

**BY-LAWS**

**OF**

**DUNHURST PLACE HOMEOWNER'S ASSOCIATION, INC.**

A non-for-profit Florida Corporation

**ARTICLE I**

The name of the corporation is Dunhurst Place Homeowner's Association, Inc., a Florida Corporation, nor for profit, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 3298-18 Langley Avenue, Pensacola, Florida 32503, but meetings of members and directors may be held at such places within the State of Florida as may be designated by the Board of Directors from time to time.

**ARTICLE II**

**Definitions**

Section 1. "ASSOCIATION" shall mean and refer to Dunhurst Place Homeowner's Association, Inc., a Florida corporation, not for profit, its successors and assigns.

Section 2. "COMMON AREAS" shall mean all real property and any improvements constructed thereon owned by the Association for the use and enjoyment of the Owners.

Section 3. "DEVELOPER" shall mean The Mitchell Company, Inc., an Alabama corporation, its successors and assigns, provided such successors or assigns acquire more than one (1) undeveloped lot from Developer for the purpose of development. The Mitchell Company, Inc., an Alabama corporation shall at all times have the right to assign its interest herein to any successor or nominee.

Section 4. "LOT" shall mean any residential lot shown on the recorded subdivision plat of Dunhurst Place or those lots in the development known as Dunhurst Place or plats of Future Phases whose owners are members as herein defined, as referred to herein with the

**EXHIBIT "C"**

exception of the common areas.

Section 5. "UNIT" shall mean any individual residential structure located on a residential lot including the garage appurtenant thereto.

Section 6. "MAINTENANCE OF ASSOCIATION PROPERTY OR COMMON AREAS" shall mean the exercise of reasonable care to keep any buildings, swimming pool, , landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden-management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

Section 7. "MEMBER" shall mean every person or entity who holds membership in the Association as provided in the Articles of Incorporation of Dunhurst Place Homeowner's Association, Inc.

Section 8. "OWNER" shall mean the record Owner, whether one or more persons, or entities, of a fee simple title to any unit or residential lot which allows membership in the Association but shall not include those holding title merely as security for performance of any obligation.

Section 9. "ARTICLES" shall mean the Articles of Incorporation of Dunhurst Place Homeowner's Association, Inc.

### **ARTICLE III Meetings of Members**

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of two o'clock p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is

not a legal holiday. The first meeting of the Board of Directors of the Association shall be immediately succeeding the annual meeting of the members.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of a majority of the members of the Class B membership, or upon written request of fifty-one (51) percent of the Class A members who are entitled to vote.

Section 3. Notice of Meeting. Written notice of each meeting of members shall be given, by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the members' addresses last appearing on the books of the Association, or supplied by such member to the Association for the purposes of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Written Response. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these By-Laws. Unless some greater number is required under the ARTICLES and except as to the election of Directors which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

Section 5. Quorum. The presence at the meeting of the members entitled to cast votes, or of proxies entitled to cast votes, equal to fifty-one percent (51%) of all the members, notwithstanding the provisions of Article III hereof, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Restrictions, or these By-laws. If, however, such quorum shall not be present or represented at the meeting, the members entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present and represented.

Section 6. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of the Meeting in order to be effective. Every proxy shall be revocable prior to the time a vote is cast according to such proxy and shall automatically cease upon conveyance by the member of his lot or unit.

Section 7. Vote Required. At every meeting of the members, the Owner or Owners of each lot or unit, either in person or by proxy, shall have the right to cast one vote, as set forth in the Articles. The vote of the majority of those present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the Articles of Incorporation, or of these By-laws, a different vote is required, in which case such express provisions shall govern and control.

The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of ten percent (10%) of the votes represented at such Meeting and entitled to be cast on such matter if such request is made prior to the vote in question. The preceding officer of the Meeting shall call for nominations for Inspectors of Election to collect and tally written ballots upon the completion of balloting upon that matter.

Section 8. Order of Business. The order of business at all annual or special meetings of the members shall be as follows:

- A. Roll Call
- B. Proof of notice of meeting or waiver of notice
- C. Reading of minutes of previous meeting
- D. Reports of officers
- E. Reports of committees
- F. Election of officers or directors (if election to be held)
- G. Unfinished business
- H. New business
- I. Adjournment

Section 9. Minutes. Minutes of all meetings shall be kept in a businesslike manner and be available for inspection by the members and Directors at all reasonable times.

**ARTICLE VI**  
**Board of Directors: Selection--Term of Office**

Section 1. Number. The affairs of this Association shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than five (5) members. The first Board of Directors shall have three (3) members.

Section 2. Term of Office. Each member of the Board shall serve for a term of one (1) year until the next annual meeting, or until such time as his successor is chosen. The eligibility of a member to be elected for more than one (1) term shall not be abridged.

Section 3. Removal. Any director may be removed from the Board with or without cause, by a majority of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board of Directors and he shall serve for the unexpired time of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### **ARTICLE V Nomination and Election of Directors**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members of their proxies may cast, in respect to each such vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving a majority of the votes cast for that office shall be elected. Cumulative voting is not permitted.

#### **ARTICLE VI**

### **Meetings of Directors**

**Section 1. Regular Meetings.** Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. No further notice of the organizational meeting shall be necessary.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

**Section 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board by signing the minutes thereof, and such signing shall constitute the presence of such Director for the purpose of determining a quorum. If at any meetings of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

**Section 4. Voting Requirements.** Except as otherwise specifically set forth in the By-laws, and Articles of Incorporation, Class A and Class B members or Owners shall vote

together as one entity on all matters requiring a vote.

Section 5. **Open Meetings.** Meetings of the Board may be open to all Members on such terms as the Board may determine. The Board may also hold closed meetings.

Section 6. **Action Without A Meeting.** Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of Directors.

**ARTICLE VII**  
**Powers and Duties of the Board of Directors**

Section 1. **Powers.** The Board of Directors shall have the power to:

A. Adopt and publish rules and regulations governing the use of the common areas and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

B. Suspend the voting rights and right to use of the common areas by a member during any period in which such member shall be in default in the payment of any assessment levied by the Association.

Such right to the use of the common areas may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-laws, the Articles of Incorporation, or the Restrictions;

D. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of



Directors;

E. Employ a manager, management company, an independent contractor or such other employees as the Board deems necessary and to prescribe the duties to be undertaken and the compensation therefor, and authorize the purchase of necessary supplies and equipment and to enter into contracts with regard to the foregoing items or services;

F. Accept such other functions or duties with respect to the property hereunder, including Architectural Control, in addition to maintenance responsibilities, as are determined from time to time to be proper by the majority of the Board of Directors; and

G. Delegate to and contract with a financial institution for collection of the assessments of the Association.

Section 2. Duties. It shall be the duty of the Board of Directors:

A. To cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is required in writing by fifty-one percent (51%) of all members, notwithstanding the provisions of Article III hereof;

B. To supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

C. To fix the amount of the annual assessment against each lot or unit at least thirty (30) days in advance of each annual assessment period and to send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and in relation thereto, to establish the Annual Budget;

D. To foreclose the lien against any property for which assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same, at the election of the Board of Directors;

E. To issue or cause to be issued by an appropriate officer, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

F. To procure and maintain adequate liability insurance on property owned by the Association, and such other insurance which in the opinion of a majority of the directors may be necessary or desirable for the Association in addition to the insurance required to be carried by the Association as set forth in the Declaration as the same may be amended from time to time, the policies and limits are to be reviewed at least annually and increased and decreased at the discretion of the majority of the members of the Board of Directors;

G. To cause the common areas to be maintained; and

H. To fix and determine the amount of special assessments for capital improvements as set forth in the Restrictions described hereinabove, to send written notice of each special assessment to every owner subject thereto at least thirty (30) days in advance of the due date thereof, and to collect or cause to be collected such sum or sums as are deemed to be due by virtue of said special assessment.

### Section 3. Special Appointments and Committees.

A. **Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

B. **Committees.** The Board shall appoint such committees as are required under the Articles or these By-laws, as well as such other committees as are necessary or desirable from time to time, which committees shall exist for such period of time, have such authority, and

perform such duties as the Board may, from time to time, determine, in its discretion.

## **ARTICLE VIII Officers and Their Duties**

**Section 1. Enumeration of Officers.** The officers of this Association shall be a president and a vice president, who shall at all times be members of the Board of Directors; a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors which shall immediately follow the adjournment of each annual meeting of the members.

**Section 3. Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled by appointment by a majority vote of the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of the president and secretary may not be held by the same person.

Section 8. Duties. The duties of the officers are as follows:

A. President: The president shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes, and shall have all of the powers and duties which are usually vested in the office of the President of a corporation.

B. Vice President: The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

C. Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as may be required by the Board of Directors.

D. Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association along with the president; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

E. Compensation: The compensation, if any, of the officer and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude the contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Dunhurst Place Homeowner's Association, Inc.

**ARTICLE IX**  
**Accounting Records; Fiscal Management**

Section 1. The Association shall use the cash basis method of accounting and shall maintain accounting records in accordance with good accounting practices, which shall be open to inspection by Members and Institutional Mortgages or their respective authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Written summaries of the accounting records shall be available at least annually to the Members. Such records shall include, but not be limited to, (i) a record of all receipts and expenditures; and (ii) an account for each Unit which shall designate the name and address of the Unit Owner thereof, the amount of the Assessments charged to the Unit, the amounts and due dates for payment of same, the amounts paid upon the account and the balance due.

Section 2. The Board shall adopt a Budget of the anticipated Operating Expenses of the Association for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the first two weeks of November of the year preceding the year to which the Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member and each Unit Owner shall be given notice of the Assessment applicable to his

Unit(s). The copy of the Budget shall be deemed given upon its delivery or upon its being mailed to the Member or Unit Owner shown on the records of the Association at his last known address as shown on the records of the Association.

Section 3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a pro rata basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure any adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the cash basis method of accounting.

Section 4. The Assessment shall be payable as provided for in the Restrictions.

Section 5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not Budgeted or which shall exceed Budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of an adjustment to the applicable Assessment (e.g., Unit

Assessment or Special Assessment).

Section 6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

Section 7. A report of the accounts of the Association shall be made annually by an auditor, accountant or Certified Public Accountant and a copy of the report shall be furnished to each Member and Owner no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Member or the Owner upon its delivery or mailing to the Member or Owner shown on the records of the Association at his last known address shown on the records of the Association. The holder, insurer or guarantor of a first mortgage upon any Unit in Dunhurst Place shall be entitled, upon written request therefor, to receive audited financial statements of the Association for the prior fiscal year without charge.

#### **ARTICLE X Books and Records**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation, and the By-laws of the Association shall be available for inspection by any member at the principal office of the Association, or such other address as the Board of Directors may from time to time designate, and copies may be purchased at a reasonable cost at such address.

**ARTICLE XI**  
**Assessments**

As more fully provided in the herein, each member is obligated to pay to the Association annual and special assessments.

**ARTICLE XII**  
**Corporate Seal**

The ASSOCIATION shall have a seal in circular form, having within its circumference the words: Dunhurst Place Homeowner's Association, Inc, a Florida corporation, not for profit, 2005. Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise. The words "corporate seal" or their equivalent may be used as a facsimile of or as the seal.

**ARTICLE XIII**  
**Amendments**

Section 1. Requirements to Amend. These By-laws may be amended at a regular or special meeting of the members by a vote of fifty-one percent (51%) of the members present in person or by proxy, notwithstanding the provisions of Article III hereof.

Section 2. Control of Conflict. In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles shall control.

**ARTICLE XIV**  
**Rules and Regulations**

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation and use of any of the Association Property. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members and Owners shown on the records of the Association at the time of such delivery or mailing at the last known address for such Members and Owners shown on the records of the Association and shall not take effect until



forty-eight (48) hours after such delivery or mailing. Notwithstanding the foregoing, where rules and regulations are to regulate the use of specific portions of the Association Property as, but not limited to, tennis courts or a swimming pool (the recitation of such facilities being only illustrative and not a representation that such facilities shall exist), same shall be conspicuously posted at such facility and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view towards protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

#### **ARTICLE XV Miscellaneous**


**Section 1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association.

**Section 2. Indemnification.** Every director and officer of the Association, and every member of the Association serving the Association at its request, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement of any proceeding or any settlement of any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association or by reason of his serving or having served the Association at its request, whether or not he is a director or officer or is serving at the time the expenses or liabilities are incurred; provided that in the event of a settlement before entry of judgment, and also when the person concerned is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, the indemnification shall apply only when the Board of Directors approves the settlement and

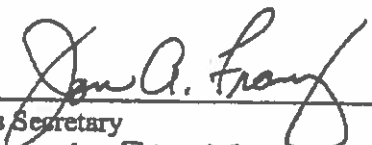
that in the event of a settlement before entry of judgment, and also when the person concerned is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, the indemnification shall apply only when the Board of Directors approves the settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which that person may be entitled.

Section 3. Insurance. The Board of Directors may, but is not required to, elect to carry a policy of officers' and directors' liability insurance, insuring the officers and directors against any claims made against them whatsoever, except claims of willful negligence and misfeasance of office.

DUNHURST PLACE

By:   
Its President  
MICHAEL PAUL SABA

ATTEST:

By:   
Its Secretary  
JON A. FRANZ

