

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE CAPTAIN'S COURT,  
A HOMEOWNER'S ASSOCIATION**

This declaration is made on the date herein after set forth by Nellie Melba Cutchin (White) Clements, subdivider of said project, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in the City of Dothan, County of Houston, State of Alabama which is more particularly described as The Captain's Court subdivision, recorded in Plat Book 8, page 150 in the Probate Court of Houston County, Alabama.

NOW, THEREFORE, Declarant hereby declares that all of the properties 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, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner.

**ARTICLE I**

**DEFINITIONS**

1.01 Association shall mean and refer to The Captain's Court Homeowners Association, its successors and assigns, but said Association shall not be for profit or pecuniary gain to the members thereof.

1.02 Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot that is any part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

1.04 Common area shall mean real property (including the improvements) owned by the Association for the common use and enjoyment of the owners. The common area to be owned by the Association at the time of the conveyance of the first lot is the private drive known as Captain's Court and all easements thereto, and being more particularly described as Exhibit A attached hereto and incorporated herewith.

1.05 Lot shall mean and refer to any plot of land or parcel shown upon any recorded subdivision map of the properties with the exception of common area.

1.06 Declarant shall mean and refer to the subdivision owner or subdivider, which is Nellie Melba Cutchin (White) Clements, her successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

## ARTICLE II PROPERTY RIGHTS

2.01 Every owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to charge reasonable fees for the use of and maintenance for the common area;

(b) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility or governmental entity for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two thirds of the members of the Association.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.01 Every owner of a lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot that is subject to assessment.

3.02 The Association shall have one class of voting membership. Any owner of a lot in the Captain's Court subdivision, whether owned by one or more individuals, shall have one vote for each lot owned. The Declarant shall be entitled to one vote for each lot owned.

3.03 Except as otherwise expressly provided herein, all actions or decisions of the Association shall require the assent of the majority of the votes of members present or by proxy at any meeting duly called after written notice thereof.

3.04 Notice of any meetings of the Association shall be in writing not less than thirty (30) days nor more than sixty (60) days in advance of such meeting, and shall state the purpose or purposes for such meeting.

3.05 The Association may adopt such Bylaws, rules and regulations as the Association may deem adequate and necessary to govern the members of the Association, and the same are incorporated herein by reference.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

4.01 The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay the Association annual assessments or charges and special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessments are due. The personal obligation for delinquent assessments shall not pass to successors and title unless expressly assumed by them.

4.02 The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and the improvement and maintenance of the common area, which is the private drive known as Captain's Court.

4.03 On December 31 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$100.00 per lot. From and after \_\_\_\_\_ of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than 2% above the maximum assessment for the previous year without a vote of the membership. In no event shall the maximum annual assessment be increased more than 5% in any given year. The Association may fix the annual assessment at an amount not in excess of the maximum.

4.04 All annual assessments must be fixed at a uniform rate for all lots and may be collected on a monthly or yearly basis.

4.05 Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of 12% per annum. The Association may bring an action at law against the

owner personally obligated to pay the same, or foreclose the lien against the property, in accordance with the laws of the State of Alabama. No owner may waive or otherwise escape liability for the assessments by non-use of the common area or abandonment of the lot.

4.06 The lien of the assessment shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not effect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of assessment as to payments that become due prior to sale or transfer. No sale or transfer shall relieve the lot from liability for any assessments thereafter becoming due.

## ARTICLE V

### GENERAL RESTRICTIONS

5.01 No such lot shall be used except for residential purposes. No dwelling shall be occupied by anyone other than the owner and his family. Each lot is intended and restricted to use for one single family residence. Trailers and/or mobile homes shall not be allowed.

5.02 No buildings shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed three stories in height, and a private garage for not less than two cars. While no more than one such dwelling shall be erected on any one numbered lot within the Captain's Court subdivision, more than one lot may be used for the erection of one single family dwelling.

5.03 The floor area of the main structure, exclusive of open porches, terraces, carports and/or garages shall not be less than 2,000 square feet except as unanimously approved by the Homeowners Association.

5.04 No buildings shall be located nearer than fifty feet from the front lot line or nearer than twenty-five feet from any side lot line in the subdivision. No detached garage or other buildings shall be located in violation of such minimum building set back lines.

5.05 No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Animals shall be controlled in compliance with the City of Dothan ordinances and regulations.

5.06 No structure of a temporary character, trailer, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently.

Travel trailers, boats and motor homes shall be parked in a location which conceals them from the front of the lot.

5.07 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 the builder to advertise the property during the construction and sales period.

5.08 No animals, other than a pet (dog or cat), livestock, or poultry of any kind shall be kept, bred, or maintained on any lot.

5.09 No lot shall be used or maintained as a dumping ground for rubbish. Trash, grass clippings, tree limbs, garbage or other waste shall be bagged or kept in sanitary containers, and placed at the end of the driveway and not on the street or grass easement. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

5.10 No towers, conductors, convertors, satellite dishes or other facilities or equipment for the reception of audio or video broadcast directly from satellites or otherwise shall be maintained on any lot which shall be visible from the private road or from an adjoining dwelling. ~~No tower or antennae shall be erected or maintained~~ on any lot without prior written permission of the Homeowners Association as to its construction and location.

## ARTICLE VI

### COMMON AREA AND COMMON EASEMENT

6.01 Common area shall mean all real property (including the improvements thereto, for the common use and enjoyment of the lot owners. The common area at the time of the conveyance of the first lot shall consist of the real property within the right-of-way designated as a private road on the plat of said property, and known as Captain's Court, which is more particularly described as Exhibit A, attached hereto and incorporated herewith.

6.02 Every owner of every lot shall have right of enjoyment in and to the common areas which shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(a) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and

(b) All provisions of this declaration, any plat of all or any part or parts of the properties, and the bylaws, rules and regulations of the Association governing use of the common area; and

(c) The easements granted herein; and

(d) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, utility, or governmental entity for such purposes and subject to such conditions as may be agreed to by the members of the Association. If such dedication or transfer is made, all future assessments for that part which is transferred shall terminate.

## ARTICLE VII

### EASEMENTS

7.01 Each lot shall be subject to a non-exclusive easement for the purpose of ingress and egress of all fire, police, sanitation, emergency and utility vehicles and personnel of the City of Dothan, Alabama, or such other public agency, authority, utility or governmental entity serving that lot or any other lot in the subdivision. The Association shall also have the irrevocable right to have access to each lot during reasonable hours as may be necessary for the construction, maintenance, repair or replacement of any of the common area adjacent thereto.

7.02 There shall be appurtenant to each lot a non-exclusive easement for use of all pipes, wires, cables, conduits, and utility lines serving such lot.

## ARTICLE VIII

### GENERAL PROVISIONS

8.01 The Association, or any owner, shall have the right to enforce, by a 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 by 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.

8.02 Invalidation of any one of the covenants or restrictions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

8.03 The covenants and restrictions of this Declaration shall run with and bind the land. This Declaration, with the exception of Article II - Property Rights and Article III - Easements may be amended by instrument signed by not less than seventy-five percent (75%) of the lot owners, and shall be recorded in the Office of the Judge of Probate of Houston County, Alabama.