



Liens. The annual and special assessments for capital improvements, together with any interest, costs and reasonable attorney's fees, if any, shall be a charge on the lots and shall be a continual lien upon each lot against which they are levied. Each such assessment, together with interest, costs and reasonable attorneys fees shall also be the personal obligation of the person or entity that is the owner of such lot at the time when the assessments fall due.

Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the property and in particular, for the maintenance, repair and replacement of any and all improvements of the property and the entrance areas to Cutty Sark, as well as the acquisition and maintenance of any and all other common areas of the property, including the costs of repair, repaving, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against any of the common areas, utility services and the procurement and maintenance of insurance, as deemed necessary by the Board of Directors. In addition, the Association may levy special assessment against individual property owners who fail to maintain their property as set forth herein to recoup the reasonable costs of such maintenance.

Limits on Assessments. The annual assessment for each calendar year shall be established by the Board of Directors and may be increased by the Board of Directors for any calendar year without approval by the membership by an amount not to exceed ten percent of the maximum annual assessment of the previous year. The initial annual assessment shall be \$250.00. The maximum annual assessment for any calendar year may be increased without limit by a vote of two-thirds of the members of the Homeowners' Association who are voting in person or by proxy at a meeting called for this purpose. Additionally, special assessments for the purpose of repair, construction, reconstruction, replacement of a capital improvement, the roads and streets of the property, the common areas, the bulkhead, docks or slips on the canal, including fixtures and personal property related thereto, shall be equally enforceable if approved by a vote of two-thirds of the members of the Homeowners' Association who are voting in person or by proxy at a meeting called for this purpose. Assessments shall be uniform for all lots and shall be collected as provided by the Board of Directors. Assessments shall be held to a reasonable standard as regards the expenses and costs of the Homeowners' Association.

Notice and Quorum for Meetings under this Article. Written notice of any meeting called for the purpose of taking any action regarding special assessments, or regarding annual assessments in excess of ten percent of the prior year's assessment, shall be sent to all members not less than ten days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting(s) shall be three-fourths of the required quorum of the preceding meeting.

Nonpayment of Assessments. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of eighteen percent 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 lot and interest, costs, and reasonable attorney's fees of such action



or foreclosure shall be added to the amount of the assessment. No owner may waive or otherwise escape liability for the assessment provided herein by non-use of any of the common areas or abandonment of his lot. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the public records of Dare County, North Carolina, which claim shall state the description of the lot encumbered thereby, the name of the record owner, the amount due and the date due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments that are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon. Such claims of lien shall be signed and verified by an officer or agent of the Homeowners' Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein shall be subordinated to the lien of any first mortgage or Deed of Trust and any person, firm, or corporation acquiring title to any lot by deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable for said lot subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired title.

ARTICLE VII GENERAL PROVISIONS

Enforcement. Any Owner, as well as the Homeowners' Association, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, now or hereafter imposed by the provisions of the Declaration. Failure by the Homeowners' 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.

Severability. 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.

Declarant Control Period. Notwithstanding anything contained herein to the contrary, the Declarant, Cutty Sark, LLC, its successors and assigns, shall have the right to appoint and designate the entire Board of Directors of the Homeowners' Association until January 1, 2008, or until such earlier time as the Declarant surrenders its authority to so by an express Amendment to the By-Laws executed by the Declarant and approved by the Board of Directors. Beginning with the first annual meeting of the membership of the Association after January 1, 2008 (or at such time as the Declarant surrenders its authority as described above), the Board of Directors shall be elected by the members as set forth in the By-Laws. This provision shall control and prevail over any inconsistent term or provision otherwise contained in the Declaration. Any amendment, modification or alteration to this paragraph shall first be approved, in writing, by the unanimous consent of the Board of Directors of the Association.

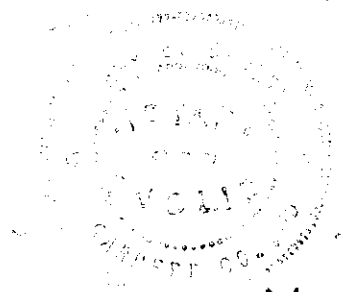
Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded,



after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment must be properly recorded in the Dare County Registry.

Waiver. The Homeowners' Association may from time to time grant to the owner or owners of lots within the subdivision a waiver or variance from the provisions of the declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the Homeowners' Association. It is understood that the existence of this power does not create a right in any homeowner or lot owner to such action by the Homeowners' Association and the decision of the Homeowners' Association on request for waiver or variance shall be final. The expressed purpose of the power as described in this paragraph is to enable the Homeowners' Association to alleviate hardships created by the terms of this declaration under circumstances which are beyond control or fault of the parties, would create irreparable harm or unnecessary hardship without such action, or under conditions where title to the property in question is clouded, encumbered or detrimentally effected by the existence of conditions which cannot otherwise be corrected. Even when conditions as described herein exist so that waiver or variance appears appropriate, granting such waiver or variance shall remain completely within the discretion of the Homeowners' Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument under seal as of the 17th day of November, 2004.



CUTTY SARK, LLC

By: [Signature] (SEAL)
Manager

State of Maryland
County of Garrett

I, a Notary Public of the County and State aforesaid, certify that Donald S. Nemith, Managing Member of Cutty Sark, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this 17th day of November, 2004.

[Signature]
Notary Public

My Commission Expires:

AMY E. DeWITT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 1, 2008

State of North Carolina
County of Dare

The foregoing certificate of Amy E. DeWitt
A Notary Public is certified to be correct. This instrument and this certificate are duly registered at the Date and Time in the Book and Page shown on the first page hereof.

Barbara M. Gray, Register of Deeds
By: [Signature] Deputy Register of Deeds



Exhibit A

All of those certain lots or parcels of land shown as Lots 1 through 18 together with all common areas, roadways and easements on that map or plat entitled "Survey for Don Nemith - Cutty Sark Subdivision" prepared by Freddy D. Rankin, P.L.S., dated _____, 2004 and recorded on _____, 2004 at Plat Cabinet _____ at Slide _____, Dare County Public Registry.

UNOFFICIAL COPY