

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE COTTAGES AT GRANDPOINTE PHASE II**

THIS DECLARATION, made this 11<sup>th</sup> day of April, 1995, by THE MITCHELL COMPANY, INC., an Alabama corporation, hereinafter referred to as "Declarant",

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of the real property located in Escambia County, Florida, and more particularly described as follows, to-wit:

THE COTTAGES AT GRANDPOINTE Phase II, a subdivision of a portion of the Joseph Noriega Grant, Section 8, and the Manuel Bonifay Grant, Section 9, Township 1 South, Range 29 West, Escambia County, Florida, as recorded in Plat Book 15 at page 48.7 of the public records of said County.

**NOW, THEREFORE**, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, restrictions covenants and conditions which are for the purpose of protecting the value and desirability of said real property and which shall run with the real property and be binding on all parties having any right, title or interest in the described property, or any part thereof, and upon all persons deraining title through the Declarant, and their respective heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to The Cottages at Grandpointe Phase II Homeowners Association, Inc., a Florida non-profit corporation, its successors and assigns. This is the Declaration of Covenants, Conditions and Restrictions to which the Articles of Incorporation and Bylaws of the Association make reference.

Section 2. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to all or any portion of any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Areas" shall mean all real property, easements and any other interests in real property (including any improvements thereto or thereon) now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot are Parcels C and G as shown on the plat, and the two-foot fence and landscape easement surrounding Parcel A also as reflected on the plat.

Section 5. "Common Elements" shall include the wooden fence on the fence and landscape easement surrounding Parcel A, street lights, and all irrigation systems, and lighting and signs or other improvements located on the Common Areas and all playground equipment located on Parcel G.

Section 6. "Lot" shall mean and refer to each of the platted lots as shown on the Plat of The Cottages at Grandpointe Phase II, a subdivision as recorded in the public records of Escambia County, Florida. In the event a portion of a lot is added to another lot due to building encroachments, setback violations or for other reasons, such combination of lots and the remainder of a lot shall also each constitute a "Lot" under this definition.

Section 7. "Declarant" shall mean and refer to THE MITCHELL COMPANY, INC., an Alabama corporation, its successors and assigns.

Section 8. "Plat" shall mean and refer to the Plat of The Cottages at Grandpointe Phase II Subdivision which is recorded in the public records of Escambia County, Florida in Plat Book 15 at Page 48, 48A.

Section 9. "Subdivision" shall mean and refer to The Cottages at Grandpointe Phase II Subdivision situated in Escambia County, Florida, according to the Plat.

**ARTICLE II**  
**PROPERTY RIGHTS**

Section 1. Common Area Easements: Every owner of every Lot shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot (even if not referenced in the document of conveyance) for the following purposes:



- (a) Erecting and maintaining a wooden fence on the fence and landscape easement shown on the plat surrounding Parcel A as more specifically referenced in Section 4 of this Article.
- (b) Installing and maintaining landscaping and other improvements on the fence and landscape easement surrounding Parcel A and on Parcels C and G as shown on the plat.
- (c) Such other rights and easements as the Association may determine to be suitable for the use and enjoyment of the Owners.

Section 2. General. The rights and easements of enjoyment herein created and reserved shall be subject to the following provisions:

- (a) The right of the Association to expand or bring other properties within the jurisdiction of the Association.
- (b) An easement in favor of Declarant and Association to develop and construct improvements on the Common Areas and to repair and maintain any existing improvements on such Common Areas provided, however, Declarant shall have no obligation to so repair and maintain any improvements once constructed.

Section 3. Buffer Area. The Buffer Area designated on the plat shall be used as a buffer area shielding Interstate 10 from the houses on Lots 1 through 20, Block C and Lots 1 through 18, Block F. The Buffer Area shall remain in a natural state at all times subject to such appropriate use by the owners of easements located thereon and shall not be fenced due to underground utilities.

Section 4. Easement for Maintenance of Wooden Fence Around Retention Pond. Inasmuch as Declarant intends to place on the area designated as the fence and landscape easement surrounding Parcel A as shown on the plat a wooden privacy fence outside of the chain link fence (as such is required by Escambia County) and such wooden fence will not be maintained by Escambia County, Declarant hereby creates and imposes for the benefit of the Association a perpetual, non-exclusive easement over the area designated as the fence and landscape easement surrounding Parcel A as shown on the plat for the purposes of ingress and egress for the Association, its agents, employees, and independent contractors hired by the Association for the purposes of maintaining the wooden privacy fence.

Section 5. Common Elements. The Common Elements shall be owned by the Association for the use and benefit of every lot owner and shall be properly maintained by the Association.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners with the exception of the Declarant (who shall become a Class A member as provided hereafter) and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B members shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (b) on July 1, 1997.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot which is owned by said Class B member. The Declarant shall not exercise its voting rights granted to it under this Article in an unreasonable manner nor in such a way as to cause undue hardship upon any Owner. Likewise, Class A members shall not exercise their voting rights granted to them in a manner so as to hinder the Declarant, in any manner, in selling the lots it has remaining, nor to affect any reservation or right of the Declarant contained herein, or elsewhere, so long as Declarant holds at least one lot for resale purposes.

**ARTICLE IV**  
**COVENANT FOR SUBDIVISION MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each



Owner of any Lot by acceptance of any Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments and (2) special assessments for capital improvements, such annual and special assessments to be established and collected as hereinafter provided (any annual assessment due under this Article IV referred to hereinafter as the "annual assessment," and any special assessment due under this Article IV referred to hereinafter as the "special assessment"), (annual assessments and special assessments under this Article IV referred to hereinafter at times collectively as "assessments"). The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but shall continue as a lien on the lot until satisfied.

Section 2. Purpose of Assessments.

(a) The annual and special assessments levied by the Association under this Article IV shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, their invitees or licensees, and for the improvement and maintenance of the Common Areas, and any improvements situated thereon and for maintenance of the Common Elements and the wooden privacy fence around Parcel A as shown on the plat. The Association shall have the obligation to maintain any common areas and all improvements thereon and shall maintain the Common Elements and the wooden privacy fence around Parcel A as shown on the plat, and shall maintain adequate liability insurance, and fidelity bond coverage in such minimal amounts as may be required by FHA, VA and FNMA, from time to time.

(b) The Owner shall be responsible for maintenance and repair of any and all improvements located within his Lot, including, but not limited to painting, repairing, replacing and caring for roofs, exterior building surfaces, trees, shrubs, grass, walks, driveways, and other exterior improvements.

Section 3. Annual Assessment. Until January 1, 1996, the maximum annual assessment under this Article IV shall be \$144.00 per Lot, payable in semi-annual installments, in advance on January 1 and July 1 of each year.

(a) From and after January 1, 1996, the maximum annual assessment under this Article IV may be increased each year by an amount not more than ten percent (10%) above the potential maximum assessment for the previous year without a majority vote of the owners.



(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased by more than ten percent (10%) by a vote of two-thirds of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors of the Association may fix the annual assessment under this Article IV at an amount not in excess of the potential maximum assessment without a vote of the owners.

Section 4. Special Assessments for Subdivision Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment under this Article IV for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of an improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such special assessment shall have the approval of not less than two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another second meeting may be called subject to the same notice requirement, and the required quorum at the second meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meetings shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual assessments and special assessments under this Article IV shall be fixed at a uniform rate for all Lots in the Subdivision.

Section 7. Annual Assessment Periods and Due Date. The annual assessment provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first lot to an owner. The first annual assessment shall be addressed according to the number of months remaining the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to each owner subject thereto. The due date shall be established by the Board of Directors if other than as set forth herein. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have



been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect on Nonpayment of Assessments - Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for under this Article IV herein by non-use of the Common Areas, or by sale or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages of Record. Any lien of the Association for assessments under this Article IV recorded after the date of recordation of any mortgage shall be subordinate to the mortgage on the Lot. When the mortgagee of a mortgage of record, or other purchaser, of a Lot obtains title to the Lot as a result of foreclosure of the mortgage, or, as a result of a deed given in lieu of foreclosure, such acquirer of title and his successors and assigns shall not be liable for the assessments by the Association pertaining to such Lot or chargeable to the former owner of such Lot which became due prior to the acquisition of title as a result of the foreclosure, or deed in lieu of foreclosure, unless such assessment is secured by a claim of lien for assessments that is recorded in the public records of Escambia County, Florida, prior to the recording of the foreclosed mortgage (or for which a deed in lieu of foreclosure is given), and such subordinate lien shall be extinguished automatically upon the recording of the certificate of title or the deed in lieu of foreclosure. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot so sold or transferred from the lien of any assessments thereafter becoming due. All such assessments, together with interest, costs, and attorney's fees, shall, however, continue to be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due. Except as hereinabove provided, the sale or transfer of an interest in any Lot shall not affect the assessment lien. Any liens extinguished by the provisions of this article shall be reallocated and assessed against all lots as a common expense.

## **ARTICLE V** **ARCHITECTURAL CONTROL**

Section 1. No building, fence, sign, wall, mailbox, sidewalks, or other structures or improvement of any nature whatsoever shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same in relation to surrounding structures and topography and compliance with the Architectural Guidelines shall be approved in writing by the Architectural Control Committee, or the Architectural Review Representative,



selected by a majority vote of the Architectural Control Committee. Detailed plans and specifications shall be submitted to the Architectural Control Committee, or the Architectural Review Representative in duplicate and written approval or disapproval shall be noted on both sets of plans and specifications or by separate letter. In the event the Architectural Control Committee, or the Architectural Review Representative, shall fail to approve or disapprove such design and location within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The initial members of the Architectural Control Committee shall be Linda Brown, Dick Godfrey and Max L. Dickson and shall serve as the sole members of the Architectural Control Committee until July 1, 1996, or their earlier resignation, at which time successor members may be appointed by the Board of Directors of the Association, but in any event the aforementioned members shall continue to serve until their successors are appointed.

Any owner acquiring title to a lot in the subdivision from Declarant, or from a successor in title to Declarant, shall expect that the Architectural Control Committee will deny approval to a proposed building or other improvements if the location, type and style are not compatible with the existing use of homes in the subdivision, or that portion of the subdivision. IN ORDER TO MINIMIZE THE COST AND EXPENSE OF ARCHITECTS AND ENGINEERS ON PLANS WHICH ARE LATER DENIED BY THE ARCHITECTURAL CONTROL COMMITTEE, OWNERS OF LOTS IN THE SUBDIVISION ARE INVITED TO SUBMIT PRELIMINARY PLANS OR IDEAS FOR THEM TO THE ARCHITECTURAL CONTROL COMMITTEE SO OWNERS WILL INCUR THE LEAST EXPENSE POSSIBLE ON DESIGNS WHICH ARE FOUND TO BE UNACCEPTABLE BY THE ARCHITECTURAL CONTROL COMMITTEE.

Section 2. When a building or other structure has been erected or its construction substantially advanced and the building is located on any Lot in an manner that constitutes a violation of these covenants and restrictions or the building setback lines shown on the recorded Plat, or this Declaration, a majority of the Architectural Control Committee or the Architectural Review Representative may release the Lot, or parts of it, from any part of the covenants and restrictions, or setback lines, that are violated. The Architectural Control Committee, or the Architectural Review Representative, shall not give such a release except for a violation that it determines to be a minor or insubstantial violation in its sole discretion.

## **ARTICLE VI**

### **BUILDING SETBACK LINES AND CONSTRUCTION RESTRICTIONS**

Section 1. Single Family Residence Purposes. No Lot in the Subdivision shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one, detached single family dwelling not to exceed two stories in height.



Section 2. Minimum Square Footage. No one story dwelling shall be erected on any lot having a living area of less than 950 square feet, and no dwelling with more than one story of living area shall have a first floor living area of less than 500 square feet and a total living area of 1,000 square feet. All square footages shall be exclusive of open porches, carports or garages.

Section 3. Setback Lines. No residential structure shall be erected on any Lot in the Subdivision which does not conform to the setback lines, if any, drawn on the recorded Plat of The Cottages at Grandpointe Subdivision.

## **ARTICLE VII GENERAL RESTRICTIONS**

Section 1. No exploration or drilling for oil, gas or other minerals shall be permitted or allowed on any lot in said subdivision and no lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

Section 2. No noxious or offensive trade or activity shall be carried on or maintained on any lot in the subdivision nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 3. No mobile living facility or structure of a temporary character shall ever be used as a residence.

Section 4. Trash, garbage, or other waste shall not be kept except in sanitary containers.

Section 5. All structures, improvements, yards, driveways, and landscaping must be diligently and properly maintained in a neat and sanitary condition so as to secure the aesthetics of the subdivision.

Section 6. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. In no event shall more than two household pets be kept on any lot at any one time. No pet kept, raised or bred on any lot shall exceed a maximum of forty (40) pounds.

Section 7. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period; provided, however, MITCHELL HOMES or THE MITCHELL COMPANY may erect a sign not exceeding four feet in height by eight feet in width as to the dimensions of the sign on any lot which it owns.

Section 8. No fence or wall, other than on the fence and landscape easements shall be erected on the street frontage of any lot or in the area between the rear of the dwelling, on each side, and the front lot line unless an exception based on desirable architectural effect is obtained from the Architectural Control Committee or the Architectural Review Representative. No fence may be constructed on any lot until the design, location, height, materials used for construction, and color of the fence have been approved in writing by the Architectural Control Committee or the Architectural Review Representative based on aesthetics, harmony with existing structures, topography, integrity of construction, requirements for uninterrupted storm water drainage. Notwithstanding any of the foregoing provisions, none of the drainage or utility easements shown on the plat may be fenced without the prior written approval of the Architectural Control Committee or the Architectural Review Representative due to the need for unrestricted drainage for storm water runoff and otherwise. However, in no event shall any chain link or wire fences be allowed on any lot in the subdivision other than around the holding pond as required by the subdivision regulations of Escambia County, Florida.

Section 9. Utility, drainage, or other easements shall not be fenced in any manner that will prohibit access and use. Drainage easements shall not be obstructed in any way that will alter the natural and normal flow of drainage.

Section 10. No one shall change the natural contours of the land causing undue and harmful flow of surface water drainage to adjoining property owners. In order to facilitate natural surface water drainage, it may be necessary for the Declarant to contour each building lot to provide a continuous drainage pattern from lot to lot within the subdivision. These drainage patterns shall not be altered.

Section 11. No outside clothes lines visible from the street or adjacent property or other items detrimental to the appearance of the subdivision shall be permitted on any lot.

Section 12. Invalidation of any of these covenants by judgment or court decree shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 13. No satellite dishes or satellite reception equipment shall be permitted in the subdivision except in a back yard, in which case it shall be screened in such a manner as not to be visible from adjacent lots or visible from the street.

Section 14. No boats, trailers, motor homes, campers, or other recreational vehicles shall be parked on any lot in the subdivision unless done in such a manner as to not be visible from the street.



**ARTICLE VIII**  
**GENERAL PROVISIONS**

Section 1. Enforcement. The ASSOCIATION, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the ASSOCIATION, or any owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by a document signed by the then owners of two-thirds (2/3) of the lots agreeing to change these covenants in whole or in part, which has been recorded in the public records of Escambia County, Florida.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Mortgaging of Common Areas. The common area, now existing or hereinafter included in these restrictions, cannot be mortgaged or conveyed by the Association, or any other entity, without the consent of at least two-thirds (2/3) of lot owners (excluding the Declarant).

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants, Conditions and Restrictions for The Cottages at Grandpointe Phase II, this 11<sup>th</sup> day of April, 1995.

Signed, sealed and delivered  
in the presence of:

Marcia Sue Timbes  
Name: Marcia Sue Timbes

Jani M. Brittain  
Name: Jani M. Brittain

DECLARANT:

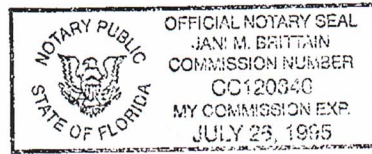
THE MITCHELL COMPANY, INC., an  
Alabama corporation

By: Max L. Dickson  
Max L. Dickson, as Sr. Vice-President

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 1995, by MAX L. DICKSON, Senior Vice-President of THE MITCHELL COMPANY, INC., an Alabama corporation, who is personally known to me.

*Jani M. Brittain*  
\_\_\_\_\_  
NOTARY PUBLIC



This instrument prepared by:

✓ John W. Monroe, Jr., of  
EMMANUEL, SHEPPARD & CONDON  
30 South Spring Street  
Post Office Drawer 1271  
Pensacola, Florida 32596  
M530-21105

Instrument 00205686  
Filed and recorded in the  
public records  
MAY 8, 1995  
at 09:28 A.M.  
in Book and Page noted  
above or hereon  
and record verified  
JIM MOYE  
COMPTROLLER  
Escambia County,  
Florida