

The following is a typed copy of the Declaration of Restrictions and Covenants for Westchester Place, First Addition. The original has been filed with the County of Mobile. A copy of the filed document is available for viewing from the Board of Directors. These covenants are legally binding for all property owners in Westchester Place.

DECLARATION OF RESTRICTIONS AND COVENANTS FOR WESTCHESTER PLACE, FIRST ADDITION

KNOW ALL MEN BY THESE PRESENTS, that this Declaration of Restrictions and Covenants is made, adopted, published and declared this 6th day of May, 1994, by WESTCHESTER, INC., a corporation, ("Owner"):

WITNESSETH:

WHEREAS, the undersigned Owner is the owner of real property in the County of Mobile, Alabama, described as follows:

**Westchester Place, First Addition, as per plat thereof recorded in Map Book 58,
Page 22 of the records in the Office of the Judge of Probate Court of Mobile
County, Alabama.
"Subdivision):**

WHEREAS, Owner is desirous of placing certain requirements, covenants, restrictions, conditions and reservations (collectively sometimes "Restrictions") upon the subdivision in accordance with general scheme or plan in order (a) to protect the owners of each lot of the Subdivision against improper use of the surrounding lots as will depreciate the value of the property, (b) to preserve, as far as practicable, the natural beauty of each lot, (c) to ensure the creation of attractive, well designed, properly proportioned and appropriate homes of suitable materials with appropriate locations on said lots, (d) to ensure proper building setbacks from street and lot lines, (e) to provide adequate free space between structures, and (f) in general, to ensure the best and most appropriate development and improvement of the Subdivision and each lot thereon:

NOW, THEREFORE, Owner does hereby impose the following protective restrictions:

1. RESIDENTIAL USE ONLY: All lots in the Subdivision shall be known and described as residential lots. No lot may be improved, used or occupied for other than private residence purposes, and no flat, duplex, apartment house, group apartment, or condominium, though intended for residence purposes, may be erected thereon.

2. ARCHITECTURAL COMMITTEE: No building shall be erected, placed or altered on any lot in the Subdivision until each of the following shall be approved in writing by an Architectural Committee composed of MIKE FORWOOD, CHARLES MACLAY and GEORGE PILGRIM, or by representative of the members of said committee: (a) building plans and specifications showing, among other things requested by the Committee or its representative, the habitable area square footage and the front elevations, and (b) a plot plan showing the location of such building and the location, dimensions, and other features of a sidewalk to be erected in accordance with the provisions contained in paragraph 7 hereof. Any such written approval shall be by separate letter or by written notation on a set of said building plans and specifications and plot plan, which approved set shall be retained by the builder or homeowner. Approval shall be based on conformity and harmony of external design with the existing structures in the Subdivision, on the location of the building with respect to topography and finished ground elevation, and on compliance with all other requirements of these Restrictions.

In the event of death or resignation of either member of the Architectural Committee, the remaining member shall have full authority to appoint a successor member and to approve or disapprove such design and location, or to designate a representative with like authority. In the event said Committee, or its designated representative, fails to give notice of approval or disapproval of such design and/or location within 30 days after said plans and specifications have been submitted to it, such approval shall not be required and this covenant will be deemed to have been fully complied with. If such plans and specifications are disapproved, written notice of such

disapproval shall be given to the submitting lot owner by hand delivery to such owner or by depositing same in the U. S. Mail, properly addressed and postage prepaid. Neither the members of such Committee nor its designated representative shall be entitled to any compensation for the services performed pursuant to this covenant. The power and duties of such Committee, and of its designated representative, shall cease and end after December 1, 2009. Thereafter, the approval described in this covenant shall not be required unless, prior to said date and effective thereon, a written instrument shall be executed by the then record owners of a majority of the lots in the Subdivision and duly recorded appointing a representative, or representatives, who shall thereafter exercise the same powers previously exercised by said Committee.

3. **BUILDING LOCATION:** No building on any corner lot shall be located nearer than 25 feet to any lot line fronting any street, without the written approval of the Architectural Committee. No building shall be located on any other lot nearer than 30 feet to the front lot line, without the written approval of the Architectural Committee. No building shall be located nearer than 8 feet to an interior lot line without approval of the Architectural Committee, additionally as to a building on any interior lot, such building shall be located so that the sum of the distance from the building to the interior lot line on one side plus the distance from the building to the interior lot line on the other side shall be a minimum of 20 feet. No dwelling shall be located on any lot nearer than 10 feet to the rear lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of any building on a lot to encroach upon another lot. For specific setback requirements, reference should be made to the plat of the Subdivision, which can only be changed by written approval from the Architectural Committee. The building locations must also comply with any applicable zoning ordinances unless a special exception is obtained from the appropriate governmental agency and approved by the Architectural Committee.

4. RESUBDIVISION: Except as hereinafter provided, no building or any part thereof, or any character, may be erected or maintained on any part of a lot that is subdivided subsequent to the date hereof. Where a lot is subdivided and all of its parts are combined with adjacent entire lots, a building may, with the approval of the Architectural Committee, be erected and maintained on each of the lots as so combined even though a portion of such building may be located on a part of such subdivided lot, but each resulting combined lot shall be subject to these Restrictions as fully and completely as if shown on the subdivision plat as a single lot. Where a portion of a lot, which portion is less than ten (10%) percent of the total area of the lot, is conveyed to the owner of the lot adjacent to such portion, a building may, with the written approval of the Architectural Committee, be erected and maintained on the remaining portion of such lot, which remaining portion of the lot shall be subject to these Restrictions as fully and completely as if shown on the subdivision plat as a separate lot. Nothing herein contained to the contrary withstanding, lots 8 through 13 of the subdivision may be subdivided, or additional land added to these lots, with permission in writing from WESTCHESTER, INC.

5. OFFENSIVE ACTIVITIES, ETC. No trade or business activity of any kind shall be carried on upon any lot, nor shall any noxious or offensive activity be done thereon which shall be or become an annoyance or nuisance to the neighborhood. No structure, including fences, shall be erected so as to channel water on an adjacent lot. No outside clothes lines shall be permitted in the Subdivision unless screened in such a manner as not to be visible from adjacent lots or streets.

No Satellite Discs, nor any other type of television or electronic device, shall be constructed or installed on any lot without the prior explicit, written approval of the Architectural Committee. If the Committee approves the construction or installation of any such device, such approval may be conditioned as to its appearance, size and location. Under no condition shall such a device be permitted to be placed in the front yard area of any lot.

6. TRAILERS: No trailer, mobile home, basement, tent, shack, garage, barn, or other outbuilding erected on any lot shall at any time be used as a residence, temporarily or permanently, nor shall any structures of a temporary character be used as a residence. House trailers, mobile homes, motor homes, campers, and/or trailers may be kept on a lot only if kept either within a fully enclosed garage or under a carport not visible from any street. No boat 25 feet in length or larger may be kept on a lot and all smaller boats must be kept on trailers in the rear yard not visible from any street, or within a garage or carport not visible from any street.

7. TYPE AND SIZE OF BUILDING: SIDEWALKS:

(a) Except as otherwise provided herein, no building shall be erected, altered, placed or permitted to remain on any lot in the Subdivision other than one single-family dwelling; additionally, no building shall be more than two and one-half stories in height or shall have habitable area of less than 2300 square feet, exclusive of basements, open porches, garages and the like, and as to any of said lots, any building that is more than one story in height shall have at least 1150 square feet of habitable area on the ground floor, exclusive of basements, open porches, garages and the like. A detached garage, however, servants' quarters or other outbuilding may be erected or permitted to remain upon any lot upon prior written approval of the Architectural Committee.

The Architectural Committee shall give approval to one reasonably sized storage outbuilding to be located near the rear lot line, unless the circumstances indicate otherwise for the benefit of the entire Subdivision.

A two-car garage or carport is required on each lot, but garage or carport may not face or open on any street, except with the prior written approval of the Architectural Committee or except in the case of a corner lot on which a garage or carport may face or open on a side street.

No house shall have an exposed concrete slab. The front yard of each house will be grassed with solid sod.

(b) Prior to or upon erection or location of a building on any lot, a sidewalk shall be installed on such lot in accordance with the same standards as would be applicable to sidewalks located within the City of Mobile and, in all events, the location, dimensions and other features of such sidewalks shall be subject to the prior written approval of the Architectural Committee or its designated representative.

8. ANIMALS: Dogs, cats and other domesticated animals, not exceeding four, may be kept by each lot owner, provided they are not kept, bred or maintained for any commercial purpose or use and are not a nuisance, annoyance or danger to the neighborhood. No other animal or fowl shall be kept or maintained on any part of said property.

9. GARBAGE DISPOSAL CONTAINERS AND EQUIPMENT: No lot shall be used as a dumping ground for rubbish, and all debris and trash from clearing or construction must be immediately removed. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean, sanitary condition.

10. MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the surface of any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, or within 500 feet beneath, the surface of any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any lot.

11. FENCES, WALLS, HEDGES AND ORNAMENTAL STRUCTURES: No hedge shall be located nearer the front property line of any lot than ten feet to the rear of the front of the dwelling on such lot without the written approval of the Architectural Committee; and no fence,

wall or ornamental structure, other than which is an integral part of the dwelling itself, shall be constructed upon any portion of any lot without the prior written approval of the Architectural Committee. In all instances, fences facing any public street must be made of wood, faced with wood or have the outward appearance of being made of wood.

12. SIGNS: No sign of any kind shall be displayed to public view on any lot except one professionally lettered sign not more than four square feet in size, which may advertise the property for sale or rent; except that during the construction period, an additional sign may be erected by the builder and except that a security service sign shall be allowed when applicable.

13. EASEMENTS: All easements shown on the recorded plat of the Subdivision are hereby adopted as a part of these Restrictions and all lots in the Subdivision shall be subject to such easements. The undersigned Owner reserves unto itself and its successors and assigns the right and easement, but not the obligation, to construct, install, maintain, repair and replace power, gas, sewer, telephone, and other utility lines, equipment and facilities and drainage ditches, in, on, over and under the streets and roads and easements shown on the recorded plat the the Subdivision, and to construct, install, operate, maintain, repair and replace lights, walls, fences, shrubbery, bushes and trees and other decorative or screening improvements in, on, over and under the property included within the areas designated as fences, drainage and/or utility easements, if any, with all right of ingress and egress to and from said streets and roads and easements across adjoining property; and the undersigned reserves unto itself and its successors and assigns the right to contract generally with others for the doing of any and all such things and the right to grant unto others such easements, rights and privileges as the undersigned may deem appropriate or convenient in connection therewith, but under no circumstances shall it be deemed as an obligation on the part of the developer to carry out such actions.

14. **AMENDMENT OR MODIFICATION OF RESTRICTIONS:** Any or all of the Restrictions hereinbefore set forth may be annulled, amended, or modified at any time by an instrument executed by the owner or owners of not less than sixty-seven (67%) percent of the lots collectively in Westchester Place, as the same appears of record in Map Book 45, Page 79, and Westchester Place, First Addition,, as the same appears of record in Map Book 58, Page 22 all in the records of the Office of the Judge of Probate Court of Mobile County, Alabama, which said instrument shall be acknowledged by each such owner signing same and shall be filed for record in the Office of the Judge of Probate of Mobile County, Alabama, provided that no ammendment shall place any burden or restriction or requirement on any lot in the Subdivision the owner of which lot does not join in said amending instrument.

15. **TERM:** The Restrictions herein shall run with the land and shall be binding of all lot owners, or upon all parties and persons claiming under through them, each of whom shall by virtue of his acceptance or acquisition of title or other interest accepts and agrees to be bound by and to abide by all terms and provisions of this instrument, all of which shall be, and remain, in full force and effect until December 1, 2009, after which time the Restrictions shall automatically be extended for successive periods of ten years unless an instrument signed by the owners of not less than 50 (50%) percent of the lots in the Subdivision has been recorded, agreeing to change said covenants in whole or in part.

16. **VIOLATIONS:** No violation of these Restrictions shall act as a cloud upon the title of the property concerned and title shall not be forfeited as a result of such violation.

17. **ENFORCEMENT:** If any person or persons shall violate or attempt to violate any of the Restrictions contained herein, it shall be lawful for any member of the Architectural Committee, or the Committee's designated representative, or any party owning any real property situated in the Subdivision to prosecute any proceedings at law or in equity against the person or persons

violating or attempting to violate any such Restriction and either to prevent such person or persons from so doing or to recover damages for such violation. Neither the undersigned Owner or its employees, agents or assigns or any of the persons comprising Owner as partners or their representatives, heirs, personal representatives, successors or assigns (said parties collectively "Owner" for the purposes of this paragraph 17), shall be liable to any lot owner or lot owners in the Subdivision for (i) the manner in which Owner exercises or fails or refuses to exercise any right or authority which said Owner may have or the failure or refusal of Owner to enforce any of the provisions hereof against any lot owner; or (ii) the failure or refusal of any lot owner to comply with or enforce any of the provisions hereof.

18. **SEVERABILITY**: Invalidation of any one of these Restrictions by judgment or court order shall in no wise affect any of the other provisions which shall be and remain in full force and effect.

19. **PROPERTY OWNERS ASSOCIATION**: There has been formed a Westchester Place Owners' Association, Inc., by Articles of Incorporation recorded in Real Property Book 3517, Page 264 of the records in the Office of the Judge of Probate Court of Mobile County, Alabama. Owners of lots in Westchester Place First Addition shall automatically become members of the Westchester Place Owners' Association, Inc. The Association shall, among other things, maintain existing common areas and walls and all improvements as contained in the wall casement, all as shown on the plat of subdivision, and be responsible, except to the extent that a governmental agency assumes responsibility for, maintain the existing street lights in the Subdivision, including, without limitation, paying the monthly power bills of said street lights after all of the current owners of the first twelve (12) lots have become members of the Property Owners' Association.

All homeowners shall be members of the Association, and each homeowner, by acceptance of a deed to such lot, whether or not so expressed in such deed, is deemed to covenant and agree to

pay the Association annual general assessments or charges as herein described. All such assessments, together with interest thereon as provided below the cost of collection thereof, including attorney fees, shall, as hereinafter provided, be the personal obligation of the owner of such property at the time such assessment became due.

By a two-thirds vote of the Board of Directors of the Association, the annual assessment shall be fixed on the basis provided above, provided, however, that the annual assessment shall be sufficient to meet the Association's obligations as budgeted. The Board shall set the date such annual assessment shall become due, and any assessment not paid within thirty (30) days from said date shall bear interest for the due date at the per annum percentage rate of twelve (12%) percent. Upon any voluntary conveyance of a lot, the grantor and grantee of such lot shall be jointly and severally liable for all unpaid assessments pertaining to such lot to the extent that such assessments accrue to the date of such conveyance, without prejudice, however, on the part of the grantee to recover from the grantor any amount paid by the grantee, but the grantee shall be exclusively liable for assessments accruing after grantee becomes lot owner.

The Association may bring an action at law against the owner and/or other person(s) personally obligated to pay any assessment not paid within the due date thereof, and such persons who are personally liable for such assessments shall be responsible for interest as provided above and costs of collection, including a reasonable attorney fees. No owner may waive or otherwise escape liability for assessments provided for herein by the abandonment or transfer of such owner's lot or lots, except as herein provided.

Any entity, its successors and assigns, obtaining title to a lot as a result of foreclosure of a mortgage or vendor's lien, or receiving a deed in lieu of foreclosure, shall not be liable for assessments which became due prior the foreclosure or receipt of deed in lieu of foreclosure. Such

unpaid share of assessment shall be deemed an expense of the Association to be collected as part of a future special assessment.

IN WITNESS WHEREOF, WESTCHESTER, INC., has caused this instrument to be executed in its name and on its behalf by its officers thereunto duly authorized.

(The original of this covenant was signed by Stanley Breland, James E. Sumrall, Jr., Karen L. Moore-Sumrall, Charles B. Mitchell, Charlene Mitchell and William D. Wood on May 6, 1994. The document was recorded in Mobile County on June 7, 1994)

