

*attached units*

*41.00  
2.00  
43.00*

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR WILLOW POINTE, UNIT ONE  
LOTS 15A-15F, 16A-16F, 17A-17F, 18A-18F, 19A-19F,  
23A-23F, 24A-24F, 25A-25F and 26A-26D**

THIS DECLARATION, made this 15<sup>th</sup> day of November, 2000, by THE MITCHELL COMPANY, INC., a corporation, hereinafter referred to as "Developer",

WITNESSETH:

WHEREAS, Developer is the Owner of the real property located in Mobile County, Alabama, and more particularly described as follows, to-wit:

Willow Pointe, Unit One, Lots 15A-15F, 16A-16F, 17A-17F, 18A-18F, 19A-19F, 23A-23F, 24A-24F, 25A-25F and 26A-26D, according to plat thereof recorded in Map Book 88, page 3 of the records in the Office of the Judge of Probate, Mobile County, Alabama.

NOW THEREFORE, Developer 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 deriving title through the Developer, and their respective heirs, successors and assigns and which shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to the Willow Pointe Owners Association, Inc., an Alabama non-profit corporation, its successors and assigns. This is the Declaration of Covenants, Conditions and Restrictions for Lots 15A-15F, 16A-16F, 17A-17F, 18A-18F, 19A-19F, 23A-23F, 24A-24F, 25A-25F and 26A-26D of Unit One 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 as hereinafter defined, 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 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 those common areas designated on the plat as hereinafter defined.

Section 5. "Lot" shall mean and refer to the platted Lots numbered 15A-15F, 16A-16F, 17A-17F, 18A-18F, 19A-19F, 23A-23F, 24A-24F, 25A-25F and 26A-26D as shown on the Willow Pointe, Unit One,

a subdivision as recorded in the public records of Mobile County, Alabama. 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 constitute a "Lot" under this definition.

Section 6. "Developer" shall mean and refer to THE MITCHELL COMPANY, INC., a corporation, its successors and assigns.

Section 7. "Plat" shall mean and refer to the Plat of Willow Pointe, Unit One, which is recorded in the public records of Mobile County, Alabama in Map Book 28, page 3.

Section 8. "Subdivision" shall mean and refer to Willow Pointe, Unit One, a subdivision situated in Mobile County, Alabama according to the Plat.

Section 9. "Future Development Parcels" Any and all real property which is located adjacent to Unit One which is now owned or which may be acquired by Developer and which is reserved for future development.

Section 10. "Building Product" shall mean and refer to the type of housing product to be placed on each Lot within the Subdivision, for example, "detached dwelling" or "attached dwelling", and for which a separate Declaration of Covenants, Conditions and Restrictions shall issue.

## **ARTICLE II**

### **DEVELOPMENT PLAN**

Section 1. Initial Development Plan. Unit One consists of 115 Lots for single family residential use with such roadways and Common Areas as appear on the plat. Lots 1-14, 20-22 and 27-72 constitute 63 single family residential Lots with one detached residence per Lot of the "detached dwelling" Building Product. Lots 15A-15F, 16A-16F, 17A-17F, 18A-18F, 19A-19F, 23A-23F, 24A-24F, 25A-25F and 26A-26D constitute 52 single family residential Lots with one attached residence per Lot of the "attached dwelling" Building Product. The restrictions herein apply to the "attached dwelling" Building Product.

Section 2. Future Development.

(a) General Provisions. Developer reserves for itself, its grantees or assigns, the future right, but shall not be required or otherwise obligated, to develop all or part of any and all additional parcels of real property adjacent to Unit One which are now owned by Developer or which may be acquired in the future by Developer for residential use as additional units of Willow Pointe or other named subdivisions in any Building Product category and/or to convey all or part of Future Development Parcels to other individuals or entities. The Owners of Lots in Unit One of Subdivision shall not, under any circumstances, bear any liability or responsibility for any of the initial development costs for any such future development. Notwithstanding anything to the contrary contained herein, as long as Future Development Parcels remain unimproved, Developer shall not be required to share in any of the maintenance, repair or replacement obligations of Association by virtue of the Ownership of Developer, its grantees or assigns, of Future Development Parcels;

(b) Future Development by Developer. If any part of Future Development Parcels is developed by Developer (development by any other party is excluded from this provision) then the following will be applicable to both Unit One and such other development by Developer of Future Development Parcels:

1. Each Owner of a Lot in such other development of Future Development Parcels shall become a member of the Association.

2. All Owners of Lots in Unit One shall have the right to use all Common Areas and easements created in such other development of Future Development Parcels on an equal basis with all future Owners and occupants of Lots in such other development of Future Development Parcels and shall likewise share equal liability and responsibility for the maintenance, repair and replacement of all Common Areas and easements which are to be developed in such other development of Future Development Parcels.

3. All Owners or occupants of Lots in such other development of Future Development Parcels shall have the right to use all common areas and easements in Unit One on an equal basis with the Owners of Lots in Unit One and all Owners of Lots in such other development of Future Development Parcels shall share in the maintenance, repair and replacements obligations of the Association in accordance with the provisions of the preceding paragraph;

4. Upon completion of the construction of roads and all buildings in such other development of Future Development Parcels or upon the initial sale or rental by Developer of a Lot in such other development of Future Development Parcels, whichever event shall occur first, the budget of Association and, therefore, the general assessments of Association as well as the apportionment thereof shall be adjusted to reflect the increased income from Lot Owners in such other development of Future Development Parcels and the increased obligations of the Association for such other development of Future Development Parcels, but the dollar amount of the existing monthly installment paying the general and special assessments for each Lot in Unit One shall not be increased or otherwise affected. The foregoing provision shall be subject to the respective assessment rates for different Building Products.

### **ARTICLE III 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) and the Association shall have such right and easement for the following purposes:

(a) Displaying and maintaining a sign identifying the Subdivision.

(b) Erecting and maintaining fences, entrance markers and landscaping at the Subdivision entrance, on the Common Areas and at other locations within the Subdivision.

(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) Right of the Association to expand or bring other properties within the jurisdiction of the Association.

(b) An easement in favor of Developer 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, Developer shall have no obligation to so repair and maintain any improvements once constructed.

(c) Easements and rights of way of record.

(d) Matters contained in Development Plan as set out in Article II hereinabove.

(e) Right of the Association to place fences or Subdivision markers on individual Lots.

(f) The Common Area cannot be mortgaged or conveyed without the consent of at least 2/3 of the Lot Owners (excluding Developer).

(g) If ingress or egress to any Lot is through any Common Area, any conveyance or encumbrance of such Common Area is subject to the Lot Owner's easement.

Section 3. Party Walls. Each wall which is built as a part of the original construction of the building on each Lot and placed on the dividing line between two Lots shall constitute a "Party Wall" and shall, to the extent not inconsistent with these restrictions, be subject to the general statutes and rules of law governing party walls, including, but not limited to, liability for property damage and negligent, willful acts or omissions and the cost of reasonable maintenance, repair and contributions. Neither party to said Party Wall shall have the right of entry through the Party Wall into the premises of the adjoining party either directly or indirectly.

Section 4. Utility Cross Easements within Building. Cross easements are hereby reserved to the Owners of each Lot located within a building for the placement, maintenance, repair and replacement of plumbing, air conditioning condensation lines, gas and electric service and any other utility service or conduit located in the slab, attic or exterior of any building which aids in the mutual use and enjoyment of each building by an individual Lot Owner. Such easement shall be limited to the original location thereof as established during the initial construction of said building, unless otherwise agreed to by any Owner for such relocation. The exercise of rights under such easements shall be limited, in the case of routine maintenance and repair to daylight hours only unless the adjoining Lot Owner or Owners involved agree otherwise; however, the foregoing limitation shall not apply in the event of an emergency, the substantial destruction of a residence or the danger of substantial damage or destruction of a residence, in which event the rights under said cross easements may be exercised for whatever period and at whatever times as are reasonably necessary.

Section 5. Encroachments. In the event that any encroachment and/or overlap of any driveway, building or any single family dwelling unit which constitutes a portion of any building exists from one Lot on, over or onto any other Lot within the subdivision and which occurs, for any reason whatsoever, expressly including the initial design thereof, during the course of or as a result of the initial construction or subsequent usage of any residential building or other structure designed and/or constructed by Developer, a permanent, exclusive easement shall be deemed to exist for such driveway, encroachment and/or overlap for as long as such driveway, encroachment and/or overlap shall continue to exist and shall be deemed to run with

the land. The aforesaid easement shall, if reasonably necessary, extend to and include an easement for the care, maintenance and repair of said driveway, encroachment and/or overlap as well as an easement for ingress and egress, if reasonably necessary, on, over and across the subservient estate in order to perform such care, maintenance and repair.

Section 6. Emergency Access. In the event of an emergency and, if required, upon obtaining the consent of the Department of Housing and Urban Development, Federal National Mortgage Association, Federal Housing Administration and/or the Veterans Administration, the Association shall be entitled to reasonable access to any portion of any building to effect the preservation of life, health or safety or to prevent substantial loss to property on other Lots, together with temporary easements therefor, all without liability to any Lot Owner for any damages for trespass in connection therewith.

Section 7. Easement to the Association. The Association shall have an easement for ingress and egress, as well as an easement for it to obtain access to all portions of the Lot in order for it to perform its maintenance obligations as herein specified. If the rear portion of any Lot is completely enclosed by fencing, such enclosure shall include a sufficiently large gate to allow access to said rear yard area for lawn maintenance and any other maintenance, repair or replacement obligations of the Association. Association shall not be obligated to perform any maintenance, repair or replacement herein required in rear yards of any Lot unless there is sufficient access thereto and no animals are contained therein.

Section 8. Access and Drainage Easement. A four (4) foot wide access and drainage easement is hereby reserved to Developer and Association along the outermost perimeter of each Lot. No Owner shall cause any fencing, shrubbery or other improvements to be constructed or placed on said easement. Further, a blanket easement is hereby granted to Developer and Association on, across and over all Lots for the repair, maintenance and replacement of roofs, exteriors of buildings, Party Walls, or any other improvements located on any Lot.

Section 9. Blanket Easement. All utilities in the Subdivision shall be installed underground and, to facilitate the installation and maintenance of such utilities, a permanent, non-exclusive blanket easement is hereby granted to Developer and Association on, across, over and under all Lots within the Subdivision for the installation, repair, maintenance and replacement of any and all utilities, including, but not limited to, water, sewage, gas, communications, electricity and master television antenna systems or cable television systems to the companies providing such services. By virtue of this easement, it shall be permissible for the companies providing such services, and their agents, servants or employees, to erect, maintain, replace and repair the necessary service systems and other necessary equipment on all of the property located within the Subdivision and to affix, maintain, repair and replace electrical, communications and/or television wires, cables, transmission lines, fiber optic cables, conduits and/or circuits on, above, across, over and under the roofs and exterior walls of the residential buildings constructed within the Subdivision and all such providing companies are hereby granted an easement for ingress and egress on, over and across all Lots within the Subdivision in order to perform such activities. Nothing contained herein shall be construed to permit the installation or relocation of any utility or other service other than in a location which has been initially directed and approved by Developer for such purposes.

Section 10. Easement to Developer. Easements and rights of way are hereby reserved to Developer, its successors or assigns, and Association for the installation and maintenance of utilities, drainage facilities, storm sewers and sanitary sewers in the locations shown on the recorded Subdivision plat or as otherwise required. Drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers

and/or utility easements as designated herein or as hereafter may appear on any recorded Subdivision Plat. Within these easements, rights of way or reservations, no planting or other material shall be placed or permitted to remain therein which may damage or interfere with the installation and maintenance of the utilities, drainage facilities, storm sewers and sanitary sewers. Furthermore, no residences or other structures of any kind shall be built, erected or maintained upon such easement, right of way or reservation, and said easements, rights of way and reservations shall at all times be open and accessible to public and quasi-public utility corporations and other persons erecting, constructing, maintaining or repairing such facilities, as well as to Developer and Association and their respective successors or assigns, all of which shall have an easement and right of way for ingress and egress to and from any such easement, right of way or reservation and the right and privilege of doing whatever may be necessary in, under and upon said easement, right of way or reservation for the performance of any of the purposes for which said easements, rights of way or reservations are reserved.

#### **ARTICLE IV** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Organization of Association.** Developer has caused or shall cause the formation of a homeowners association which shall be a non-profit corporation. Such corporation shall be required to hold title to all Common Areas as defined and provided herein. The name of such non-profit corporation shall be "Willow Pointe Owners Association, Inc." and shall be referred to herein as "Association". Said Association shall be governed and managed by its Board of Directors, which shall be elected by its members in accordance with and for such terms as may be provided in its Articles of Incorporation and By-Laws; however, control of the number of directors and the membership of said Board of Directors shall be retained by Developer until (i) Developer ceases to be the record Owner of any unit or Lot within the Subdivision or (ii) the date on which Developer relinquishes its right to the members of the Association to determine the number of directors and to elect directors, whichever event shall occur first.

**Section 2. Authority of Association.** The Association shall have such objects, purposes and powers as provided in the Articles of Incorporation and shall, among other things, own, maintain, service, repair and replace if necessary, all Common Areas as defined herein. Rules and regulations for the use thereof, shall be adopted in accordance with the terms and conditions of the Articles of Incorporation of the Association and Bylaws adopted by Association. The Association shall have the obligation of collecting all assessments, maintaining and investing all funds, including reserve funds, maintaining appropriate accounting records therefor in accordance with generally accepted accounting principles and paying all expenses in connection with its maintenance, repair and replacement obligations. The Association shall obtain insurance coverage as required by these Restrictions.

**Section 3. Membership.** 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 4. Classes of Membership.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Developer (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 a 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 Developer 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 Developer ceases to be the record Owner of any unit or Lot within the subdivision; (b) the date on which Developer relinquishes its right under Class B membership herein; or (c) 120 days after the date 75% of the total number of Lots within the subdivision are conveyed by Developer to Owners other than the Developer. Under no circumstance shall the Class B membership continue past the date which is seven (7) years from the date the original declaration was recorded.

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 (1) vote for each Lot which is owned by said Class B member. The Developer 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 as to hinder the Developer, in any manner, in selling the Lots it has remaining, nor to affect any reservation or right of the Developer contained herein, or elsewhere, so long as the Developer holds title to at least one Lot.

## **ARTICLE V**

### **COVENANT FOR SUBDIVISION MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments. 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 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 (annual assessments and special assessments under this Article V referred to hereinafter at times collectively as "assessments"), together with interest, costs and a reasonable attorneys fee, shall be a continuing charge and lien on each Lot against which such assessments are made. All such assessments, 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 V 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 the following:

- (i) expenses for the maintenance, repair and replacement of roofs and building exteriors; and
- (ii) expenses for landscaping maintenance; and
- (iii) a reserve fund for the future replacement of roofs; and
- (iv) a reserve fund for the future maintenance, repair and replacement of building exteriors; and

(b) Association's Insurance Obligations. Association shall maintain in full force and effect a comprehensive public liability insurance policy, in such amounts as the Association, in its sole discretion, deems appropriate or desirable, insuring the Association, its officers, directors, employees and managing agents and all Owners from any liability in connection with any personal injury or property damage occasioned as a result of the Association's operation, maintenance, repair or replacement of the Common Areas, easements or other areas within the Subdivision for which Association has any maintenance, repair or replacement responsibility and for any such liability arising out of the use of such areas by Owners, their families, tenants, guests or invitees.

(c) Owner's Insurance Obligation. Each Owner shall obtain and maintain in full force and effect casualty insurance coverage against loss or damage by fire, vandalism, malicious mischief and all other hazards that are covered under standard extended coverage provisions for the full insurable replacement cost of each Owner's portion of the building constructed on a Lot and against such other hazards and in such amounts as the Association may from time to time deem advisable. Owner shall furnish Association with satisfactory written proof that such coverage is in full force and effect. Insurable replacement cost shall be deemed to be the cost of restoring such improvements located on such Lots or any part thereof to substantially the same condition in which it existed prior to the damage or destruction. Such insurance coverage shall be written in the name of the Owner, but the proceeds thereof shall be jointly payable to the Owner and to the Association as Trustee for the Owner, subject to any requirements of the holder of any mortgage on such Lot. If any insurance policy purchased by Owner cannot provide that Association be named on any such proceeds check as Trustee, by virtue of any insurer's or mortgagee's limitation, Association shall be named as an additional loss payee on such policy. Any coverage under any such policies that is solely for the loss of contents or personal property of an Owner shall be paid solely to Owner. If the property described herein is ever designated as part of a flood plain area or any other designation which would make such property subject to the Federal Flood Insurance Act, as heretofore or hereafter amended or any similar law, then the Owner shall comply with the requirements of said law, including all regulations and other requirements applicable thereto, and shall obtain such flood insurance in the name of the Owner and the Association, as aforesaid, subject to the requirements of any mortgagee or insurer on such Lot. All policies required by this paragraph shall provide that the same cannot be canceled or substantially modified by Owner or insurer without at least thirty (30) days prior written notice to the Association. Such policies of insurance must also contain a waiver of subrogation rights by the insurer against other Owners of Lots within the building and their respective families, tenants, guests or invitees.

(d) Association Maintenance Obligations. The Association shall have the obligation to maintain, repair and, as necessary, replace the roofs of all of the residential buildings constructed on the Lots and to maintain, paint and repair all exterior surfaces of the residential buildings, excluding doors, shutters, windows, garage doors and exterior lighting, subject to the approval of the Architectural Control Committee pursuant to Article VI hereof. The Association shall also have the obligation, as reasonably necessary for lawn maintenance which shall be limited to grass mowing and edging in the yards of each building, subject to the provisions of Article III, Section 7, hereof, and to maintain and repair, as reasonably necessary, driveways and parking aprons in front of each building and all community mail box facilities, if any.

(e) Owner's Maintenance Obligation. Each Owner shall have the obligation to maintain, repair and replace all portions of such of the building on the Owner's Lot, including, but not limited to, painting, repairing, cleaning or otherwise dealing with interior walls and flooring, and all exterior doors, windows and shutters, patios, cooling equipment, garage doors, exterior lighting, all rear privacy fencing and any other improvements located in the rear yard of any Lot.



(f) Responsibilities in the Event of a Casualty Loss. In the event of a casualty where the damage is limited to the building on an Owner's Lot for which Association has no maintenance, repair or replacement obligation, all insurance proceeds shall be paid to the Owner and/or to the holder of any mortgage on the Lot, as their respective interests may appear, and such Owner shall use the same to rebuild or repair said living unit substantially in accordance with the original plans and specifications therefor, subject to the approval of the Architectural Control Committee pursuant to Article VI hereof. If, however, such damage extends to more than one Lot or to any portions of the building for which Association has any maintenance, repair or replacement obligation, such insurance proceeds shall be held by the Association, as Trustee, for the benefit of the Owners and holders of any mortgages, as their respective interests may appear. The Association shall, thereupon, contract to repair or rebuild the damaged portions of such building substantially in accordance with the original plans and specifications therefor and the funds held in trust shall be used for this purpose. All such insurance proceeds shall be placed in a separate insurance trust fund account and Association shall comply with all reasonable requirements of any mortgagee regarding the inspection of any completed work prior to disbursement of funds from such trust fund account. If the insurance proceeds are insufficient to pay all of the cost of repairing or rebuilding due to an Owner's failure to maintain sufficient insurance coverage as required hereunder, then the Owner shall be required to furnish the additional funds necessary to complete such rebuilding or repairs. In the event that such Owner fails to do so, the Association shall have the obligation, if the funds are available, to pay all costs of completing said repairs and/or rebuilding. In such event, Association shall have the right to impose an individual assessment against such Owner for such costs, before or after incurring such expense, and such individual assessment shall be due and payable to the Association from the Owner within thirty (30) days after the assessment thereof, which said individual assessment may be collected in accordance with the provisions hereof. In the event that such insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding due to no fault of an individual Owner or Owners, then the Association shall levy a special assessment against all Owners. If any such Owner shall fail to pay such special assessment within thirty (30) days after the assessment thereof, the Association shall make up the deficiency if the funds are available and complete said repairing or rebuilding. Any such assessment unpaid by any Owner may be collected or enforced in accordance with the provisions hereof for other assessments.

(g) Default of Owner in Maintenance of Insurance. In the event that an Owner fails to maintain insurance coverage on the improvements located on such Owner's Lot as required by the provisions hereof, the Association may obtain such coverage on said improvements. If the sums expended by Association for such coverage are not paid within thirty (30) days after written demand therefor to such Owner, Association shall have the right to impose an individual assessment against such Lot and Lot Owner and collect the same in accordance with the provisions hereof.

Section 3. Annual Assessment. Annual assessments shall be payable in monthly installments.

(a) From and after the initial annual assessment, the maximum annual assessment under this Article V may be increased each year by an amount no more than five percent (5%) 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 five percent (5%) 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 V at an amount in excess of the potential maximum assessment without a vote of the Owners.

(d) At the time of closing of the initial sale of each Lot by Developer, such purchaser shall pay the Association an amount equal to two (2) months of the annual assessment, which sum is to be used by the Association in such manner as it deems appropriate in its sole discretion. The payment of this sum shall not affect such purchaser's obligation to pay subsequent installments as provided herein. This provision shall not apply to the sale of any Lot subsequent to the initial sale thereof.

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 V 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, or portions of the improvements for which the Association has some obligation, 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 V shall be fixed at a uniform rate for each Lot assigned to a particular Building Product or for all Lots included in this Declaration of Covenants, Conditions and Restrictions. Rates for Lots in a different Building Product or Lots included in a different and separate Declaration of Covenants, Conditions and Restrictions may be assessed at a different rate.

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 assessed according to the number of months remaining on the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) 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 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 interest allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property in accordance with the laws of Alabama and applicable

to the foreclosure of mortgages. No Owner may waive or otherwise escape liability for the assessments provided for under this Article V herein by non-use of the Common Areas, or by sale or abandonment of his Lot. The Association shall be entitled to foreclose its lien if it elects to do so and shall have the right to sell the property at public outcry at the front door of the Courthouse of Mobile County, Alabama in accordance with Alabama Law, after publication of notice of sale once a week for three consecutive weeks in some newspaper published in Mobile County, Alabama. In a foreclosure action, the Association shall have the right to bid as a stranger at the foreclosure sale and to acquire, hold, mortgage and convey the same.

Section 9. Subordination of the Lien to Mortgages of Record. Except as otherwise provided by law, any lien of the Association for assessments under this Article V recorded after the date of recordation of any mortgage shall be subordinate to the mortgage on the Lot, and when the mortgagee or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of such 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 such acquisition of title, and such lien shall be extinguished automatically upon the recording of the foreclosure deed or deed in lieu of foreclosure. Such unpaid share of 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. 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. 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.

Section 10. Assessment on Lots Owned by Developer. Notwithstanding any of the other provisions of this Article V, Developer shall not be required to pay any annual or special assessments as provided herein as to any Lot which it owns. However, in the event any annual assessment proves to be insufficient for the purposes set out in this Article, then Developer shall be responsible for the amount of any such budget deficit, but only to the extent of the total assessment which Developer would have otherwise owed for the total number of Lots owned by it.

## **ARTICLE VI** **ARCHITECTURAL CONTROL**

Section 1. Architectural Control Committee Authority. No building, fence, sign, wall, mailbox, sidewalks, or other structure 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 Lindsey Walker, Joe Campus, III, and Troy D. Wilson. So long as Developer is the record Owner of any Lot in the subdivision, Developer shall

have the exclusive right to appoint all members of the committee, and all such members shall serve at the pleasure of the Developer. At such time as Developer ceases to own any Lots in the subdivision or any future phase thereof or at such other time as Developer in its own discretion deems appropriate, Developer shall relinquish the exclusive right to appoint all members to the Architectural Control Committee.

Section 2. Release. When a building or other structure has been erected or its construction substantially advanced and the building is located on any Lot in a manner that constitutes a violation of these covenants and restrictions or the building setback lines shown on the recorded Plat, or this Declaration, 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 VII**

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

Section 1. Single Family Residence Purposes. No Lot 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, attached single family dwelling not to exceed two stories in height. The color, texture and style of the exterior of each residential building shall be kept the same, unless otherwise expressly authorized by both the Committee and Association. No decorations shall be installed and no landscaping shall be altered in the front or side yard of any residential building, unless otherwise expressly authorized by both the Committee and Association.

Section 2. Minimum Square Footage. No one story dwelling shall be erected on any Lot having a living area of less than 800 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 which does not conform to the setback lines, if any, drawn on the applicable recorded Plat of Willow Pointe Unit One.

## **ARTICLE VIII**

### **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. However, Developer may use a mobile home or temporary structure as a construction or sales office.

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 four (4) household pets be kept on any Lot at any one time.

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 on any Lot which it owns.

Section 8. No fence or wall 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 of the 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 the 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, and access requirements for construction of dwellings on adjoining property and/or maintenance of existing dwellings on adjoining property. Any fence or wall placed on any Lot shall be subject to the Easement reserved to the Developer and Association in Article III, Section 8 hereof. Based on the foregoing considerations, the Architectural Control Committee or the Architectural Review Representative may impose certain requirements, as a condition of approving such fence, as the Architectural Control Committee and Architectural Review Representative deem appropriate. Fencing shall be of eight (8") inch boards, shadow box style, six (6') feet in height, or as otherwise approved by the Architectural Control Committee pursuant to Article VI hereof.

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, the Developer shall have the right but not the obligation 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 and no other items detrimental to the appearance of the subdivision shall be permitted on any Lot.

Section 12. No satellite dishes or satellite reception equipment shall be permitted in the subdivision except in a back yard, no closer to the front street than the rear of the house and no closer to the side Lot line than the side of the house, and it shall be screened by a wooden fence at least four (4) feet in height on all sides and shall not be placed in such a manner as not to be visible from adjacent Lots or visible from the street. Notwithstanding the foregoing, satellite reception equipment not larger than twenty (20) inches in diameter may be attached directly to or under the overhanging eaves of a house, provided that such equipment is not attached to the front of the house, and provided that if such equipment is placed on the side of the house, it shall be

located no closer to the front of the house than one-half (1/2) the distance between the front and the rear of the house.

Section 13. 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.

Section 14. Outdoor storage buildings may be constructed on Lots provided plans are submitted and approved by the Architectural Control Committee. Storage buildings must be of similar design and construction as the home on the Lot where construction is proposed.

Section 15. No abandoned vehicles or vehicles without current valid registration or licenses shall be kept or stored on any Lot in such manner as to be a health hazard, a safety hazard, or create an annoyance, or nuisance to the neighborhood and no such abandoned or unlicensed vehicles shall be permitted on any Lot unless garaged or kept on a driveway or parking pad in the rear yard of such Lot and screened in such a manner as not to be visible from adjacent Lots or from any streets. All other vehicles must be parked on driveways or parking pads. No vehicles shall be parked on grass yards. No trucks, trailers, vans, commercial vehicles or other vehicles shall be parked on any Lot in any manner to create a neighborhood nuisance or impede other Lot Owners from the use and enjoyment of their Lots, except for the use by Developer or other builders during construction and development.

Section 16. Garage doors shall be kept closed when not in use for ingress and egress or when persons using the garage doors are not physically present.

Section 17. No window air conditioner shall be installed in any residential building on any Lot.

## **ARTICLE IX 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 way affect any other provision 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. After Developer has closed the sale of all Lots in the Subdivision or any future unit thereof, 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 Mobile County, Alabama. Any material amendment to this document must be done at a meeting of the membership called in accordance with the provisions set out in the Willow Pointe Owners Association, Inc. ByLaws.

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. Amendments by Developer. Until such time as Developer, its successors or assigns, has completed the closing of the sale of all such Lots within the Subdivision, and any future unit thereof, the Developer herein expressly reserves unto itself the sole and unilateral right to amend, modify, change, cancel or annul these Restrictions, in whole or in part, at any time during the pendency or term of the same as existing, or as the same may be amended, modified, changed, canceled or annulled by Developer in accordance with the foregoing provisions. These Restrictions may be so changed, modified, amended, altered or terminated solely and unilaterally by the recording in the records of the Office of the Judge of Probate of Mobile County, Alabama of a written instrument duly executed by Developer, its successors or assigns which purports to have changed, modified, amended, altered or terminated these restrictions. It is expressly reserved and stipulated herein that such action as may be taken by Developer in accordance with the foregoing authority and power and may result in all or any part of these Restrictions as existing or as may be changed, modified, amended or altered being either more or less restrictive or burdensome than the foregoing Restrictions contained herein. It is further stipulated and reserved herein that Developer may at any time waive all or any part of these Restrictions as set forth herein. Developer may also include in any contract or deed hereinafter entered into or delivered such modifications and/or additions to these Restrictions which, by their nature, have the effect of raising the standards of the Subdivision.

Section 6. Effect of Acceptance of Ownership of Lot. All future Owners of any Lot or Lots subject to these Restrictions, shall by virtue of the acceptance of the conveyance or other transfer of any interest in or title to such Lot or Lots or the execution of a contract for the purchase thereof, whether from Developer or any subsequent Owner of such Lot or Lots, shall be deemed to have accepted such conveyance or transfer or other contract subject to each and all of these Restrictions and to have agreed to be bound by all of the terms and conditions of thereof, whether or not such restrictions have been referenced in any written instrument.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Covenants, Conditions and Restrictions for Willow Point Unit One, Lots 15A-15F, 16A-16F, 17A-17F, 18A-18F, 19A-19F, 23A-23F, 24A-24F, 25A-25F and 26A-26D, a Subdivision this 1 day of November, 2000.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Ruth Ann Holland  
NAME: Ruth Ann Holland  
Susan Summerrin  
NAME: Susan Summerrin

DEVELOPER:

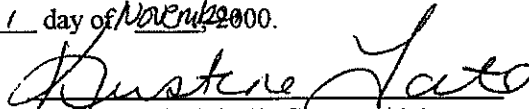
THE MITCHELL COMPANY, INC.  
A Corporation

BY: W. Lee Wall  
Its: Vice Pres.

STATE OF ALABAMA  
COUNTY OF MOBILE

I, the undersigned authority in and for said state and county, hereby certify that W. LINDSAY WALKER, whose name as Vice Pres. of THE MITCHELL COMPANY, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of the instrument he, as such Vice Pres and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and notarial seal this the 1 day of November, 2000.



Notary Public, Mobile County, Alabama

My Commission Expires: May 28, 2003  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
RECORDED THROUGH NOTARY PUBLIC UNDERWRITERS

THIS INSTRUMENT PREPARED BY:

Beth McFadden Rouse, Attorney  
McFADDEN, LYON & ROUSE, L.L.C.  
718 Downtowner Boulevard  
Mobile, Alabama 36609  
(334)342-9172

State of Alabama - Mobile County  
I certify this instrument was filed on:

Wed, Nov-01-2000 @ 02:42:50

RECORDING FEE	41.00
S. R. FEE	2.00
TOTAL AMOUNT	\$43.00

2000073030

L. W. NOONAN, Judge of Probate