

Prepared by: Raymond P. Fitzpatrick, Jr.  
Fitzpatrick, Cooper & Clark  
Farley Building, Suite 600  
1929 Third Avenue North  
Birmingham, Alabama 35203

Inst # 1997-23197

### **NOTICE OF DEFAULT**

Notice is hereby given that the Promissory Note dated December 29, 1995 (the "Note"), in the principal sum of NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00) by and between Weatherly Investment Group, L.L.C., an Alabama limited liability company (the "Maker") and Steven E. Chambers and wife Caryn Chambers (the "Holder") is in default due to Maker's failure to make payments due under said Note. Notice has previously been given to the Maker that the full remaining indebtedness is now due and payable. The Note is secured by that certain Purchase Money Mortgage (the "Chambers Mortgage"), attached hereto as Exhibit A, recorded at instrument no. 1995-37295, Probate Office of Shelby County, Alabama, dated December 29, 1995, by and between Weatherly Investment Group, L.L.C., an Alabama limited liability company, by and through Thomas J. Thornton and Patrick A. Thornton, its managing members ("Mortgagor") and Steven E. Chambers and wife Caryn H. Chambers ("Mortgagee"). Said Chambers Mortgage is now in default.

In consideration of the execution of the aforesaid Note and the covenants and promises contained therein, the Chambers Mortgage contained the provision that during the pendency of the Mortgage to AmSouth Bank, N.A., dated December 15, 1993, recorded at instrument no. 1993-40414, Probate Office of Shelby County, Alabama (the "AmSouth Mortgage"), lots released from said AmSouth Mortgage in accord with the release terms of said AmSouth Mortgage shall also be released from the Chambers Mortgage. However, as a consequence of the aforesaid default in the terms of the Note and the failure to adhere to the release terms and other provisions of the AmSouth

07/24/1997-23197  
10:33 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
007 MCD 26.50

Mortgage, notice is given that any release from that certain AmSouth Mortgage shall not operate to release the Chambers Mortgage and property released from the AmSouth Mortgage shall not be released from the Chambers Mortgage.

Dated: July 23, 1997


  
Steven E. Chambers

  
Caryn Chambers

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Steven E. Chambers and Caryn Chambers, whose names are signed to the foregoing Notice of Default, and who are known to me, acknowledged before me on this day that, being informed of the contents of the Notice of Default, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 23<sup>rd</sup> day of July, 1997

  
NOTARY PUBLIC

My Commission Expires: 3-17-99

This instrument prepared by:  
Thomas J. Thornton  
1119 Willow Run Road  
Birmingham, Alabama 35209

Inst # 1995-37295

STATE OF ALABAMA )  
SHELBY COUNTY )

12/29/1995-37295  
10:29 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
005 MCD 1444.50

### **PURCHASE MONEY MORTGAGE**

THIS MORTGAGE, made this 29th day of December, 1995, by and between Weatherly Investment Group, L.L.C., an Alabama Limited Liability Company, by and through Thomas J. Thornton and Patrick A. Thornton, its Managing Members (the "Mortgagor") having its principle office at 1119 Willow Run Road, Birmingham, Alabama 35209 and Steven E. Chambers and wife Caryn H. Chambers (the "Mortgagee").

Whereas, the Mortgagor is justly indebted to the Mortgagee in the sum of Nine Hundred Fifty Thousand and 00/100 Dollars (\$950,000.00) according to the terms of that certain promissory note, of even date herewith (the "Note"), which Note matures not later than December 31, 2000.

Whereas it is desired by the undersigned to secure the prompt payment of said indebtedness when the same falls due.

NOW THEREFORE, in consideration of the said indebtedness, and to secure the prompt payment of the same at maturity, the undersigned, do hereby grant, bargain, sell and convey unto the said Mortgagee, the following described real property situated in Shelby County, Alabama, to-wit:

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.

Subject to mineral and mining rights owned by others. Together with all leases, rents, awards by governmental authorities, permits, plans, licenses, subdivision rights, contract rights, public utility deposits, after acquired improvements on fixtures, or other rights or revenues applicable to the said lands.

And all of the following lands located in Shelby County, Alabama, to-wit:

**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.

Said lands are herein collectively referred to as the "Subject Lands".

TO HAVE AND TO HOLD the above granted premises unto the said Mortgagee forever; and for the purpose of further securing the payment of said indebtedness, the undersigned, agrees to

pay all taxes or assessments, when legally imposed upon said premises, and should default be made in the payment of same, said Mortgagee has the option of paying off the same; and all amounts so expended by said Mortgagee for taxes or assessments, shall become a debt to said Mortgagee, additional to the debt hereby specially secured, and shall be covered by this mortgage, and be at once due and payable.

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the secured indebtedness, at the times and in the manner stipulated in the Note, this Mortgage, and in all other instruments evidencing and securing the same, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments evidencing and securing the secured indebtedness to be kept, performed or observed by Mortgagor, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect. Said Note provides, in part, that Mortgagor shall pay \$5,000.00 upon the sale of each lot from the lands described as Parcel 1, Parcel 2, and Parcel 3 of the Subject Lands described above hereinafter sold after satisfaction of the debt underlying that certain mortgage from Mortgagor to AmSouth Bank, N.A., dated December 15, 1993, recorded at Inst. #1993-40414, Probate Office of Shelby County, until 160 such payments of \$5,000 have been made. During the pendency of said mortgage to AmSouth Bank, lots released from said mortgage in accord with the release terms of said mortgage shall also be released from this mortgage.

Upon condition, however, that if the said Mortgagor timely pays said indebtedness, without default, and reimburses said Mortgagee for any amounts Mortgagee may have expended for taxes or assessments, then this conveyance shall be null and void, but should default be made in the payment of any sum expended by the said Mortgagee, or should said indebtedness hereby secured, or any part thereof, remain unpaid at maturity, then the whole of said indebtedness hereby secured shall at once become due and payable, and this mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the said Mortgagee shall be authorized to take possession of the premises hereby conveyed and with or without first taking possession, after giving twenty-one days notice by publishing once a week for three consecutive weeks, the time, place and terms of sale, in some newspaper published in said County and State, to sell the same in lots or parcels, or en masse, as Mortgagee may deem best, in front of the Courthouse door in said County, at public outcry, to the highest bidder and apply the proceeds of said sale; First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; Second, to the payment of any amounts that may have been expended, or that it may be necessary then to expend in paying taxes or other incumbrances or unpaid interest; Third, to the payment of said indebtedness in full, whether the same shall or shall not have fully matured, at the date of said sale; and Fourth, the remainder, if any, to be turned over to the said Mortgagor; and the undersigned further agree that said Mortgagee may bid at said sale and purchase said property, if the highest bidder therefore, as though a stranger hereto, and the person acting as auctioneer at such sale is hereby authorized and empowered to execute a deed to the purchaser thereof in the name of the Mortgagor by such auctioneer as agent, or attorney in fact; and the undersigned further agree to pay a reasonable attorney's fee to said Mortgagee for any judicial foreclosure of this mortgage should the same be so foreclosed, said fee to be a part of the debt hereto secured.



Notwithstanding any provision hereof to the contrary, the liability of Mortgagor with respect to principal payable hereunder and under the Note shall be "nonrecourse", and in the event of any default hereunder, the Mortgagee may pursue such remedies as are available hereunder, under the Note, or under law, to have the Mortgaged Premises applied toward the satisfaction of the indebtedness secured hereby, but following any such application, no deficiency judgment for any unsatisfied amount of principal owed hereunder or under the Note shall be rendered against the Mortgagor.

Any estate or interest herein conveyed to said Mortgagee, or any right or power granted to said Mortgagee in or by this mortgage is hereby expressly conveyed and granted to the heirs, and agents, and assigns, of said Mortgagee.

To the extent permitted by law, Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law, or any exemption from execution or sale of the Mortgaged Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage; nor, after any such final sale or sales, claim or exercise any right under any statute or otherwise, to the extent that such may be waived, to redeem the property so sold or any part thereof; and Mortgagor hereby expressly waives all benefits or advantages of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Mortgagor covenants and represents that: it has good and marketable title to the Subject Lands; this Mortgage is valid and enforceable in all respects; to the best of Mortgagor's knowledge, no portion of the Subject Lands contains any hazardous substances; it will permit no use of the premises for any activity involving hazardous substances; it will execute any and all instruments necessary to carry out the purposes and intentions of this mortgage; it will timely pay the indebtedness; it will maintain adequate general liability insurance with respect to the Subject Lands naming the Mortgagee as an additional named insured and provide evidence of same to Mortgagee; it will permit Mortgagee reasonable access to the Subject Lands for purposes of inspection; it will comply with all property laws, zoning and subdivision regulations; it will not permit waste of the Subject Lands; it will not destroy any improvements to the Subject Lands without written consent of Mortgagee; it will not permit development of the Subject Lands other than in accord with the Weatherly Master Plan and will permit no other changes in the character or use of the Subject Lands; and, it will make no sale or removal of timber from the Subject Lands without prior written consent of the Mortgagee.

Upon default, continuing uncured more than ten (10) days following written notice to Mortgagor, Mortgagee may declare the entire unpaid indebtedness due and payable and hereafter, the unpaid debt shall bear interest at the rate of 9% per annum; Mortgagee shall have the right to enter into and immediately take possession of the Subject Lands to the exclusion of Mortgagor and may use and maintain the Subject Lands as it sees fit; no rights or remedies of Mortgagee hereunder shall be exclusive or intended to exclude other available remedies; and no delay or omission or forbearance of Mortgagee shall be construed as a waiver of any rights hereunder.

IN WITNESS WHEREOF, we, in our capacities, and with full authority to do so, as Managing Members of Weatherly Investment Group, L.L.C., an Alabama Limited Liability Company, have hereunto set our hands and seals on this the 29th day of December, 1995.

Weatherly Investment Group, L.L.C.

Thomas J. Thornton (Seal)  
Thomas J. Thornton, Managing Member

Patrick A. Thornton (Seal)  
Patrick A. Thornton, Managing Member

STATE OF ALABAMA     )  
                                  )  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Thomas J. Thornton and Patrick A. Thornton, as Managing Members of Weatherly Investment Group, L.L.C., and whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that being informed of the contents of the Mortgage they, with full authority to do so, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 29th day of December, 1995.

Maile E. Wilson  
Notary Public  
My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE. MY COMMISSION EXPIRES: JULY 8, 1997. BONDED THRU NOTARY PUBLIC UNDERWRITERS.

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