

✓ This Instrument Prepared By
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**DECLARATION OF PROTECTIVE COVENANTS FOR
WEATHERLY COMMERCIAL SUBDIVISION**

**AS RECORDED
IN MAP BOOK 21, PAGE 60, IN THE
PROBATE OFFICE OF SHELBY COUNTY, ALABAMA**

Inst # 1996-37138

STATE OF ALABAMA)
COUNTY OF SHELBY)

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, the undersigned Weatherly Joint Venture, L.L.C., an Alabama limited liability company (which, together with its successors and assigns, is hereinafter referred to as "Developer"), is the owner of all of that certain real property situated in Shelby County, Alabama which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). All lots shown on the subdivision plat (the "Subdivision Plat") for the Property are hereinafter referred to individually as a "Commercial Lot" and collectively as "Commercial Lots". **THESE PROTECTIVE COVENANTS ARE APPLICABLE ONLY TO THE PROPERTY AND SHALL NOT EXTEND TO OR BE BINDING UPON ANY OTHER PORTIONS OF THE DEVELOPMENT.**

WHEREAS, the Developer desires to subject all of the Property and each Commercial Lot located thereon to the easements, covenants, conditions, assessments, limitations and restrictions hereinafter set forth.

NOW, THEREFORE, Developer does hereby expressly adopt the covenants and limitations for the Property as set forth in these Protective Covenants and does hereby declare that the Property and each Commercial Lot located within the Property shall be and the same are hereby subject to the following easements, covenants, conditions, assessments, limitations and restrictions.

Inst # 1996-37138

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SHELBY COUNTY JUDGE OF PROBATE
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ARTICLE I
EXCLUSIVE COMMERCIAL USE AND IMPROVEMENTS

1.01 All Lots shall be known and described as Commercial Lots and shall be used for commercial purposes exclusively. No Commercial Lot shall be subdivided or re-subdivided without the prior written approval of Developer.

1.02 No structure shall be erected, altered, placed or permitted to remain on any Commercial Lot other than one (1) building not to exceed two and one-half (2-1/2) stories, or forty (40) feet in height, and a garage, and other outbuildings incidental to and necessary for commercial use of the Commercial Lot. No mobile home or modular housing is allowed. Separate garage buildings are permitted. Any outbuilding will be in conformity to the standards set herein and approved by the Architectural Review Committee (hereinafter referred to as "Committee"), established by Developer pursuant to Article III hereof.

1.03 Notwithstanding anything provided to the contrary herein, Developer shall be permitted to construct and maintain on any Commercial Lot a structure and related facilities which may be designed and used as a temporary construction field office and as a sales/marketing office subject to time limitations as may be established by the Committee.

1.04 Subject to the provisions of Article VII below and the rights retained below by the Committee, each Commercial Lot except Lot 1, and any building or other structure constructed or placed thereon shall be subject to the following minimum setbacks:

Front: Fifty (50) feet from dedicated road right-of-way;
Side: Forty (40) feet from each side.
Rear: Sixty (60) feet from the rear lot line.

Lot 1 setbacks will be set by the Committee.

1.05 No Commercial Lot shall be used except for commercial purposes. No building shall be erected on any Commercial Lot containing less than three thousand (3,000) square feet of finished heated space on one level; and three thousand six hundred (3,600) square feet on a story and a half with a minimum of twenty four hundred (2,400) square feet of heated finished area on the first floor; and all two-story buildings shall contain a minimum of thirty eight hundred (3,800) square feet of heated finished area. Square footage measurements shall include only the living (heated and cooled) areas of a building but shall not include porches, garages, or decks. In the event that, Commercial Lot number one (#1) if used for a convenience store gas station combination, then the Developer shall have the right to grant a lesser square footage amount for the onsite building. All buildings will have wooden, wood clad, or painted aluminum windows. All buildings shall have all sides finished with brick approved by the Committee. The Committee reserves and shall have the right to grant reasonable variances from the first floor square footage requirements so long as the overall square footage meets or exceeds the minimum requirements.

1.06 The entrance ways to the Development, all areas on the recorded Subdivision Plat

which are depicted as common area or beautified easements and any and all other areas or improvements within the Development which Developer may from time to time in its sole discretion designate as common areas, including, without limitation, recreational amenities, parks and play areas within the Development, shall be, for the purpose of maintenance and upkeep, considered common area (collectively, the "Common Area"), and shall be maintained by the Weatherly Residential Association, Inc. (the "Association") as hereinafter provided.

ARTICLE II

GENERAL REQUIREMENTS

2.01 It shall be the responsibility of each Commercial Lot owner (which together with their respective heirs, executors, personal representatives, successors and assigns, is hereinafter individually referred to as an "Owner" and collectively as "Owners") to prevent any unclean, unsightly or unkept conditions of any Building, buildings or grounds on such Owner's Commercial Lot which may tend to decrease the beauty of the specific area or of the neighborhood as a whole. Any and all building, structures and other improvements of any nature to any Commercial Lot must be approved by the Committee.

2.02 No refuse pile or unsightly object, including firewood, shall be allowed to be placed or suffered to remain upon any part of any Commercial Lot or the Property, including vacant lots or Common Areas. Developer, for itself and the Association reserves the right (after ten (10) days prior written notice to an Owner) to enter any Commercial Lot during normal working hours for the purpose of removing trash or refuse therefrom which, in the sole opinion of either Developer or the Association, is considered to be in violation of the foregoing, and may charge the Owner of such Commercial Lot a reasonable cost for such services, which charge shall constitute a lien upon such Commercial Lot enforceable by appropriate proceedings at law or equity or as hereinafter provided.

2.03 No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Commercial Lot.

2.04 No noxious or offensive trade or activity shall be carried on upon any Commercial Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners or which would be in violation of any applicable governmental law, ordinance or regulation.

2.05 No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Commercial Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Commercial Lot. No derrick or other structure designed for use in boring oil or natural gas shall be erected, maintained or permitted upon any Commercial Lot.

2.06 No trash, garbage or other refuse shall be dumped, stored or accumulated on any Commercial Lot or Common Area. Trash, garbage or other waste shall not be kept on any Commercial Lot except in sanitary containers or garbage compactor units. Garbage containers, if

any, shall be kept in a clean and sanitary condition and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Committee as not to be visible from any road, or within sight distance of any other Commercial Lot at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction of a building on such Commercial Lot, or with approval of or by the Fire Department having jurisdiction over the Property.

2.07 Except as authorized in Section 1.03 above, no structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently or otherwise allowed to remain on any Commercial Lot without the Committee's approval. There shall be no occupancy of any building unit until the interior and exterior of the building is completed and a Certificate of Occupancy for such building has been issued by the appropriate governmental authorities.

2.08 No sign of any kind shall be displayed to the public view on any Commercial Lot except as may be approved by the Committee. All signs shall comply with the design specifications of the Committee. No signs shall be nailed to trees, unless approved by the Committee.

2.09 When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and the building on such Commercial Lot must be completed within twelve (12) months.

2.10 Garage doors shall not be permitted on the front of buildings. Unless approved in writing by the Committee, all garage doors shall be located on the side or at the rear of buildings.

2.11 Outside air conditioning units may not be located in the front yard or within any side yard adjacent to any street on corner lots. Utility meters shall not be located on the front of a building (unless required by any applicable governmental authority) and shall not be visible from any public street.

2.12 No concrete block work, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted, or otherwise, shall be visible above ground or from the exterior of any building.

2.13 No siding shall be used on the construction of any building, except as approved by the Committee. The Committee shall have the right, in its sole and absolute discretion, to establish what types of exterior building materials may be utilized on any building or other structures or improvements to a Commercial Lot.

2.14 Wood fencing may be utilized on any Commercial Lot with prior written approval of the same by the Committee. If fencing is not finished on both sides, the finished side must be to the outside, if it faces any street or house.

2.15 No individual water supply system shall be permitted on any Commercial Lot unless

such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of both state and local public health authorities. Approval of such system as installed shall be obtained from such authority.

2.16 No automobiles or other vehicles will be stored on any Commercial Lot or Common Area or kept on blocks unless in the garage of a building. Boats, utility trailers, recreational vehicles and travel trailers must either be parked or stored in the garage of a building or within a completely enclosed structure on a Commercial Lot, which structure must be approved by the Committee. No tractor trailer trucks, panel vans or other commercial trucks in excess of one (1) ton classification shall be parked or stored on any Commercial Lot or Common Area.

2.17 No satellite, microwave dishes or television or radio antennas shall be placed on any Commercial Lot unless first approved in writing by the Committee, but in no event shall satellite, microwave dishes or television or radio antennas be visible from any street within the Property.

2.18 No individual sewage disposal system shall be permitted on any Commercial Lot unless such system is designated, located and constructed in accordance with the requirements, standards and recommendations of both state and local public health authorities. Approval of such system as installed shall be obtained from such.

2.19 The Developer requires a landscape plan to be submitted for approval on each Commercial Lot. Upon the completion of a building, all front and side yards will be landscaped with sod and other landscaping approved by the Committee. The rear yard may be seeded or sprigged. That certain area located in the northwest corner of Commercial Lot 1 which has been landscaped and constitutes a part of the entrance to Weatherly shall not be disturbed and the owner(s) of Commercial Lot 1 shall permit the Weatherly Residential Association to have access to that area in perpetuity for the purpose of maintaining and/or improving the area.

2.20 The roof pitch on any building shall not be less than 9 & 12 unless first approved in writing by the Committee. All roof vents, and pipes shall be painted as near the color of the roof as possible, and shall be located on the rear of the building and not visible from the front. All roofs will be three dimensional roofing product and all buildings will use the same color, such color to be approved by the Committee. No solar or other energy collection devise or equipment shall be maintained on any Commercial Lot or building if the same would be visible from the street. No projections of any type shall be allowed above the roof of any building except for approved chimneys and vent stacks.

2.21 All driveways visible from the street must be concrete finish or asphalt.

2.22 No fence, wall, hedge or shrub planting which obstructs sight lines from any roadways within the Property shall be placed or permitted to remain on any Commercial Lot.

2.23 The intent of Developer is to preserve for present and future Owners a beautiful environment, well landscaped and maintained. All Commercial Lots shall be landscaped in

accordance with standards established by the Committee. It is also the intent of Developer to preserve a minimum number of "flowering trees" visible from the street right-of-way. Each Owner must also plant and maintain at least three (3) flowering trees, a minimum of eight (8) feet in height, visible from the street fronting said building. All landscaped areas on any Commercial Lot shall be maintained in good condition by the Owner thereof and any of the aforesaid flowering trees which die or become diseased or damaged shall be promptly replaced with new flowering trees by the Owner of such Commercial Lot.

2.24 Developer reserves the right to make any road or other improvements within the Property, to change or extend the present road or other street grades, if necessary, without liability to the Owners for any claims for damages; and further reserves the right to change or modify the restrictions on any Commercial Lots within the Property.

2.25 During all construction, all vehicles, including those delivering supplies, must enter each Commercial Lot on the driveway only as approved by the Committee so as not to unnecessarily damage trees, street paving and curbs. Any damage not repaired by the Owner or his contractor will be repaired by Developer or the Committee (after ten (10) days written notice) and will be charged to the owner. This charge shall constitute a lien upon such Commercial Lot enforceable by appropriate proceedings at law or equity or as hereinafter provided. During construction, all Owners must keep the homes, garages and building sites clean and attractive. No construction debris will be dumped in any area of the Property or any Common Area.

2.26 Except with the prior written consent of Developer, no Commercial Lot shall be sold or used for the purpose of extending any public or private road, street or alley or to provide a means of access to any other real property situated adjacent to or in close proximity with the Property.

2.27 Motorized vehicular traffic of any type is strictly prohibited on any Common Area except as may be required by the Developer or the Association for maintenance or construction.

2.28 Wood piles shall be located only at the rear of a building and should be screened from view from public street, adjacent Commercial Lots. Children's toys, swingsets, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances shall be allowed only at the rear or behind a building and shall be located so as not to be visible from any public street. Free-standing playhouses and tree houses must be approved by the Committee; no above ground swimming pools shall be allowed on any Commercial Lot. No statues, water fountains, bird baths, flagpoles or furniture shall be placed or maintained on the front or side yard of any Commercial Lot. All outdoor furniture for any building shall be kept and maintained only at the rear or behind the Building. Outside clothes lines and other facilities for drying or airing of clothes are prohibited. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of a building and should not be visible from any public street. Statues, water fountains, bird baths, bird feeders, wood carvings, plaques and other home crafts shall be allowed only at the rear of a building and should not be visible from any public street. No rocks, rock walls, fencing or other substance shall be placed on any Commercial Lot as a front or side yard border or to prevent vehicles

from parking on or pedestrians from walking on any portion of such Commercial Lot or to otherwise impede or limit access to the same. Seasonal or holiday decorations (e.g. Christmas trees and lights, pumpkins, Thanksgiving decorations) shall be promptly removed from any Commercial Lot or building within thirty (30) days following such holiday.

ARTICLE III

ARCHITECTURAL REVIEW COMMITTEE

3.01 The Committee will consist of no more than five (5) persons each of whom will be designated and may be removed at any time by the Developer, until such time as Developer relinquishes in writing the authority to appoint members to the Committee to the Association. At such time as Developer no longer owns any Commercial Lots within the Property or upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the Committee, then the Board of Directors of the Association shall have the right to appoint and terminate, with or without cause, all members of the Committee.

3.02 All plans and specifications, including plot plans, grading and drainage plans for any improvements to a Commercial Lot, exterior materials, texture and color selections for any buildings and the plans for all mailboxes and entrance columns serving any Commercial Lot within the Property shall be first filed with and approved by the Committee before any construction is commenced on such Commercial Lot. The Committee shall have the authority to require modifications and changes in plans and specifications if it deemed the same necessary.

3.03 The authority to review and approve plans and specifications as provided herein is a right and not an obligation. Owners (and their respective contractors) shall have the sole obligation to oversee and construct buildings in accordance with the restrictions hereof and the plans and specifications approved by the Committee. No buildings, structures or other improvements of any nature shall be constructed, erected, placed or maintained on any Commercial Lot until such time as the Committee has approved in writing the plans therefor. The Committee shall have the right to establish and amend from time to time written rules, regulations and standards governing policies, guidelines and minimum requirements relating to the construction and alteration of any buildings or other improvements on any Commercial Lot, as well as the content and types of information required to be submitted to the Committee for its approval, each of which shall be in addition to the provisions and requirements set forth herein.

3.04 Any exterior remodeling, reconstruction, alterations or additions to an existing building or any activity which would change or alter the exterior appearance of a building must be approved by the Committee. Interior remodeling, reconstruction or alterations not affecting the exterior appearance of a building shall require the written approval of the Committee, and shall comply with all restrictions and covenants set forth herein.

3.05 Neither the Committee, any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done

according to such plans and specifications. **EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY COMMERCIAL LOT, DOES HEREBY WAIVE AND RELEASE THE COMMITTEE AND DEVELOPER AND ANY OF THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, MEMBERS AND SUCCESSORS AND ASSIGNS, FROM ANY LIABILITY OF ANY NATURE WHATSOEVER ARISING FROM DAMAGE, LOSS OR EXPENSE SUFFERED, CLAIMED, PAID OR INCURRED BY ANY OWNER ON ACCOUNT OF ANY DEFECTS IN ANY PLANS AND SPECIFICATIONS SUBMITTED TO OR APPROVED BY THE COMMITTEE, ANY DEFECTS RESULTING IN ANY WORK DONE IN ACCORDANCE WITH SUCH PLANS OR OTHER DATA SUBMITTED PURSUANT TO THE REQUIREMENTS OF THIS ARTICLE III AND ANY INJURY TO PROPERTY OR PERSONS, INCLUDING DEATH, ARISING FROM ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED ON SUCH OWNER'S COMMERCIAL LOT.**

3.06 The Committee shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. Any approval granted by the Committee shall be effective only if such approval is in writing. The Committee shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of the Protective Covenants, including, without limitation, purely aesthetic considerations, failure to comply with any of the provisions of the Protective Covenants, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the Property, objection to the location of any proposed improvements on any Commercial Lot, objection to the color scheme, finish proportions, style of architecture, height, bulk of appropriateness of any building or other improvements on any Commercial Lot or any other matter which in the sole and absolute judgement of the Committee, would render the proposed building or other improvements inharmonious with the general plan of development for the Property. The approval of plans, specifications and other data for any one specific building shall not be deemed an approval or otherwise obligate the Committee to approve similar plans, specifications or data for any other building to be constructed on any Commercial Lot within the Property.

3.08 THE PROPERTY MAY BE LOCATED IN AN AREA WHICH INCLUDES UNDERGROUND MINES, TUNNELS, SINKHOLES AND SUBSURFACE CONDITIONS. THE APPROVAL OF PLANS AND SPECIFICATIONS BY THE COMMITTEE SHALL NOT BE CONSTRUED IN ANY RESPECT AS A REPRESENTATION OR WARRANTY BY THE COMMITTEE OR DEVELOPER TO ANY OWNER THAT THE SURFACE OR SUBSURFACE CONDITIONS OF ANY COMMERCIAL LOT ARE SUITABLE FOR THE CONSTRUCTION OF A BUILDING OR OTHER STRUCTURES THEREON. IT SHALL BE THE SOLE RESPONSIBILITY OF EACH OWNER TO DETERMINE THE SUITABILITY AND ADEQUACY OF THE SURFACE AND THE SUBSURFACE CONDITIONS OF THE COMMERCIAL LOT. NEITHER THE COMMITTEE OR THE DEVELOPER SHALL BE LIABLE. FOR ANY DAMAGE OR INJURY SUFFERED OR INCURRED BY OWNER OR ANY OTHER PERSON AS A RESULT OF SURFACE OR SUBSURFACE CONDITIONS AFFECTING A COMMERCIAL LOT OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY SURFACE OR SUBSURFACE

DRAINAGE OR UNDERGROUND MINES, TUNNELS, SINKHOLES OR OTHER CONDITIONS OR TYPES OF GROUND SUBSIDENCE OCCURRING ON OR UNDER ANY COMMERCIAL LOT.

3.09 The Committee shall have the right to establish, amend, change and modify from time to time reasonable charges and fees for the review of any plans and specifications submitted pursuant to the provisions hereof. Furthermore, the Committee shall, upon request and at reasonable charges, furnish to any Owner a written certificate setting forth whether all necessary Committee approvals have been obtained in connection with any building or other improvements on any Commercial Lot.

3.10 The Committee, in its sole and absolute discretion, shall have the exclusive right to grant variance with respect to any of the matters set forth in these Protective Covenants. Any variance approved by the Committee shall be in writing and shall be executed by either the chairman or the vice-chairman of the Committee.

3.11 Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event any one (1) or more of said covenants or restrictions shall, for any reason, be held to be invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

ARTICLE IV
WEATHERLY RESIDENTIAL ASSOCIATION, INC.

4.01 Every Owner of a Commercial Lot within the Property and the Owner of every "Commercial or Residential Lot", as hereinafter defined in the Development, is subject to assessments, as hereinafter provided, and shall be a member of the Association (the Articles of Incorporation for which are recorded in the Probate Office of Shelby, County, Alabama). Membership in the Association shall be appurtenant to and may not be separated from ownership of any Commercial Lot and shall be subject to the provisions of these Protective Covenants and the rules, regulations and bylaws of the Association, as the same may be modified and amended from time to time.

4.02 The Association shall have one (1) class of voting membership, Owners, together with the Owners of all "Commercial or Residential Lots", hereinafter defined, shall be members of the Association and, subject to the rights reserved by Developer in the Articles of Incorporation and ByLaws of the Association, and shall be entitled to one (1) vote for each Commercial or Residential Lot owned. When more than one (1) person holds an interest in any Commercial Lot, all persons shall be members; however, the vote for such Commercial Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Commercial Lot. Each Owner, by acceptance of a deed to a Commercial Lot, does hereby acknowledge and agree that (a) Developer, for so long as Developer owns any portion of the Development, shall be exclusively entitled to take all actions and vote on all matters to be voted on by the members of the Association in the manner set forth in the Articles of Incorporation and ByLaws of the Association, and (b) if Developer elects to add Additional Property to this Declaration or as part of the Association or

modify the description of the Development to add or delete real property from such description, each Owner consents and agrees to the dilution of his voting interest in the Association which may occur as a result thereof.

4.03 The Association (with the prior written consent of Developer for so long as Developer owns any portion of the Development), shall have the right at any time, and from time to time to merge, consolidate or otherwise transfer all of the rights and obligations of the Association to any other association which has been formed for the benefit of the Owners of the Commercial Lots within the Property or any real properties situated adjacent to or in close proximity with the Development.

ARTICLE V

COVENANT AND ASSESSMENTS

5.01 Each Owner of a Commercial Lot within the Property, by acceptance of a deed to such Commercial Lot, agrees to pay to the Association: (i) annual assessments or charges levied each year by the Association, (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (iii) individual assessments which may be levied against any Commercial Lot and the Owner thereof as a result of such Owner's failure to comply with the terms of these Protective Covenants. The annual, special and individual assessments, together with interest, late charges, costs and reasonable attorney's fees, shall also be a charge on each Commercial Lot and shall be a continuing lien upon each Commercial Lot against which such assessment is made, which lien may be enforced in the manner hereinafter provided. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Commercial Lot at the time when the assessment came due or was due.

5.02 The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Development, for the improvement and maintenance of the Common Areas within the Development and the payment of any and all costs and expenses incurred from time to time by the Association, including, without limitation, any "Common Expenses", as defined in the ByLaws of the Association.

5.03 Any expenses incurred by the Committee or the Association in enforcing any of the provisions of these Protective Covenants against a specific Owner shall be deemed an individual assessment against the owner and the respective Commercial Lots owned by such Owner. Such individual assessment shall be levied by the Association and shall be specified to the Owner, which notice shall also specify the due date for the payment of same. The Association is solely responsible for and shall assume all maintenance responsibilities with respect to all Common Areas within the Property.

5.04 The annual assessment for the Property shall commence on June 1 of each year, and shall be paid in advance. The amount of the annual assessment shall be established by the Association in accordance with its rules, regulations and ByLaws. Commercial Lots owned by the Developer

shall not be subject to any assessment by the Association, be it annual, specific or individual.

5.05 In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such assessment must have the assent and approval of (a) at least fifty-one percent (51%) of the total votes in the Association, whether voted in person or by proxy, at a meeting duly called for this purpose and (b) for so long as Developer owns any portion of the Development, the approval of the Developer.

5.06 Written notice of any meeting called for the purpose of taking any action authorized under Section 5.05 above shall be sent to all Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence, either in person or by proxy, of the holders of at least fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting.

5.07 Both annual and special assessments for all Commercial Lots within the Property shall be fixed based upon the various zoning classifications within the development. In other words, the rates of easement shall be uniform as to each zoning classification. As used herein, the term "Commercial or Residential Lot" or "Commercial or Residential Lots" shall mean and refer to any real property within the Development which has been or will be developed for single-family residential purposes, including, without limitation, attached or detached residential dwellings, townhouses, condominiums, cooperatives, duplexes, garden homes, patio homes, zero-lot-line homes, cluster homes, or any other types of single-family dwellings, and any commercial usage approved by the Developer and the Architectural Review Committee. As used herein and in the Articles of Incorporation and ByLaws of the Association, the term "Commercial or Residential Lots", whether used in the singular or plural tense, shall include all Commercial Lots within the Property. Annual and special assessments shall commence as to each Commercial Lot on the day on which such Commercial Lot is conveyed to any Owner (other than Developer) and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the annual assessment against each Commercial Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due date for the payment of annual assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice).

5.08 The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a Commercial Lot has been paid. A properly executed certification of the Association as the status of the assessment on a Commercial Lot is binding upon the Association as of the date of its issuance.

5.09 Any assessments (whether annual, special or individual) which are not paid on or

before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of 18% per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any assessments or other amounts due to the Association are not paid by any Owner when the same come due, then, in addition to all other rights and remedies provided by law or in equity, the Association, acting through the Board of Directors or through any its duly authorized officers or representatives, may undertake any of the following remedies:

(a) The Association may commence and maintain a suit at law against the Owner for a personal money judgement to enforce all such charges and obligations for assessments and other amounts due to the Association, which amounts shall include the late charge and interest specified above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in connection therewith; and/or

(b) The Association may enforce the lien created pursuant to Section 5.01 above as hereinafter provided. The lien created pursuant to Section 5.01 above shall secure payment of any and all assessments (annual, special and individual) levied against any Commercial Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the assessments and in maintaining any legal action in connection therewith. If any assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, the Association may file a claim of a lien against the Commercial Lot so such delinquent Owner, which claim shall be executed by any member of the Board of Director of the Association or any officer of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Commercial Lot purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Commercial Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner (other than Developer) may waive or otherwise be exempt from the liability to pay the assessment provided herein.

5.10 The lien for assessments and other charges provided herein with respect to any

Commercial Lot shall be subordinate to the lien of any first mortgage encumbering such Commercial Lot. The sale or transfer of any Commercial Lot shall not affect any lien retained by the Association on a Commercial Lot; provided, however, that the sale or transfer of any Commercial Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

5.11 In addition to the rights and remedies set forth above, if any Owner (or his contractor, family members, guest or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the Committee, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all rights and remedies available at law or in equity. In any such proceedings, Developer, the Association or the Committee, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 5.09 above. The failure of Developer, the Association or the Committee to institute proceedings for any one (1) or more violation of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

ARTICLE VI

EASEMENTS

6.01 Developer does hereby establish and reserve for itself, the Association, the Committee and their respective successors and assigns, a permanent and perpetual non-exclusive easement over, across, through and upon each Commercial Lot for the purpose of inspecting each Commercial Lot and any dwelling constructed thereon in order to determine the compliance with the provisions of these Protective Covenants and to otherwise perform any of their duties or undertake any of the action authorized or permitted to be taken by any of them pursuant to these Protective Covenants.

6.02 Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under those portions of any Commercial Lot upon which the Developer has reserved an easement, as reflected on the recorded Subdivision Plat for such Commercial Lot, which easements may be used for the purpose of installing, erecting, maintaining and using above and below ground utility and cable television lines, poles, wires, cables, conduits, storm sewers, sanitary sewers, conveniences, appurtenances and other utilities.

6.03 Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under all portion of the Common Areas for the purpose of installing, erecting, maintaining and using thereon above and below ground utility and cable television lines, pipes, poles, wires, cables, conduits, storm sewers, conveniences and other utilities.

6.04 Subject to any applicable rules and regulations adopted from time to time by the Association and the payment of any fees and charges which may from time to time be established by the Association, Developer does hereby grant to the Association and each Owner the non-exclusive right, privilege and easement of access to and the use of the Common Areas in common with Developer, its successors and assigns.

ARTICLE VII MISCELLANEOUS

7.01 Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, to add and submit any additional property (the "Additional Property") situated adjacent to or in close proximity within the Property to the terms and provisions of these Protective Covenants. Additional Property may be submitted to the provisions of these Protective Covenants by an instrument executed solely by Developer and filed for record in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to these Protective Covenants which need not be consented to or approved by any Owner or his mortgagee and which may contain different terms, conditions, restrictions and provisions from those set forth herein. From and after the date on which an amendment to these Protective Covenants is recorded in the Probate office of Shelby County, Alabama, submitting any Additional Property to the terms and provisions hereof, (a) all references herein to Owner shall include Owners of all Commercial Lots within the property and the Owners of all Commercial Lots within such Additional Property, (b) all references herein to the Property shall include the Additional Property and © the number of votes in the Association shall be increased by the number of lots within the Additional Property so that there shall continue to be one (1) vote in the Association per Commercial Lot within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of these Protective Covenants or to otherwise impose any covenants, conditions or restrictions set forth herein upon any other real property owned by Developer situated adjacent to or in close proximity within the Property.

7.02 The terms and provisions of these Protective Covenants shall be binding upon each Owner and their respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner and shall enure to the benefit of Developer, the Committee, the Association and all of the Owners of any of the Commercial Lots within the Property. These Protective Covenants shall be deemed covenants running with the land and any Commercial Lot shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to all of the terms and provisions of these Protective Covenants.

7.03 It is understood and agreed that the foregoing covenants and restriction shall attach to and run with the land for a period of fifty (50) years from the date hereof, at which time these covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless, by a vote of at least fifty-one percent (51%) of all votes in the Association, it is agreed to change the same in whole or part.

7.04 Subject to the provisions of Sections 7.01 and 7.09 hereof, these covenants and

restrictions may be amended or altered (a) solely by Developer during such period of time as the Developer owns any Commercial Lots within the Property, so long as such amendment does not materially and adversely affect or deter any Owner's right to use his Commercial Lot or (b) by the (i) vote of fifty-one percent (51%) of all votes in the Association and (ii) written agreement of the Developer.

7.05 All personal pronouns used herein, whether used in masculine, feminine or neuter gender, shall include all genders. The use of the singular tense shall include the plural and vice versa.

7.06 Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

7.07 Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Commercial Lot by Developer to any third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in these Protective Covenants which Developer is transferring to such third party.

7.08 Whenever in these Protective Covenants, Developer, the Association or the Committee has the right to approve, consent to or require any action to be taken, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the Association or the Committee, as the case may be.

7.09 Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, without any obligation or requirement to obtain the consent or approval of any Owners or any of their mortgagees, to (a) add any additional real property to the Development to the extent the same may be developed for Commercial or Residential Lots, (b) amend Exhibit "B" attached hereto in order to add or remove any real property from the definition of the Development, (c) alter, change or extend any roadways within the Development or alter any street grades of any roads within the Development, without liability to the Owners for any claims for damages resulting from such alterations or changes, and (d) change, modify or adopt different covenants and restrictions which would affect the Commercial or Residential Lots within other portions of the Development which covenants and restrictions may be different from those set forth in these Protective Covenants. Developer may undertake any of the actions set forth in this Section 7.09, including, without limitation, executing and recording amendments to these Protective Covenants with respect to any of the matters described in terms (a) through (d) above, without the consent or approval of any Owner or mortgagee. **The Protective Covenants shall be applicable only to the Property, as described in Exhibit "A" hereto, and shall not extend to or be binding upon any other real property owned by Developer or any portion of the Development unless expressly subjected to the terms and provisions of these Protective Covenants by an instrument duly executed by Developer and recorded in the Office of the Judge of Probate of Shelby County, Alabama.**

IN WITNESS WHEREOF, the Developer, and the Owners of all other Lots, subject to the Original Covenants, have executed this instrument on the 7th day of NOVEMBER 1996.

WEATHERLY JOINT VENTURE, L.L.C

By: Thomas J. Thornton
THOMAS J. THORNTON
Managing Member

By: Jack H. Harrison
JACK H. HARRISON
Managing Member

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Thomas J. Thornton and Jack H. Harrison, whose names as Managing Members of Weatherly ~~Joint Venture,~~ L.L.C., are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such Managing Members and with full authority to do so, executed the same voluntarily on the say the same bears date.

Given under my hand and official seal this 7th day of November, 1996

B. Lynn McLaughlin
NOTARY PUBLIC

My Commission Expires: 7-15-99

EXHIBIT "A"

DESCRIPTION OF WEATHERLY COMMERCIAL SUBDIVISION

**LOTS 1, 2, 3, AND 4 ACCORDING TO THE SURVEY OF WEATHERLY COMMERCIAL
SUBDIVISION AS RECORDED IN MAP BOOK 21, PAGE 60 IN THE PROBATE OFFICE OF
SHELBY COUNTY, ALABAMA.**

Inst # 1996-37138

**11/07/1996-37138
03:16 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
017 MCD 50.50**