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STATE OF ALABAMA     )  
                                  )  
SHELBY COUNTY         )

**COVENANT AND AGREEMENT FOR WATER  
SERVICE AND TAP FEES**

This Agreement made this 7<sup>th</sup> day of MARCH, 1995, by and between Weatherly Enterprises, Inc., an Alabama corporation ("WEI"); Weatherly Joint Venture, L.L.C., an Alabama limited liability company ("WJV"); Weatherly Investment Group, L.L.C., an Alabama limited liability company ("WIG"); and, Steven E. Chambers and wife Caryn H. Chambers (hereinafter collectively referred to as "Chambers");

Whereas, WJV, WIG or Chambers are the current owners of those lands identified on Exhibits A and B hereto (hereinafter collectively referred to as the "Subject Lands"); and,

Whereas, WEI has paid to the City of Pelham the costs of construction of a water tank (Tank) and booster station located on Kings Crest (hereinafter collectively referred to as the "Tank") which have been dedicated as a part of the Pelham municipal water system; and,

Whereas, it was agreed with the City of Pelham at the time of construction of the said Tank that the owners of the Subject Lands and the Weatherly Investment Partnership ("WIP") would pay their pro rata share of the costs of said improvements based on the number of lots and other improvements developed on their respective lands that are ultimately served by the said Tank; and,

Inst # 1995-06003

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SHELBY COUNTY JUDGE OF PROBATE  
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Whereas, it is agreed that the pro rata cost of the said improvements allocable to the Subject Lands to be reimbursed to WEI is \$230,000.00; and,

Whereas, the said Subject Lands listed on Exhibit A are currently owned by either WJV or WIG; and,

Whereas, the said Subject Lands listed on Exhibit B are currently owned by Chambers, and are under contract for sale to WIG; and,

Whereas, the parties covenant and agree that WEI shall be reimbursed the said \$230,000.00 through payment of tap fees at the time of sale of lots or other parcels from the Subject Lands; and,

Whereas, the parties agree that the obligation to pay said tap fees shall be a lien and charge against the land recordable as a covenant running with the lands;

Therefore, in consideration of the mutual agreements and promises contained herein:

1. Chambers, WJV and WIG, for themselves, their successors and their assigns, covenant and agree to pay to WEI a fee (hereinafter referred to as the "Tap Fee") at the time of sale of each residential lot or other parcel from the said Subject Lands, which uses water from the Tank, described in Exhibits A and B in accord with the following requirements.

2. (a) The Tap Fee for each standard residential lot, with a projected water usage of 300 gallons per day drawn from the Tank, shall be \$2,000.00.

(b) The Tap Fee for each parcel other than a standard residential lot shall be based on the projected water usage for the improvements to be made on said lots, with a baseline fee of \$2,000.00 for every 300 gallons of use per day.

(c) Tap Fees shall be payable only for those parcels of land using water from the Tank that are, in whole or in part, at or above an elevation of 725 feet above sea level.

(d) It shall be determined and noted on each record map of the several sectors of land developed, those burdened lots or parcels contained therein which are subject to the lien herein established. All parties agree that WEI or its successors or assigns shall be a party to each record map and note its concurrence as to those lots which constitute burdened lots hereunder by signature on the record map.

3. The Tap Fee for each lot or parcel shall be due and payable to WEI at the time of sale of the said residential lot by the developer to an ultimate consumer or other parcel until WEI has received Tap Fees from sales of the Subject Lands of \$230,000.00. Upon receipt of said total sum of \$230,000.00, WEI shall file a notice of payment and satisfaction in full of the terms and obligations provided for in this Agreement.

4. The terms and conditions of this Agreement shall be covenants running with the lands described in Exhibits A and B and shall be binding upon Chambers, WJV, WIG and their assignees and successors in interest. Said parties and their assigns and successors covenant and agree to pay the Tap Fees when due, and, upon failure to do so, shall be liable for the unpaid Tap Fee, together with interest at the statutory rate, costs and reasonable attorney's fees for collection, all of which shall be a charge and assessment on the land and shall be a continuing lien on the property against which such charge and assessment is made. Each such charge or assessment shall also be the personal obligation of the owners of such property at the time when the charge and assessment became due and continuing thereafter until the charge or assessment, together with all costs and fees, is fully satisfied.

5. Power of Sale. If default in payment of Tap Fees on burdened lots exists, this Agreement shall be subject to foreclosure and may be foreclosed on burdened lots as now provided


by law in case of past-due mortgages, and WEI shall be authorized, at its option, whether or not possession of the property is taken, to sell the property (or such part or parts thereof as WEI may from time to time elect to sell) under the power of sale which is hereby given to WEI, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of Shelby County, after written notice to the record owner at the last known address and by giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the property to be sold, by publication in some newspaper published in Shelby County. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. WEI may bid at any sale held under this Agreement and may purchase the property, or any part thereof, if the highest bidder therefore. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money.

6. In the event WEI so elects, and is permitted to do so by law, the lien for Tap Fees hereunder shall be enforceable in the manner prescribed by statute for enforcement of a lien for municipal assessments or improvements.

7. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter described herein and supersedes all prior discussions, understandings agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by all parties hereto. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Alabama. If any term, covenant or condition of this Agreement or the application thereto to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term,

covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Weatherly Enterprises, Inc.

By:   
Its President

STATE OF ALABAMA                     )  
  )  
JEFFERSON COUNTY                     )

On this the 7<sup>th</sup> day of MARCH, 1995, before me, MARIE EIDSON, the undersigned officer, personally appeared STEVEN E. CHAMBERS, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

My Commission Expires

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: FEB. 6, 1997.  
~~BONDED THROUGH NOTARY PUBLIC UNDERWRITERS.~~



Weatherly Investment Group, L.L.C.

By: Thomas J. Thornton  
Its Managing Member

By: Patrick A. Thornton  
Its Managing Member

STATE OF ALABAMA )

JEFFERSON COUNTY )

On this the 7th day of MARCH, 1995, before me, MARIE EIDSON, the undersigned officer, personally appeared THOMAS J. THORNTON and PATRICK A. THORNTON known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Marie Eidson

Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: July 8, 1997.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

Weatherly Joint Venture, L.L.C.

By: Thomas J. Thornton  
Its Managing Member

By: Jack H. Harrison  
Its Managing Member

STATE OF ALABAMA                    )  
  )  
JEFFERSON COUNTY                    )

On this the 24<sup>th</sup> day of MARCH, 1995, before me, MARIE EIDSON,  
the undersigned officer, personally appeared THOMAS J. THORNTON and  
JACK H. HARRISON, known to me to be the persons whose names are subscribed to the within  
instrument and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Marie E. Eidson

Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: July 8, 1997.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

  
Steven E. Chambers

STATE OF ALABAMA           )  
  )  
JEFFERSON COUNTY        )

On this the 7<sup>th</sup> day of MARCH, 1995, before me, MARIE EIDSON ~~Steven E. Chambers~~, the undersigned officer, personally appeared STEVEN E. CHAMBERS, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: July 8, 1997.  
~~BONDED THRU NOTARY PUBLIC UNDERWRITERS.~~

  
Caryn H. Chambers

STATE OF ALABAMA           )  
  )  
JEFFERSON COUNTY        )

On this the 7<sup>th</sup> day of MARCH, 1995, before me, MARIE EIDSON ~~Caryn H. Chambers~~ the undersigned officer, personally appeared CARYN H. CHAMBERS, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: July 8, 1997.  
~~BONDED THRU NOTARY PUBLIC UNDERWRITERS.~~



## **EXHIBIT "A"**

### **Parcel 1 (Kimberly Clark 1330)**

All of Section 28, Township 20 South, Range 2 West, situated in Shelby County, Alabama. Less and except the Northwest Quarter of the Northwest Quarter, and

The North one-fourth of Section 33, Township 20 South, Range 2 West, and

The North one-half of the Northwest Quarter and the Northeast Quarter of the Northeast Quarter of Section 32, Township 20 South, Range 2 West and

The South one-half of Section 31, Township 20 South, Range 2 West, and

The East one-half of the Northeast Quarter of Section 31, Township 20 South, Range 2 West, less and except that portion known as Survey of Weatherly-Windsor Sector 11, as recorded in Map Book 18, Page 80, in the Probate Office of Shelby County, Alabama, and less and except that portion owned by Durall Dobbins,

all of said parcels are situated in Shelby County, Alabama.

### **Parcel 2 (Martin)**

The Northwest Quarter of the Northeast Quarter of Section 32, Township 20 South, Range 2 West, and

The Southwest 1/4 of the Northwest 1/4 and the West one-half of the Southeast 1/4 of the Northwest 1/4, all in Section 32, Township 20 South, Range 2 West, all of said parcels are situated in Shelby County, Alabama.

### **Parcel 3 (Bettini)**

A parcel of land situated in Section 33, Township 20 South, Range 2 West, and being more particularly described as follows:

Begin at the NW corner of the SW1/4 of NW1/4 of Section 33, Township 20 South, Range 2 West; thence S 87 degrees 34' 13" East a distance of 3000.00'; thence S 54 degrees 23' 13" West a distance of 3730.91'; thence N 0 degrees 53' 51" East a distance of 983.26'; thence N 0 degrees 53' 17" East a distance of 1316.74' to the point of beginning.

EXHIBIT "B"

Begin at the SE corner of Section 29, Township 20 South, Range 2 West and proceed Northerly on the E boundary of Section 29, 4761.79 feet; thence turn S 52 degrees 22 minutes 25 seconds W a distance of 1060.75 feet; thence turn S 41 degrees 25 minutes 19 seconds W a distance of 840.19 feet; thence turn S 34 degrees 22 minutes 38 seconds W a distance of 2074.81 feet; thence turn S 24 degrees 11 minutes 52 seconds E a distance of 282.99 feet; thence turn S 37 degrees 7 minutes 24 seconds W a distance of 1611.65 feet; thence turn S 82 degrees 37 minutes 6 seconds E a distance of 738.93 feet; thence proceed in an easterly direction for a distance of 2655.99 feet to the point of beginning. Said property lies in Section 29, Township 20 South, Range 2 West. Containing approximately 187 acres.

Begin at the NE corner of Section 28, Township 20 South, Range 2 West and proceed S 89 degrees 3 minutes 46 seconds W along the Northern boundary of said Section 28 a distance of 1314.30 feet to the point of beginning; thence turn N 2 degrees 0 minutes 49 seconds E a distance of 2632.34 feet; thence turn N 84 degrees 37 minutes 27 seconds W a distance of 1284.38 feet; thence turn S 40 degrees 24 minutes 20 seconds W a distance of 3078.00 feet to a point along the N boundary of Section 28; thence S 82 degrees 46 minutes 09 seconds E a distance of 602.30 feet; thence in an easterly direction a distance of 2605.03 feet more or less to the point of beginning. Said property lies in Section 21, Township 20 South, Range 2 West. Containing approximately 130 acres.

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