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DARE COUNTY
NORTH CAROLINA

DRAWN BY AND MAIL
AFTER RECORDING TO:

DIXON, DIXON & CASEY NAGS HEAD
Post Office Box 28
Nags Head, NC 27959

Declaration of Covenants, Conditions and Restrictions of: Cutty Sark Subdivision Avon, North Carolina

THIS DECLARATION OF PROTECTIVE COVENANTS, made and entered into this, the 18th day of November, 2004, by Cutty Sark, LLC, a North Carolina limited liability company, hereinafter referred to as the "Declarant."

WITNESSETH:

WHEREAS, the Declarant owns certain property in Avon Village, County of Dare, State of North Carolina, which property is more particularly described in that map or plat entitled "Survey for Don Nemith - Cutty Sark Subdivision", prepared by Freddy D. Rankin, PLS, dated _____, and recorded on _____ in Plat Cabinet __ at Slide __, which plat is incorporated herein by reference; and



WHEREAS, the Declarant is desirous of subjecting the said real property to the Protective Covenants hereinafter set forth, each and all of which is and are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and run with said real property, and each and every lot or parcel which is a subdivided portion thereof, and shall apply to and bind each and every owner thereof and the successors in interest of any owner thereof;

NOW, THEREFORE, the Declarant hereby declares that all of the properties described in Exhibit A, and any additions thereto, if the Declarant brings that property under these same Restrictive Covenants by an Amendment to the Declaration, which is specifically provided for by this Declaration, shall be held, sold, transferred and conveyed subject to the following easements, restrictions, covenants and conditions:

ARTICLE I
INTENT

The real property described in Exhibit A hereof is subjected to the Protective Covenants hereby declared to insure the best use and most appropriate development and improvements of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve so far as practicable the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to prevent haphazard and in-harmonious improvements on lots; to secure and maintain proper set-backs from streets, and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvements in said property and thereby to enhance the value of investments made by purchasers of lots therein.

ARTICLE II
SITE AND BUILDING PLANS APPROVAL

No building, fence, swimming pool, or any other structure shall be erected, placed, moved onto or altered on any lot or premises in Cutty Sark until the building plans, specifications, and plot or site plan showing the proposed location on the lot of such improvements have been approved in writing as to conformity and harmony of external design with existing improvements in the development, and as to location of the improvements with respect to topography and finished ground elevation by an architectural review committee (the Architectural Review Board or "A.R.B.") composed of three persons designated and appointed by Declarant or its assigns. During the Declarant control period, Declarant, his successors or assigns may perform the duties of the A.R.B. until such time as the A.R.B. members are appointed. In the event said committee fails to approve or disapprove such design or location within sixty days after said plans and specifications have been submitted to it, or in any event, in the case of major improvements, if no suit to enjoin the erection of such improvements or the making of such alterations has been commenced prior to the substantial completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.



Members of such committee shall be entitled to compensation for services performed pursuant to this covenant. The Declarant has promulgated an initial Architectural Review Board Application containing the requirements for proper review and approval of site and building plans. Said Application is hereby incorporated by reference herein as if set forth word for word and shall be the form used until otherwise amended by the A.R.B.

The A.R.B. shall charge a fee of \$250.00 to defray the costs of the review procedures contemplated hereunder.

The A.R.B. will provide each owner of a lot within Cutty Sark Subdivision a list of standards and guidelines to be followed with regard to improvements erected within the subdivision. Said list is incorporated by reference herein as if set forth word for word, and shall be binding upon all owners and purchasers of lots in Cutty Sark Subdivision.

The exterior appearance and the landscaping of each dwelling are considered extremely important by the developer in order to maintain the standards of quality, environment, aesthetics, quality of life, and overall appearance of this subdivision.

The following items must be submitted to the A.R.B. in order for the plans to be reviewed: site plans, house, building or construction plans, elevation plans, landscape plans (showing walks, drives, and type, size and location of major plantings and shrubbery and grass) and samples of exterior siding and roofing materials and colors. The site plans must indicate the distances to existing structures and lot lines on the same or adjacent lots.

Each lot owner must also comply with all permit requirements of municipal and other governmental authorities before beginning construction, including, but not limited to, the obtaining of a CAMA permit in the event such a permit is required.

ARTICLE III COMMON AREAS ACCESS

Easements. Easements for installation and maintenance of utilities (cable, water, sewer, electricity, telephone, walkways, etc.) and drainage facilities are reserved as described on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the use, installation and maintenance of the easements. The easement on each lot and all improvements within the easements shall be continuously maintained by the owner of each lot, except for those improvements for which a public authority or utility company is responsible for maintaining.

(a) The developer reserves the right to subject the real property in this subdivision to a contract for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which may require a continuing monthly or other periodic payment to the power supplier by the Homeowners' Association.



(b) The Declarant reserves for itself, its successors and assigns, and for the Homeowners' Association, its members, agents, employees, successors and assigns, access, ingress and egress easements over and across those certain areas designated as Maintenance Easement on the Plat as well as the Common Area as shown on the recorded subdivision plat to provide access to and from adjacent Access & Maintenance Easement areas, the Common Areas, easements and roads. The Declarant also reserves the right, for itself, its successors and assigns, to install, construct and maintain walkways, boardwalks and related improvements over, across and through all said Access & Maintenance Easement areas and Common Areas shown on the recorded subdivision plat. The Declarant reserves for itself, its successors and assigns, and for the Homeowners' Association, its members, agents, employees, successors and assigns, access, ingress and egress easements over those areas of each lot necessary for the maintenance of roadside drainage swales in the event that a property owner does not perform his maintenance obligations as set forth in Section V.

(c) Easements are hereby reserved over and through each and every lot in the Cutty Sark Subdivision for the use, benefit and enjoyment of the Declarant, its agents, employees, successors and assigns for the installation and maintenance of docks, piers, boat slips, roads, walkways, streets and parking areas and for cable television services, sewage, water and other utility services, and such other reasonable services that the Declarant may, in its sole discretion, provide to said lots. Easements are also hereby granted over and through each and every lot in the Cutty Sark Subdivision for the use, benefit and enjoyment of the Homeowners' Association, its agents, employees, successors and assigns for the installation and maintenance of any docks, piers, boat slips, roads, walkways, streets and parking areas and such other properties or improvements in and adjacent to the Cutty Sark Subdivision owned by or entrusted to the Homeowners' Association. Said easements in favor of Homeowners' Association shall include the rights of access, ingress and egress to fulfill its obligations under the By-Laws of said Association and all applicable Declarations and to enforce said By-Laws and Declarations for the benefit of and against all lot owners in the Cutty Sark Subdivision. Any easement and rights of access herein granted or reserved by this Article shall not obligate the person, corporation, municipality, or other entity in whose favor the easement has been granted or reserved to provide the services or improvements for which the easements have been created, unless, in each instance, they are otherwise obligated to provide such service or improvement.

Construction and Repair of Piers, Docks and Boatslips. Owners of canalfront lots may, under certain conditions, construct docks, piers or boatslips (hereinafter collectively "Pier") from their property into the Canal. In addition to obtaining the required permits from the applicable governmental agencies, any such construction must be approved in writing by the A.R.B. prior to beginning construction. Provided that owners of canalfront lots have obtained the appropriate governmental permits and the appropriate written approval from the A.R.B. prior to beginning construction, all Piers constructed on or adjacent to canalfront lots shall be considered private in nature and not entrusted to, owned or maintained by Declarant or the Homeowners' Association. Owners of said lots who construct Piers from their property into the canal shall be responsible for maintaining said piers in good repair at the owners' sole cost and expense; provided that if said lot owners fail to maintain the Pier constructed from their property in good condition, to be



determined in the Declarant's or the Association's sole and absolute discretion, then the Declarant or the Association shall have the right to cause such repairs to be made to the structure as it deems necessary and to charge these costs and expenses for said repairs to the lot owner. Upon failure of any lot owner to pay any such costs and expenses when due, the amount owed shall become a lien upon the applicable lot enforceable in accordance with the provisions of Article VI of the Declaration.

For the purpose of insuring the Association's right to repair any such Piers, the Association hereby reserves an easement over, through and across each and every lot in Cutty Sark Subdivision, for the use, benefit and enjoyment of the Declarant, its agents, employees, successors and assigns, for access to the Pier for the specific purpose of performing any necessary repair work. Except as set forth above, the Association and its members shall not have general access rights to the Piers, however, if any such Piers are connected to common walkways, boardwalks or related improvements constructed on or adjacent to the lot, said walkways, and boardwalks shall remain the property of the Association. The Board of Directors of the Homeowners' Association may by appropriate resolution, make such other and further rules and regulations concerning the use and enjoyment of the canals and waterways in the residential area of Cutty Sark Subdivision.

Development Rights. The Declarant hereby reserves unto itself, its successors and assigns non-exclusive easements and rights over and through subdivision streets, parking areas, docks, piers, boat slips and other areas in and adjoining the Cutty Sark Subdivision, for the use, benefit and enjoyment of the Developer its agents, employees, successors and assigns. Said easements are reserved for the purpose and intent of developing and improving lands and properties in Cutty Sark Subdivision according to its plan and as it, in its sole discretion, may deem proper. Declarant reserves the right to create additional subdivisions or other planned communities on adjacent land and to add such additional subdivisions or other planned communities to the Homeowners' Association. The plans of the Declarant are to build or develop 18 lots in the residential area of Cutty Sark Subdivision, but no assurances are given that any or all of such units shall be developed. To the extent such residential lots are developed, they will be added to Cutty Sark Subdivision, made subject to these covenants, and the owners of these added lots will be obligated to pay their pro rata share of the common expenses of said Association.

ARTICLE IV
PROPERTY RIGHTS

Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas as set forth on the plat of Cutty Sark Subdivision which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Declarant or Homeowners' Association to promulgate rules and regulations to maintain the Common Area;



(b) the right of the Declarant or Homeowners' Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Delegation of Use. Any Owner may delegate his rights or enjoyment of the Common Areas to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

ARTICLE V USE RESTRICTIONS

Permitted Structures. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family Dwelling Unit (thereby expressly excluding the construction of duplexes, double or multiple-unit Dwelling Units on any Lot) and a garage or other out building approved by the A.R.B. in accordance with the terms of Article II of this Declaration. Any Dwelling Unit constructed on a Lot shall have a maximum height of 52 feet and have not less than 1,600 square feet of heated and enclosed living area. The calculation of heated and enclosed living area shall not include garages, decks, porches and walkways. Roof slopes on the main roof shall not be less than 6/12.

Special Requirements for Lots 3 through 10. Lots 3 through 10 of the Subdivision partially encompass an area containing a filled borrow pit. Pursuant to licensed Professional Engineer Victor E. White of Landmark Engineering, P.C., Kitty Hawk, these Lots are suitable for construction, subject to the requirement that owners of these Lots submit to the ARC evidence and acknowledgment of one of the following options when plans are submitted for approval:

Option One: Wood-pile foundations must extend to a minimum depth of twelve (12) feet below the land surface of the Lot in question.

Option Two: Building foundations must be designed and certified by a Profession Engineer licensed to practice in the state of North Carolina. The engineer's certification must state that the engineer is aware of the former borrow pit's presence and location on the lot.

No sewer and/or septic unit and/or system shall be installed outside of the septic setback as shown on the Plat for lots 3 through 10 of the Subdivision.

Location of Buildings, Wells and Septic Systems on Lot. Building setback lines have been noted on the recorded plat of the Cutty Sark Subdivision. No building shall be erected on any Lot except within the building setback lines noted on the recorded plat of the Subdivision. When one Owner acquires all or a portion of two or more adjoining Lots, then and in that event, the adjoining one or more Lots may be used as one building site, in which event the setback requirements noted on the recorded plat of the Subdivision shall apply to the outside perimeter property line of the combined Lots acquired by a single Owner.



Water. The subdivision shall be connected to the Dare County central water supply and no private wells shall be used for potable water. This restriction shall not apply to wells installed for the purpose of irrigation.

Sewage. All toilets, septic and/or sewage units and/or systems shall be installed and located in accordance with the rules and regulations of the North Carolina Department of Health or its successor regulatory agency. No outside toilets will be permitted under any circumstances except those self-contained temporary facilities used by construction workers during the period of construction of a Dwelling Unit on a Lot, and any such self-contained unit shall be removed after completion of construction or before occupation of the Dwelling Unit, whichever shall first occur.

Roadside Swales. Each property owner shall be responsible for maintenance of that portion of the roadside drainage swales running through his lot so that the roadside drainage swales are performing the function for which they were intended.

Re-subdivision of Lots. No Lot shall be subdivided or re-subdivided to create an additional Lot or Lots. However, there may be added to or combined with any Lot as shown on the recorded plat of the Cutty Sark Subdivision all or a portion of another Lot or Lots to produce a larger building site upon the written consent of the Developer.

Completion of Building. All construction on a Lot shall be completed within nine (9) months from the commencement thereof, provided, however, that the A. R. B. may extend such time for completion of construction when, in the committee's sole opinion, such an extension of time is warranted.

Cable Television. So long as cable television service is available, no exposed antenna shall be erected on or used on any Dwelling Unit or Lot. If cable television service is unavailable, an exposed antenna may be erected only with the approval of and subject to conditions imposed by the A.R.B. No exposed satellite dish in excess of 20 inches in diameter shall be permitted on any Lot.

Streets. No street shall be laid out or opened across or through any Lot. It is the intention of the Declarant to make application for entry of the Subdivision roads into the state highway system. Until such time as the roads are accepted into the state highway system, the maintenance of the Subdivision roads are the responsibility of the property owners and/or the Homeowners Association. Declarant shall have no responsibility for maintenance of the Subdivision roads.

Signs. No billboards or signs shall be erected or allowed to remain on the Properties except "For Sale" signs, "For Rent" signs and signs giving the name of a Dwelling Unit and/or its Owner not exceeding six (6) square feet in total area. No such permitted sign shall be illuminated. Notwithstanding the foregoing, the Homeowners' Association may erect such signs on the Properties as it, in its sole discretion, deems necessary to the development, operation and marketing of the Properties or the normal conduct of its business, signs of general contractors



and construction ladders may be erected during construction and must be removed prior to obtaining a certificate of occupancy for the Dwelling Unit constructed on a Lot, and the Homeowners' Association may erect such informational signs on the Common Area as it deems appropriate. The Homeowners' Association may enter upon the Lot of any Owner and remove any sign violating this Section, and such entry by the Homeowners' Association or his representative shall not be deemed a trespass. A sign so removed may be left on the Lot to be removed from the premises or destroyed by either the Lot or the sign Owner.

Vehicle Storage. Upon construction of a Dwelling Unit, a Lot Owner shall provide sufficient parking space on his Lot and off the abutting street for at least two (2) vehicles. The storage of travel trailers, campers, trucks and self-propelled mobile homes shall be in a garage or under the Dwelling Unit. No one shall live in or occupy campers, travel trailers, trucks, self-propelled mobile homes and other vehicles while parked on a Lot.

Driveways. During construction, an Owner shall provide access to his Lot for workers and for unloading construction materials by means of at least a temporary driveway. The Lot Owner shall repair and bear the expense of repairing subdivision streets damaged by vehicles in connection with the construction on his Lot. The Homeowners' Association may require a Lot Owner to install a culvert underneath the driveway serving his Lot at the point at which that driveway intersects a subdivision street, and the Lot Owner shall pay the cost of the culvert and its installation. At or prior to the completion of the construction of a Dwelling Unit on a Lot, the Owner thereof shall pave the driveway and all parking areas serving that Lot in concrete, asphalt or other paving materials approved by the Homeowners' Association.

Screening. Each Lot Owner shall provide screening from the public view for garbage stations, fuel tanks, rubbish storage receptacles or any other permanent facility that is required to preserve the beauty and harmony of the Properties. All rubbish shall be placed in receptacles screened from public view except as required to accomplish the collection of rubbish from those receptacles.

Pilings. All Dwelling Units constructed on the Properties on a foundation of or which are supported by pilings shall utilize pilings at least eight (8) inches in diameter (or having the strength or other structural characteristics of pilings of at least eight (8) inches in diameter), which shall be buried no less than eight (8) feet below the surface of the ground. All pilings shall be enclosed with siding or lattice approved by the Homeowners' Association.

Temporary Structures. No temporary structures, such as a trailer, tent or shack, shall be constructed or placed upon any Lot before, during or after completion of construction of any buildings and structures except for such structures as are normally used by construction contractors during the period of construction. Such temporary structures shall be promptly removed after completion of construction and may not be used as residences while on the Lot.

Mobile Homes. No mobile home, manufactured home, modular home, trailer, recreational vehicle or other like structure shall be located or installed on any Lot to be used as a residence. As used herein, mobile home, manufactured home or modular home shall mean a



structure assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four feet or more in width and ten feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. No accessory building previously constructed elsewhere shall be moved onto any Lot; provided, however, that trailers to be used as sales offices or for construction purposes shall be allowed during the construction and sales periods.

Marine Craft. No boat or other vessel or craft shall be docked or moored in the waterways and canals in Cutty Sark Subdivision so as to block or hinder the reasonable access, ingress and egress of others. No boat or other vessel or craft over eleven feet (11') wide, measured at the "beam", shall be allowed in the residential area of Cutty Sark Subdivision, unless it shall first seek and obtain the prior written approval of the Board of Directors of the Homeowners' Association.

Animals. No pets other than household pets in reasonable numbers shall be kept in or on the Properties at anytime. No savage or dangerous animal shall be kept. No pets may be raised or bred for sale or maintained for commercial purposes. Further, an Owner may require the permanent removal of any pet causing or creating a nuisance or unreasonable disturbance or noise. For purposes of this provision, household pets shall refer to dogs, cats, birds and fish.

Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within the properties is prohibited, unless required for public safety.

Vehicle Use. All motorized vehicles operating within the properties must be properly muffled so as to eliminate noise which might be offensive to others. Two and three wheel motorized vehicles, as well as four wheeled go-carts or beach buggy type vehicles are prohibited from being used or operated on or within the Common Properties.

Nuisances. It shall be the responsibility of each Lot Owner to maintain the exterior of his Dwelling Unit and the surrounding grounds of his Lot in a clean, tidy and safe manner, and such Lot Owner shall be responsible for preventing waste from occurring to any structure on his Lot. In the event of destruction of or other casualty to the building or structure, the premises shall be cleared and debris removed therefrom by the Owner of the Lot within sixty (60) days from the date of such casualty.

(a) No Lot shall be used in whole or in part for storage of anything that might cause such Lot to appear cluttered, unclean or obnoxious to the eye; nor shall any substance, thing or material be kept on any Lot that emits foul or obnoxious odors, noises or other conditions that will or may disturb the serenity, safety or comfort of the occupants of surrounding property. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon to create a nuisance to the neighborhood.



(b) After construction has commenced on a Lot, the Lot Owner and his builder shall keep the Lot clean and neat in appearance. A trash and rubbish container at least eight (8) feet wide and eight (8) feet long shall be maintained during construction. All construction trash and debris shall be placed in the trash container and removed from the premises by the Owner or the builder. The burning of trash and rubbish is expressly prohibited. No structure, including the Dwelling Unit, shall be occupied until all construction trash, rubbish, debris and the trash container have been removed from the premises.

(c) No junked, wrecked or inoperative automobiles, trucks, buses or boats shall be permitted to remain on the Properties unless otherwise permitted by this Declaration, nor shall unsightly material be stored thereon. Owners of unoccupied Lots shall at all times keep and maintain their Lots in an orderly manner and prevent the accumulation of rubbish and debris upon the premises.

Lot Maintenance: Each Lot Owner shall keep his Lot cleared of unsightly underbrush, weeds, debris and lumber.

ARTICLE VI ASSESSMENTS, LIABILITY, LIEN AND ENFORCEMENT

Intent. The Homeowners' Association is hereby given the responsibility and authority to administer the operation and management of the common areas, docks, bulkheads and boat slips of the property, it being recognized that the delegation of such duties to one entity is in the best interests of the Owners of all residential lots in the Subdivision. To properly administer the operation and management of the common areas, docks, bulkheads and boat slips of the property, the Association will incur, for the mutual benefit of all the owners of lots, costs and expenses. To provide the funds necessary for such proper operation, management, capital improvements and repairs after damage from hazards, the Declarant hereby grants the Homeowners' Association the right to make, levy, and collect assessments against the members of the Homeowners' Association and their lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses of the operation of, the management of, and for the repair and capital improvements to, the common areas, which for the purpose of these Articles shall be deemed to include, but not limited to, the private streets and roads of the Subdivision and all other improvements, the following shall be operative and binding upon the owners of all residential lots.

Assessments and Charges. The purchaser of each lot owned within the property, by acceptance of a Deed therefor, whether or not is shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Homeowners' Association (1) Annual assessments or charges, and (2) Special assessments for capital improvements or special assessments as established by the Board of Directors of the Association, such assessments to be established and collected as hereinafter provided and as may be further provided in the Articles and Bylaws of the Homeowners' Association.