

STATE OF ALABAMA)
COUNTY OF WALKER)

**DECLARATION OF RESTRICTIVE COVENANTS FOR
EMPIRE ESTATES SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS: That:

WHEREAS, Catherine A. McGehee, ("the Developer") has heretofore acquired fee simple title to certain real property situated in Walker County, Alabama and has subdivided such property (the Subdivision) into SIXTY (60) Lots (herein "Lots") as described in map and survey of Empire Estates Subdivision recorded in Plat Book 9, Page 32 in the Probate Office at Walker County, Alabama and the Resurvey of Empire Estates Subdivision recorded in Plat Book 9, Pages 78-81 in said Probate Office (herein the "Record Map" or the "Property").

WHEREAS, the Developer desires to develop a residential estate subdivision to be known as Empire Estates Subdivision and in doing so to subject the Property to the restrictions and covenants set forth in this Declaration of Restrictive Covenants for Empire Estates Subdivision (herein "the Declaration") and

WHEREAS, the Developer desires to subject each Lot Owner and Lot as herein defined to membership in the Empire Estates Subdivision Homeowners Association, Inc. (the "Association").

NOW THEREFORE, the Developer does, upon recording hereof, declare and make the Property and each of the Lots now or hereafter included in the subdivision of the Property subject to the covenants, conditions, restrictions, uses, easements, limitations and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding on all persons, firms or corporations having or acquiring any right, title or interest in the Property, the Lots, or any part(s) thereof, and shall be for the benefit of each such Owner of Property or interest therein, and shall inure to the benefit of and be binding of and be binding upon each successor in interest to the Owners thereof.

Recording Fee 39.00, TOTAL 39.00

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Rick Allison, Judge of Probate, Walker County, Alabama

ARTICLE I
DEFINITIONS

For the purposes of this instrument, the following capitalized terms shall have the following meanings:

(a) **Lot**, means any Lot within Empire Estates Subdivision family residential subdivision as depicted in Plat Book 9, Page 32 and Plat Book 9, Pages 78-81 in the Office of the Judge of Probate of Walker County, Alabama (the "Subdivision") or as depicted on survey and plat of the Property, and any parcel of land resulting from a future subdivision of any Lot.

(b) **Owner or Lot Owner**, means in the aggregate, all of the Owners in the aggregate of fee simple interests in and to any Lot and individually, the owner of a Lot. Notwithstanding multiple ownership of any Lot, for the purposes of this instrument, no Lot shall be afforded more than one vote for any matters contained in this Declaration. If a Lot is owned by more than one person or by an entity (other than a natural person), the Owner (or other natural person, if the Owner is an entity other than a natural person) entitled to cast the vote appurtenant to said Lot shall be designated by the Owners of a majority interest in the Lot. A voting member must be designated as the person entitled to cast the vote for all such owners of that Lot by a statement filed with the Association, in writing, signed under oath by the Owners of a majority interest in the Lot. The designation may be revoked and a substitute voting member designated at any time at least five (5) days prior to any meeting. If a designation of a voting member is not filed at least five (5) days prior to any meeting, no vote shall be cast at such a meeting by or for said Lot Owner(s).

(c) **Mortgagee**, means the holder of any mortgage encumbering any Lot within the Property.

(d) **Service Providers**, means all providers of services for the maintenance, protection and benefit of the Lots and Lot Owners including, but not limited to, fire departments, law enforcement agencies, utility providers, postal service, garbage collectors and any other provider of service which would benefit the Lots or Lot Owners.

(e) **Utility Companies**, means all entities providing utility services to the Property including, but not limited to power, water, gas, telephone and cable television.

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ARTICLE II

Land Use

The Property will be used for residential or agricultural purposes only and not for any business or trade. Home offices are allowed, however, such allowance is intended only to allow individual work at a structure located on a Lot, but not the conduct of business with the presence of the general public at the Property.

ARTICLE III

ROADS

(a) There is one road entering the Property from York Mountain Road called Blackberry Ridge Road. There is a road in the property running easterly off Blackberry Ridge Road named Whipporwill Lane. Both roads are private. Blackberry Ridge Road and Whipporwill Lane are shown on the Map and may be referred to herein as the Roads or the Road.

1. GRANTS, RESERVATIONS AND CONDITIONS RELATIVE TO THE ROADS. Developer hereby establishes, reserves and grants, bargains, sells and conveys;

(A) A non exclusive, perpetual easement, fifty (50) feet in width, running with the land for vehicular and pedestrian ingress and egress and for utilities and drainage over, across, above and under (as necessary) the Roads to all Lots and the Owners thereof and their heirs, successors and assigns; and,

(B) To the Service Providers and the Utility Companies, a non exclusive easement for ingress and egress along the Roads for the purpose of providing services and utilities to all Lots; and,

(C) To the Association, in fee simple, the Roads, subject to the easements and reservations contained in this Article III, Paragraph (a)(1)(A) (i) and (ii) above.

TO HAVE AND TO HOLD TO THE HEREIN ABOVE GRANTEES, THEIR HEIRS, SUCCESSORS AND ASSIGNS FOREVER.

2. **MAINTENANCE.** The Roads shall be maintained for normal maintenance in equal shares by the Owners of all Lots through the Association.

3. **INDIVIDUAL REPAIR.** Notwithstanding any of the provisions of this Article III relating to Road maintenance, any Owner of a Lot (their guests, contractors, agents or invitees) that cause(s) extraordinary damage to a Road shall be responsible to immediately repair such damage. Such Owner shall be referred to herein as the Offending Owner. Any damage not repaired by the Offending Owner may be repaired by the Association or the other Owners to which such Road damage applies (after 10 days written notice to the Offending Owner) and the cost of such repair shall be charged to the Offending Owner which charge shall be subject to the provisions of Article IV, Paragraph (o) of these covenants. The Roads are designed for light residential traffic and care must be taken during construction on the Lots by the Owners not to damage the Roads.

ARTICLE V

Miscellaneous

- (a) **No** obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property, the other Lots or Lot Owners or the Roads. **No** Lot shall be used as a dumping ground for rubbish, trash, garbage or other waste and such shall not be kept except in sanitary containers. Each Lot shall be maintained in a neat and orderly fashion at least to the extent of visibility from the Roads.
- (b) During all construction, all vehicles, including those delivering supplies, must enter the building Lot on the driveway only as approved by the ARC so as not to unnecessarily damage trees, and Roads. Any damage not repaired by the contractor will be repaired by the ARC (after ten (10) days written notice) and will be charged to the Lot Owner at a reasonable charge for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. During construction, all Builders must keep the homes, garages, and building site clean. All building debris, stumps, trees, etc., must be removed from each building Lot by the Builder as often as necessary to keep the house and Lot atLotive. Such debris will not be dumped in any area of the Property. Best management practices shall be implemented

and observed during all construction on any Lot.

Lot owners are responsible for adhering to regulations required by ADEM during any construction on Lot Owner's property. If Lot Owner is notified of an ADEM violation such Owner shall have 15 days after notice to correct any cited problems. If such Owner does not correct the problems, the Association may correct the problems and assess the costs to the said Lot Owner and use any other remedies to collect expenditures.

(c) No Lot shall be sold or used for the purpose of extending any public or private road, street, or alley, for the purpose of opening any road, street, or alley.

(d) No Lot in the Subdivision may be re-subdivided so as to result in Lots containing less than 20 acres without the express written consent and approval of all of the Lot Owners and the appropriate government agency.

(e) **GRANTEE'S ACCEPTANCE.** The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purpose thereof, whether from Owner or a subsequent Owner of such Lot, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained and other easements, restrictions and reservations of record.

(f) **INDEMNITY FOR DAMAGES.** Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to the Declaration, agrees to indemnify the Developer for any reasonable direct damage (but not consequential damages) caused by such Owner, or the contractor, agent, or employees of such Owner, to the Roads.

(g) **SEVERABILITY.** Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions.

(h) **EFFECTS OF VIOLATION ON MORTGAGE LIEN.** No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, and Lot therein; provided, however, that any mortgagee in actual possession, or any purchaser at any foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property, or any Lot therein.

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(i) **NO REVERTER.** No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.

(j) **DURATION AND AMENDMENT.** The restrictions contained in this Declaration shall run with and bind the Property and, shall inure to the benefit of and shall be enforceable by the Association and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December, 2030, after which time said restrictions shall be automatically extended for successive periods for ten (10) years. This Declaration may not be amended in any respect except by the execution of an instrument shall be signed by 2/3 of the Lot Owners, which instrument shall be filed for recording among the Land Records of Walker County, Alabama, or in such other place of recording as may be appropriated at the time of the execution of such instrument. After December 31, 2030, this Declaration may be amended and or terminated in its entirety by an instrument signed by not less than a majority of the Lot Owners, which instrument shall be filed for recording among the Land Records of Walker County, Alabama, or in such other places of recording as may be appropriate at the time of the execution of such instrument.

(k) **ENFORCEMENT.** In the event of a violation or breach of any of these restrictions or any amendments thereto by any Owner of a Lot, or employee, agent, or lessee of such Owner, the other Owner(s) of Lot(s), their successors and assigns, or any party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages for any amounts required to be paid hereunder, or take all such courses of action at the same time, or such legal remedy deemed appropriate. No delay or failure on the part of an aggrieved party to initiate and available remedy set forth herein shall be held to be a waiver of that party or of any other party to assert any right available to him upon the recurrence of continuation of said violation or the occurrence of different violations. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity. Any party to proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction

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against a Lot Owner shall be awarded as reasonable attorney's fee against such Lot Owner, and shall have the right to place recorded lien on any Lot for purpose of securing the payment of any amounts owing by a Lot Owner under this Declaration and such lien may be enforced in the same manner as foreclosure of a mortgage under the law of the State of Alabama.

(l) **NO WAIVER.** The failure of any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

(m) All Lot owners shall maintain their Lot and the improvements thereon in a neat and orderly fashion.

(n) **MODIFICATION OF THESE COVENANTS BY DEVELOPER.**

Notwithstanding anything to the contrary contained herein, the Developer reserves the right to unilaterally modify these covenants with respect to any Lot owned by Developer at any time without the necessity of obtaining approval from any Lot Owner or Lot Mortgagee. Any such modification shall only apply to Developer Owned Lot(s). Developer reserves the right to add additional property so long as any such additional property is subject to these Covenants.

(o) **PROPERTY SOLD AS IS WHERE IS.** By accepting a Deed or Mortgage to a Lot, such Owner and/or Mortgagee acknowledges that the Developer has no further responsibility with respect to the Property, the Roads or improvements located on the Property, it being expressly understood that all Lots and any improvements including the Roads are sold AS IS/WHERE IS, except as expressly limited herein.

(p) **NOTICES.** Any notice to be given under these covenants shall be in writing and be sent by certified mail, return receipt requested and shall be effective if given to the Lot Owner to whom such notice is directed at either; 1. The address provided by such Lot Owner to the other; or 2. At the address maintained by the Tax Collector of Walker County, Alabama for such Lot Owner (herein the "Authorized Address"). Mailing, postage prepaid, by certified mail, to the Authorized Address shall conclusively mean receipt by the Lot Owner to whom such notice is intended. In the event such notice is for repair or maintenance on a Road or for the Lake, the failure of any Lot Owner to respond to any such notice within thirty (30) days of the date of such notice shall be conclusively deemed an Affirmative Vote by such non responding Lot Owner to

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the proposed maintenance or repairs.

(q) **GRANTEE'S ACCEPTANCE.**

1. The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed or other contract upon and subject to each and all of the restrictions, conditions and easements herein contained and other easements, restrictions and reservations of record.

2. **EMPIRE ESTATES SUBDIVISION HOMEOWNERS ASSOCIATION, INC.** (the "Association"). By accepting a deed to a Lot, as an appurtenance to such Lot, an Owner shall become a member of the Empire Estates Subdivision Homeowners Association, Inc. and be subject to the Articles of Incorporation and By-Laws of such Association as they exist and are from time to time amended.

IN WITNESS WHEREOF, the undersigned, as the Developer of the Property, has caused this Declaration to be executed as of the 22 day of July, 2011.

Catherine A. McGehee
Catherine A. McGehee

STATE OF ALABAMA)
Walker COUNTY)

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Catherine A. McGehee, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 22 day of July, 2011.

[Signature]
Notary Public
My Commission Exp. 3.1.14

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Rick Allison, Judge of Probate, Walker County, Alabama

