THE SOURCE THEREOF, SHALL BE EXCLUSIVELY USED IN THE PROMOTION OF THE BUSINESS OF THE CLUB, AS THE BOARD OF DIRECTORS MAY FROM TIME TO TIME DETERMINE.

4. INITIAL REGISTERED OFFICE AND AGENT. The location and mailing address of the initial registered office of the Club, and the name of its initial registered agent at such address, are as follows:

B. Lynn McGaughy
100 Wembley Way
Alabaster, Alabama 35007

5. NONSTOCK AND NONPROFIT STATUS. The Club shall have no capital stock, is not organized for profit, and does not contemplate pecuniary gain or profit to the Members thereof. No part of the earnings of the Club shall inure to the benefit of any Member, individual, officer, or director of the Club. The Club does not contemplate the distribution of gains, profits or dividends to the Members thereof and is organized solely for

1
08/20/1996-27015
09:53 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 MCD 50.00

Inst # 1996-27015

nonprofit purposes.

6. **MEMBERS.** The categories of Membership, qualifications for Membership, the manner of admission and requirements for Membership in the Club shall be as set forth in the Club's Bylaws. Members shall not have voting rights in the Club until after the Turnover Date, as defined in the Bylaws.

7. **DIRECTORS.**

(a) **Number of Directors.** The affairs of the Club shall be managed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be five (5). Thereafter, the number of Directors shall be fixed in the manner provided in the Bylaws and may thereafter be increased or decreased from time to time by amendment to or in the manner provided in the Bylaws; provided, however, that (i) the number of Directors shall in no event consist of less than three (3) Directors and (ii), no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Furthermore, as provided in the Bylaws, Weatherly Lands, L.L.C., an Alabama limited liability company and its successors and assigns ("Developer"), shall have the right to elect all members of the Board of Directors of the Club. Directors need not be Members or residents of the State of Alabama. The names and addresses of each person who is to serve as an initial Director of the Club until their successors are elected and qualified or until such Directors are removed as provided in Paragraph 7(b) of these Articles are as follows:

B. Lynn McGaughy
100 Wembley Way
Alabaster, Alabama 35007

Jack H. Harrison
100 Wembley Way
Alabaster, Alabama 35007

Robert C. Sinclair
100 Wembley Way
Alabaster, Alabama 35007

Patrick A. Thornton
100 Wembley Way
Alabaster, Alabama 35007

Thomas Thornton
100 Wembley Way
Alabaster, Alabama 35007

(b) **Removal.** Developer shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director

or otherwise fill any vacancies on the Board, in each case without any consent or approval of any of the Members.

(c) **Powers.** Except as may be otherwise provided to the contrary in these Articles of Incorporation or the Bylaws of the Club, all powers of the Club shall be exercised by or under authority of, and the business and affairs of the Club shall be managed under the direction of, the Board of Directors.

(d) **Conflicts of Interest.** No contract or other transaction between the Club and one or more of its Directors or any other corporation, firm, club, or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest. Any Director of the Club or any corporation, firm, club or entity of which any Director of the Club is a director or officer or is financially interested may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Club, provided that such relationship or interest in such contract or transaction shall be disclosed or known to the Board of Directors at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction and, if such fact shall be disclosed or known, any director so related or interested may be counted in determining a quorum at such meeting and may vote on such matter or action with the same force and effect as if he were not so related or interested. Any Director of the Club may vote on any contract or other transaction between the Club and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

8. **INCORPORATOR.** The name and address of the incorporator is as follows:

B. Lynn McGaughy
100 Wembley Way
Alabaster, Alabama 35007

9. **POWER OF PRESIDENT AND VICE PRESIDENTS TO EXECUTE DOCUMENTS.** The President and each Vice President of the Club shall each have authority to execute all instruments, documents and contracts on behalf of the Club.

10. **INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.**

(a) The Club shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Club), by reason of the fact that he is or was a Director, officer, employee or agent

of the Club, or is or was serving at the request of the Club as a Director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expense (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Club; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or upon a plea of nolo contendere or its equivalent, shall not, in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Club, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Club shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Club to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee or agent of the Club, or is or was serving at the request of the Club as a Director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Club; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for willful, deliberate or wanton misconduct in the performance of his duty to the Club unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which court shall deem proper.

(c) To the extent that a Director, officer, employee or agent of the Club has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraphs 10(a) and (b) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expense (including attorney's fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

(d) Any indemnification under Paragraphs 10(a) and (b) above (unless ordered by a court) shall be made by a determination that indemnification of the Director, officer, employee or agent is

proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraphs 10(a) or (b) above. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the Members of the Club.

(e) Expenses (including attorney's fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Club in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Paragraph 10(d) above upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Club as authorized in this Paragraph 10.

(f) The indemnification authorized by this Paragraph 10 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provisions of these Articles of Incorporation, Bylaw, agreement, vote of members or disinterested Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Club shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Club, or is or was serving at the request of the Club as a Director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Club would have the power to indemnify him against such liability under the provisions of this Paragraph 10.

11. **AMENDMENT.** These Articles of Incorporation may be amended and modified in the manner provided in the Bylaws.

IN WITNESS WHEREOF, the undersigned Incorporator has hereunto subscribed her name to these Articles of Incorporation as of this the 1st day of June, 1996.


B. LYNN MCGAUGHY
Incorporator

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public and for the foregoing State and County, do hereby certify that B. Lynn McGaughy whose name as incorporator is signed to the foregoing Articles of Incorporation, acknowledged before on this day, that, being informed of the contents of the foregoing instrument, she executed the same voluntarily, and first duly sworn did depose and say that the matters set out therein are true and correct according to the best of her knowledge, information and belief.

Subscribed and sworn to before me,
this the 1st day of June,
1996.


NOTARY PUBLIC

My Commission Expires: 6/30/2000

State of Alabama

SHELBY

County

CERTIFICATE OF INCORPORATION

OF

WEATHERLY SWIM & TENNIS CLUB, INC.

The undersigned, as Judge of Probate of SHELBY County, State of Alabama, hereby certifies that duplicate originals of Articles of INCORPORATION of WEATHERLY SWIM & TENNIS CLUB, INC., duly signed and verified pursuant to the provisions of Section NON-PROFIT of the Alabama Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby issues this Certificate of INCORPORATION of WEATHERLY SWIM & TENNIS CLUB, INC., and attaches hereto a duplicate original of the Articles of INCORPORATION.

GIVEN Under My Hand and Official Seal on this the 20 day of

AUGUST19 96

Patricia Geyer Schmieder

Inst # 1996-98 of Probate

08/20/1996-27015
09:53 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
50.00