

STATE OF ALABAMA

COUNTY OF MOBILE

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**COVENANTS, RESTRICTIONS AND
LIMITATIONS OF
MARCH POINTE, PHASE TWO**

KNOW ALL MEN BY THESE PRESENTS that **The Mitchell Company, Inc.**, an Alabama corporation, hereinafter called Declarant, makes, publishes and declares as follows:

WHEREAS, Declarant is the "Owner" of all that real property in Mobile County, known as **March Pointe, Phase Two**, plat of which is recorded in records in the Office of the Judge of Probate of Mobile County, Alabama, in Map Book 109, page 10; and

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

WHEREAS, these restrictions shall apply to **March Pointe, Phase Two**, and all future phases of said subdivision, with the Owner retaining the right to record additional restrictions applicable to additional Phases of **March Pointe** within the Owner's sole discretion.

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

1. **RESIDENTIAL USE ONLY**: All lots in the Subdivision shall be known and described as residential lots. No lot may be improved, used or occupied for other than private single family residence purposes, and no flat, duplex apartment house, group apartment or condominium, though intended for residence purposes, may be erected thereon.
2. **ARCHITECTURAL COMMITTEE**: No building shall be erected, placed or altered on any lot in this Subdivision until two sets of the building plans and specifications are presented to the Architectural Control Committee; which plans and specifications must show at the minimum, habitable square footage as defined in Section 8 hereof and front, side, and rear elevations. In addition, two plot plans showing the locations of the building, driveway and sidewalk shall be submitted. The Architectural Control Committee shall approve the plans and specifications by separate letter or by written notation on a set of said plans, specifications and plot plans with one set of the plans and specifications and plot plan being returned to the builder or homeowner, and the second set of plans and specifications and plot plan being retained by the Architectural Control Committee. The Architectural Control Committee, or any individual member thereof, shall determine whether the plans and specifications and plot plans are in conformity and harmony as to external design with the existing structures in the Subdivision, and, as to the location of the building and the driveway, with respect to topography and finished ground elevation, and as to compliance with all other requirements of these restrictions. The Architectural Control Committee shall initially be comprised of **John B. Saint and Kenneth C. Kvalheim**, or by a representative designated by the members of said Committee. Said individuals, or their duly appointed successors, shall sit as members of the said committee for as long as the developer declares those property within the area now known as **March Pointe**. In the event of death or resignation of either member of the Committee, the remaining member shall have full authority to appoint a successor member and to approve or disapprove such design and location or to designate a representative with like authority. If such plans and specifications are disapproved, written notice of such disapproval shall be given to

the submitting lot owner in person or by U. S. Mail at the address as indicated on the application. Neither the members of such Committee or its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of such Committee and of its designated representative shall cease on the date the Developer sells the last lot owned by it. Thereafter, the approval described in this covenant shall not be required unless prior to said date and effective thereon, a written instrument shall be executed by the then record owners of a majority of the lots in this Subdivision and duly recorded appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by the said Committee.

Neither the Committee, Committee representative, or Owner shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work performed according to such plans and specifications. (It is specifically agreed that the scope of review by the Committee shall be limited to the appearance only and shall not include any responsibility or authority to review for structural soundness or compliance with building codes or standards, or any other similar or dissimilar factors.) No member of the Committee nor the Owner shall have any individual liability to the applicant nor to any third party for damages in reference to any function or duty undertaken by the member or owner in reference to the Architectural Control Committee.

3. BUILDING LOCATION AND SIDEWALK REQUIREMENT: No building shall be located on any lot nearer than twenty-five (25) feet to the front lot line, without the written approval of the Architectural Control Committee. No building shall be located nearer than ten (10) feet to an interior lot line or nearer than twenty (20) feet to the rear lot line. For the purpose of this covenant, caves, steps and open porches shall not be considered as a part of a building; provided, however, this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. The building locations must also comply with any applicable zoning ordinances unless a special exception is obtained from the appropriate governmental agency and approved by the Architectural Control Committee. The building location must also comply with any set-back line shown on the Plat unless special exception is obtained from the Architectural Control Committee.

4. RESTRICTIONS AGAINST RESUBDIVISION: No subdivision or resubdivision of any lot shall be made except that adjacent lots or portions thereof may be annexed by the adjacent property owner, although before such annexation, the express written consent of the Architectural Control Committee must be obtained.

5. OFFENSIVE ACTIVITIES, ETC.: No trade or business activity of any kind shall be carried on upon any lot, nor shall any noxious or offensive activity be done thereon which shall be or become an annoyance or nuisance to the neighborhood. No structure, including fences, shall be erected as to channel water on an adjacent lot. No outside clothes lines shall be permitted in the Subdivision unless screened in such a manner as not to be visible from adjacent lots or streets. No lot or homeowner shall be allowed to use property for such activities as parking trailers, inoperable motor homes, cars or trucks not in use or for repairs of same.

6. NEATNESS, ETC.: All lots, whether occupied or unoccupied, and any improvements placed thereon, shall, at all times, be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or by the accumulation of rubbish or debris to a include, but not limited to, miscellaneous personal items, thereon. In order to implement effective control of this, Owner reserves for itself, its agents and the Architectural Control Committee, the right, after fifteen (15) days written notice by certified mail to the property address to any lot owner, to enter upon any residential lots with such equipment and devices as may be necessary for the purpose of mowing, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which, in the opinion of Owner or the Architectural Control Committee, detracts from the overall beauty or safety of the Subdivision. Such entrance upon such property for such purposes shall be only between the hours of 7:00 A.M. and 6:00 P.M. on any day except Sunday, and shall not be a trespass. The Owner or the Architectural Control Committee may charge the lot owner with a reasonable cost for such services, which charge shall constitute a lien upon such lot enforceable by appropriate proceedings at law or equity. The provisions of this paragraph shall not be construed as an obligation on the part of Owner or the

Architectural Control Committee to mow, clear, cut or prune any lot nor to provide garbage or trash removal services.

7. TRAILERS, BOATS, POOLS, COMMERCIAL TRUCKS ETC.: No trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding erected on any lot shall at any time be used as a residence, temporarily or permanently, nor shall any structures of a temporary character be used as a residence. House trailers, mobile homes, motor homes, campers, and/or trailers may be kept on the premises only if kept within a rear yard which is surrounded by a fence which is allowed pursuant to Paragraph 12 herein. No 18-wheel trucks may be parked on the premises (this includes the truck and/or the trailer). No boat twenty five (25) feet in length or larger may be kept on the premises and all smaller boats must be kept on trailers in the rear yard not visible from any public street, or within a garage or carport not visible from any public street. Above the ground pools are not allowed.

8. TYPE AND SIZE OF BUILDINGS: No building shall be erected, altered, placed or permitted to remain on and of the lots within said Subdivision other than one single family dwelling, not to exceed two and one-half (2½) stories, which shall have habitable area, exclusive of basements, open porches and garages, of at least One Thousand Two Hundred (1,200) square feet. All buildings erected on any lots shall be of new construction. It is understood that the Architectural Control Committee shall give approval to one reasonably sized outbuilding to be located near the rear lot line in which must be architecturally acceptable to the committee.

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

10. GARBAGE DISPOSAL CONTAINERS AND EQUIPMENT: No lot shall be used as a dumping ground for rubbish, and all debris and trash from clearing or construction must be immediately removed. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean, sanitary condition and kept behind the dwelling or fence except on days that the garbage is collected. Any cuttings, trimmings, vegetation or other debris shall be kept behind the dwelling and/or fence and shall not be placed for collection earlier than twenty-four (24) hours prior to the time of collection by the appropriate collecting agency.

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

12. FENCES, WALLS, HEDGES, ORNAMENTAL STRUCTURES, BUFFER ZONE AND MAILBOXES: All fences shall be Six (6) feet or less in height. Hedges shall be located at least Ten (10) feet to the rear of the front of the dwelling on such lots, except as to corner lots, on which the location of hedges must be pre-approved by the Architectural Control Committee. No fence, wall or ornamental structure, other than which is an integral part of the dwelling itself, shall be constructed upon any portion of any lot without the prior written approval of the Architectural Control Committee. All fences must be made of wood or brick, faced with wood or brick, or have the outward appearance of being made of wood or brick. No chain link fences will be allowed.

13. SOD FRONT YARDS: Immediately after the completion of construction of a dwelling on a lot, the front yard and side yards shall be sodded to an extent to prevent soil erosion and washout into the street and drainage system.

14. SIGNS: No sign of any kind shall be displayed to public view on any lot except one professionally lettered sign not more than Five (5) square feet in size, which may advertise the

property for sale or rent; except during the construction period, an additional sign may be erected by the builder and a security service sign shall also be allowed when applicable. Owner has the right to place additional signs within the Subdivision until all units are developed and sold.

15. **AMENDMENT OR MODIFICATION OF RESTRICTIONS:** Any and all of the restrictions or requirements hereinbefore set forth may be annulled, amended, or modified at any time by the Owner, so long as it continues to own any lots within the Subdivision, without the consent of the property owners or by the owners of not less than Seventy-Five (75%) percent of the lots in said Subdivision, provided, that the owner, its successors and assigns must approve such amendments, modifications or annulments so long as such owner shall own any lots in said subdivision and any adjacent lands under his control. Any amending instrument shall be acknowledged by the Owner or owners signing same and shall be filed for record in the Office of the Judge of Probate, Mobile County, Alabama, provided that no amendments shall place an additional burden, restriction or requirement on any lot in said Subdivision, the owner of which does not join in the said amending instrument.

16. **TERM:** The herein stated restrictions shall run with the land, shall be binding on all lot owners, and upon all parties and persons claiming under or through them, each of whom shall, by virtue of their acceptance or acquisition of title or other interest, accept and agree to be bound by and to abide by all terms and provisions of this instrument, all of which shall be and remain in full force and effect until January 1, 2025, after which time said restrictions shall automatically be extended for successive periods of Ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part with it being understood that should the Owner/Developer, **The Mitchell Company, Inc.**, retain any lots in said Subdivision, the said instrument to be valid must be signed by the **President of The Mitchell Company, Inc.**, of Alabama and by the majority of the owners of lots in the subdivision other than **The Mitchell Company, Inc.**

17. **VIOLATIONS:** Any violation of these covenants shall not constitute a cloud upon the title of the property concerned and title shall not be forfeited as a result of such violation; however, should a lien be placed on the lot by the Owner or by the Architectural Control Committee and/or Homeowner's Association, those entities shall have all remedies available under the law to enforce the said lien.

18. **ENFORCEMENT:** If any person or persons shall violate or attempt to violate any of the restrictions contained herein, it shall be lawful for any member of the Architectural Control Committee or any party owning any real property, to include the Owner/Developer, situated in said Subdivision, to prosecute any proceedings at law or in equity, against the person or persons violating or attempting to violate any such restrictions, to prevent the violation of these restrictions and to recover damages for such violation, and the party bringing the action, if successful, shall be entitled to recover legal fees and costs in addition to any other recoverable damages.

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


20. **HOMEOWNER'S ASSOCIATION:** There will be formed, no later than the time Phase Two of March Pointe Subdivision is developed, a Homeowner's Association. The name of the association will be March Pointe Homeowner's Association (the "Association") and it shall, among other things, hold title to and be responsible for the maintenance of the entrance, any decorative fences, street islands, detention pond for storm water drainage, holding tank for sewer system, neighborhood pool, and all other common areas, and pay for the power used by the Subdivision street lights. Among the purposes of such organization shall be the establishment of rules and policies with respect to the use and maintenance of all common areas, such as street islands, subdivision name signs, decorative fences, and the like; but shall have no jurisdiction over privacy fences which each lot owner shall maintain. All lot owners of all units of March Pointe, and any additions thereto, must be members of the Association. Since there are no common areas, entrances, street lights, etc. in Phase One, there will be no general or special assessments required to be paid by

the owners of lots in Phase Two. All said assessments will be paid by the lot owners of the future phases built, as they will be the lot owners receiving a benefit from said common areas.

21. **TREE REMOVAL:** Due to the intent and desire of the Owner to maintain the natural beauty of the development known as **March Pointe**, should any property owner desire to remove a tree of any description, the diameter of which is Six (6") inches or more in diameter at a height no greater than Four (4') feet from the base, the written approval of the Architectural Control Committee must be obtained prior to the removal of the said tree.

IN WITNESS WHEREOF, **The Mitchell Company, Inc.** has had its name signed on this the 3rd day of February 2006.

THE MITCHELL COMPANY, INC.

By: 
Christopher Sylvester
Its Executive Vice President

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned notary public in and for said state and county, hereby certify that Christopher Sylvester, whose name as **Executive Vice President of The Mitchell Company, Inc.**, is signed to the foregoing instrument, and who is known to me, acknowledges before me on this day that, being informed of the contents of the instrument he, as such officer and with full authority, executed the same on behalf of the company on the day the same bears date.

Given my hand and seal this the 3 day of February 2006.


NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: 04/27, 2009
My Commission Expires: ~~04/27, 2009~~
ISSUED UNDER NOTARY PUBLIC UNDERWRITERS

This Instrument Prepared By:

Douglas L. Anderson, Esq.
Bowron, Latta & Walsden, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(251) 344-5151

State of Alabama-Mobile County

I certify this instrument was filed on:

S. R. FEE February 3, 2006 9 4:51:23 PM \$2.00
RECORDING FEES \$13.50
TOTAL AMOUNT \$15.50

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