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NORTH CAROLINA  
DARE COUNTY

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BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC



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DECLARATION OF RESTRICTIVE COVENANTS  
ALDER BRANCH ESTATES SUBDIVISION

WHEREAS, James E. Dough, Kathleen W. Dough, Russell L. Stetson and Carolyn D. Stetson (hereinafter referred to as "Declarant"), are the fee simple owners of those certain lots or parcels of land located on Roanoke Island, Nags Head Township, Dare County, North Carolina, and shown as Lots 1 through 30, inclusive, on a map or plat entitled "Subdivision Plat of the Lands Owned by James E. & Kathleen F. Dough, et als ALDER BRANCH ESTATES SUBDIVISION", prepared by W. M. Meekins, Jr. & Associates, Inc., dated September 23, 2003, recorded in Plat Cabinet G, Slide 199 & 200 in the office of the Register of Deeds of Dare County, North Carolina ("Plat");

WHEREAS, Declarant intends to develop said lots as shown on the aforesaid plat according to a common scheme with the objective that the restrictions herein imposed shall inure to the benefit of each and all of the purchasers of said lots, as shown on said plat, and it is the purpose of this declaration to declare and make known the covenants and restrictions which shall apply to said lots, as shown on the aforesaid map;

NOW, THEREFORE, Declarant does by this instrument declare and make known that the following covenants and restrictions are to run with said lots as shown on the map or plat hereinbefore designated and shall be binding upon its successors in interest.



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## RESIDENTIAL USE

All lots and lands shown shall be used exclusively for residential purposes except certain exclusive rights of Declarant. No lot or lands included in this Declaration shall be used or occupied for the manufacture or sale of any articles or for any commercial purposes of any kind or character whatsoever, or for the conducting of any business. Hotels, motels, rooming houses or boarding houses are specifically forbidden.

The owner residing on any lot may conduct business activities within the residence as long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the residence; (b) that business activity conforms to all zoning requirements for the lot; (c) that the business activity does not involve persons coming onto the lot who do not reside in the residence or door-to-door solicitation of residents of the subdivision; and (d) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, a hazardous or offensive use or threaten the security or safety of the other residents of the subdivision, as may be determine in the sole discretion of the Declarant. The term "business" used in this section shall be construed to have the ordinary, generally accepted meaning, and shall include without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the providing of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is generated in full or part time, or such activity is intended or does generate a profit; or a license is required therefore.

## ARCHITECTURAL REVIEW

No building, garage, accessory building or other structure, site work or clearing preparatory to construction shall be begun, altered, added to, maintained or reconstructed on any lot until the plans and specifications for such work have been reviewed and approved by Declarant and/or its designated Architectural Review Board (ARB). Before commencing such review, the lot owner shall submit to Declarant a complete set of plans and specifications including but not limited to: a site plan, a foundation plan, a floor plan or plans, the four directional elevations, and a schedule of proposed exterior colors and materials. No change shall be made from such approval plans and specifications, nor shall subsequent alterations be caused to the site or buildings without the express approval of the Declarant or its ARB. Declarant or its ARB may approve the plans, sighting or specifications conditionally, or it may refuse approval upon any grounds, including purely aesthetic considerations, which in its sole discretion shall appear warranted to protect the beauty and harmony of the Alder Branch Estates development.



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Each lot owner shall provide screening from public view, approved in writing by Declarant or its ARB, for fuel tanks, service yards, air conditioning units, clothes lines, water tanks, rubbish storage receptacles, or for any other permanent facility which Declarant or its ARB, in its sole opinion, shall require to preserve the beauty and harmony of the development.

The approval of plans and specifications shall also include the approval of driveways. No driveways shall be approved unless same is to be constructed of concrete, asphalt, or brick. No lot shall access the streets within the Subdivision via more than one driveway.

If any application for approval shall include any structure proposed to be situated on a piling-type foundation, the Declarant or its ARB specifically reserves the right as part of the approval process to set a limit for the amount of exposure above ground allowed for any such pilings, and to require screening and masking of all exposed pilings with solid panels, open lattice or plant materials, or a combination thereof.

No building shall be erected, altered, placed, or permitted to remain on any numbered lot other than a detached single family dwelling not to exceed two and one half stories in height and a private garage or accessory building in keeping with the architectural design of the dwelling.

Declarant reserves unto itself the right to determine the exact location of any building, garage, accessory building or other structure to be located on the lot. It is the intent of Declarant in this site location process to attempt to encourage in all cases a blend of structure and terrain that will least impact the neighbors, insofar as bulk, mass, height, and vista interruption. Vertically oriented structures will be allowed to the extent that location within the topography will lessen their impact on the locale, and horizontally oriented structures will be required by Declarant or its ARB when, in its sole discretion, such would enhance the aesthetic quality of the neighborhood, or in the event that neighboring vistas would otherwise be adversely affected.

In no event shall the location of a residence, garage, accessory building or other structure be approved in violation of these covenants. All such structures placed on the property described on the above plat, shall comply with the minimum building set back lines as shown on the recorded plat.

Within 30 days after receipt of the plans and all other required information, the Declarant or its ARB shall notify the owner in writing as to whether the plans have been approved. If a response is given by the Declarant or its ARB within 30 days after all required information has been received, the plans shall be deemed approved. The response may be an approval, a



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denial, an approval with conditions or request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the 30 day time period for further response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and the construction then begins, the conditions shall be deemed accepted by the owner and the conditions imposed shall become fully a part of the approved plans.

#### CONSTRUCTION RESTRICTIONS

Notwithstanding the foregoing right to approve buildings plans, the following minimum standards shall apply to Buildings on the Lots in the Subdivision:

No one-story Buildings shall be constructed on Lots with a fully enclosed first floor area of less than 2,000 square feet, exclusive of garage, decks, and open porches. No two-story or higher Buildings shall be constructed with a fully enclosed first floor area of less than 1,200 square feet, or a total square footage of two floors not less than 2,000 square feet. No one and one-half story Building shall be constructed with a fully enclosed first floor area of less than 1,000 square feet.

The exterior Building materials shall extend to grade level, and no building shall have an unfinished exposed foundation of concrete or concrete block.

In order to preserve a desirable beauty and to prevent purchasers of those lots and lands from the massive destruction of trees, the plans for cutting trees on the lots shall be submitted in writing, and approved by Declarant or its designated ARB, and evidenced by the approved copy of the plan for cutting trees left in the permanent possession of Declarant.

Prior to commencement of construction of improvements, or clearing of any lot, other than by hand or other method approved by the Declarant or its ARB, the owner shall place a temporary or permanent driveway to provide entry to the lot from the road. A culvert shall be placed under this driveway and in line with the existing road swales. The culvert shall be a minimum of 15 inches in diameter, at least as long as the width of the permanent driveway, and set to ditch grade by a registered surveyor or engineer.

Some styles preferred are Cape Cod, Colonial, Country, Southern and Traditional. Any deviations shall be only with approval of the Declarant or its ARB; judgment of the Committee is final. No modular homes shall be permitted within the subdivision.



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Roof pitch 8:12 minimum where practical with architectural shingles.

All porches shall be stained to coordinate the house. No unfinished wood shall be exposed to exterior.

Brick or lattice shirting shall be required around house foundation, porches, decks and out buildings.

Pools to be in ground with no more than 2.0' above ground

Each building and structure erected upon said lot shall be completed within 12 months after commencing construction, except where completion is, in the opinion of Declarant or its ARB, impossible or would result in severe hardship to the lot owner or the builder due to causes not in his or their control.

All lawns must be either seeded or sodded for the entire front area, both sides and rear of the residence, said seeding or sodding to be done within six (6) months or next immediate growing season after erection of the residence on any Lot, whichever first occurs. At least one tree must be planted in the front yard.

#### WALLS AND FENCES

Walls and fences ornamental in design, may be erected but only start at the building line and the rear Lot line. No fences shall be constructed on the lots or lands exceeding six feet in height above ground level. No fence shall be permitted between a residence or dwelling and the street line. Split-rail or picket corner fences located at the corners of a Lot side line and the street bounding the Lot, shall not exceed twelve feet between each of the two (2) legs, and shall be no higher than four feet. No chain link fence is allowed.

#### OCCUPANCY

No residence erected upon any lot shall be occupied in any manner prior to completion of construction and the connection of permanent utilities.

All buildings, structures and their appurtenances shall be maintained in a suitable state of repair, and in the event of destruction by fire or other casualty, premises are to be cleared and debris removed within 90 days from date of such casualty.

State Water Management Systems Permit was issued by the Department of Environmental and Natural Resources Division of Water Quality of the State of North Carolina for this Subdivision. In compliance with the terms of said permit, the following restrictions apply to the subdivision:



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a. Allowable built-upon area of each Lot shall not exceed those values shown on the recorded Plat inclusive of that portion of the right-of-way between the front lot line and the edge of the pavement, structures, pavement, walkways of brick, stone, slate, not including wood decking.

b. The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State of North Carolina.

c. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the Subdivision, except for average driveway crossings, is strictly prohibited by any persons.

#### MOTOR VEHICLES, TRAILERS, BOATS, ETC.

No structure of a temporary character, including, but not limited to, trailer of any kind, tent, shack, garage, barn, mobile home, or other outbuilding shall be used or allowed on any lot or land at any time either temporarily or permanently and such temporary structures as may be necessary for the storage of materials by or for the convenience of workmen during the erection of the residences upon said lots or land. No temporary structure of any kind including those hereinabove set out shall be used on any lot or land at any time as a residence either temporarily or permanently.

#### PARKING

No trucks, trailers, passenger cars or other vehicles may be habitually parked on the common roads area. On each lot shall be provided an improved, non-porous surface for the parking of vehicles off the road. The storage of travel trailers, campers, trucks, boats, and self-propelled mobile homes shall be off the common roads and in such a manner so as not to constitute a visual nuisance. Campers, travel trailers, trucks, self-propelled mobile homes, and other vehicles of that nature shall not be lived in while parked on a lot.

#### EXTERIOR APPEARANCE

All personal property of the owners, including yard furniture, firewood, bicycles, motorbikes, beach furniture, toys and trashcans, must be stored or kept inside each building or in exterior receptacles approved by the Declarant or its ARB. No such items may be kept in the yard areas of the lots, it being the intent of this subsection to maintain an aesthetically pleasing subdivision free of exterior storage and display of unsightly clutter to insure the continued beauty of the subdivision.



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All utilities shall be placed underground, and the erection of any exposed antennas shall be done only with the approval of Declarant or its ARB. Approval for any such antennas will be in writing to Declarant with sufficient drawings, measurements and information accompanying so as to allow a full understanding of the visual impact of said antenna.

#### EASEMENTS FOR DECLARANT

There is reserved unto the Declarant, its successors and assigns, an easement for the purpose of drainage and installation and maintenance of utilities, including cable television, over and upon the ten feet of each lot which abuts a street or roadway, and along the side and rear property lines in conformity with the setbacks as shown on the recorded plat.

All wells and toilet and sewerage units installed upon said property shall be in accord with the rules and regulations of the North Carolina Department of Health and shall be located upon said lands in positions approved by the Declarant or its ARB and said Health department. No outside toilets will be permitted under any circumstances.

All owners of lots and lands subject to these restrictions shall have an easement of right of way for the purpose of ingress, egress and ordinary enjoyment across any of those lands dedicated or set aside as access for all property owners. However, vehicular access to Lots 1 and 29 is limited to Madeline Drive only. Access to the subdivision is only by Madeline Drive via U.S. 54 Business.

#### SUBDIVISION OF LOTS

None of the Lots shall at any time be subdivided. No more than one residence shall be erected on any one lot; however, when one owner acquires two or more adjoining lots, then in that event the adjoining one or more lots may be used as one building site and the side lot lines and easements referred to herein shall apply to the outside perimeter line of the combined lots, except that no buildings or structure or any part thereof shall be erected or maintained on any combined lots nearer the side boundary lines of such lot than twenty (20) feet.

No lot(s) shall be used for the dedication of a roadway or used as an easement for adjoining tract or tracts of land, including other subdivisions without the consent of Declarant, its successors and assigns. Notwithstanding this provision, the Declarant, their heirs, successors and assigns, shall have the right to access additional property adjoining the Subdivision to the west through Madeline Drive, as same is shown and delineated on the aforesaid subdivision plat for vehicular access and the installation and maintenance of utilities.



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Notwithstanding the provisions of the preceding paragraph or any other provision of this Declaration, the owners of the 1.20 acre tract recorded in Book 1179, at Page 774, Dare County Registry, currently owned by Steven Samuel Silver, Sr. and wife, Mary Stuart Silver, adjoining the east margin of Madeline Drive as shown on the Plat of the subdivision (the 1.20 acre tract being hereafter referred to as the "Silver Tract"), their heirs, successors and assigns, shall have the right to replat or subdivide the Silver Tract into two (2) lots pursuant to applicable Dare County ordinances without the approval of Declarant, the Association, or the owner of any Lot in the subdivision. In the event the Silver Tract is hereafter subdivided each lot shall be considered a separate lot for all purposes, including membership in the Association.

#### SIGNS

There shall be no signs, billboard or advertising structures of any nature whatsoever placed on any lots or lands, except for one "for sale" or "for rent" sign. Declarant shall not be prevented from erecting such signs as may be deemed necessary to the operation of the subdivision in the normal conduct of its business, provided that any signs so erected shall be within the applicable limits as defined by the guidelines applicable to all other lot owners in the subdivision.

#### PETS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or any household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

#### VARIANCES

Declarant 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 Declarant. It is understood that the existence of this power does not create a right in any Homeowner or Lot Owner to require such action by the Declarant and the decision of the Declarant on a request for waiver or variance shall be final. The express purpose of the power as described in the paragraph is to enable the Declarant to alleviate hardships created by the terms of this Declaration under circumstances which are beyond control or fault of the parties and 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 affected 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





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discretion of the Declarant.

#### PROPERTY OWNERS' ASSOCIATION

For the express purpose of owning and maintaining the roads, streets and other common properties in the subdivision as shown on the aforesaid plat recorded in Plat Cabinet G, Slides 199 & 200, Dare County Registry, and for the benefit of the lot owners, Declarant has caused to be formed a property owners association known as the Alder Branch Estates Property Owners Association, Inc. (Association), of which each lot owner in the subdivision, shall be a member. Declarant reserves the right to assign its rights pursuant to these covenants, including the right to approve plans and specifications, and the right to enforce these covenants and restrictions, to said Association at such time as DECLARANT, in its sole discretion, determines that such Association is prepared to assume the obligations imposed by these covenants.

Each and every owner of a lot shown on the aforesaid plats of Alder Branch Estates Subdivision, recorded in Plat Cabinet G, Slides 199 & 200, Dare County Registry, agrees to pay to the Association on the 1st day of January of each year beginning in the year 2007 for the maintenance of the streets, or common areas which the Association may hereafter acquire in Subdivision, as shown on the aforesaid plat, the sum of Two Hundred and 00/100 (\$200.00); and the sum of Two Hundred and 00/100 (\$200.00) thereafter on the same day of each year thereafter unless and until terminated. The owners of said lots shall pay said sums promptly when they become due, but in any event within thirty (30) days after on the 1st day of January of each year. Upon failure of said lot owners to pay said sums when due, the amount due together with interest as allowed by law and attorney's fees shall become a lien upon the lot or lots owned by such lot owner which lien may be claimed by notice and enforced by civil action in the nature of the enforcement of a laborer's and materialmen's lien against real property pursuant to G.S. 44A-7, et seq or, in the sole discretion of the Association, by civil action in the nature of the foreclosure of the lien of a deed of trust.

The standard to which said roads and streets in said subdivision shall be maintained is the same standard and condition maintained by Declarant as of the date hereof. Said roads and streets were built in accordance with Dare County Subdivision Ordinance existing as of the date of recording of these covenants (which standards and specifications are incorporated by reference), and have been maintained since that time in accordance with those standards.

DECLARANT hereby states its intention and purpose to cooperate in the future with the Association for the purpose of the betterment of the entire neighborhood including the supervision and ownership of properties that may be conveyed to



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the Association by Declarant for the benefit of all lot and landowners.

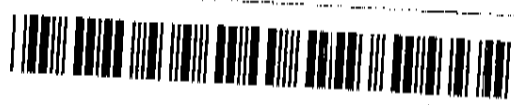
Enforcement of these covenants, restrictions and declarations may be by Declarant, its successors and assigns, or any owner of property subject to these covenants either for equitable restraint against the violation thereof, or at law for damages by virtue of any such violation and the invalidation of any one or more of the conditions and restrictions set out herein shall in no way affect any other of such provisions, all of which shall remain in full force and effect.

Declarant reserves the right to bring other property belonging to said Declarant under these protective covenants or to amend same by filing a supplementary Declaration setting forth that purpose. In addition, Declarant reserves the right, with the joinder of the then owners of the Silver Tract, to add the Silver Tract containing 1.20 acres as described in deed recorded in Book 1179, at Page 774, Dare County Registry, adjoining the east margin of Madeline Drive as shown on the Plat of the Subdivision and subject to this Declaration, which property may be subdivided as permitted under the applicable Dare County ordinances.

The foregoing conditions, reservations, declarations, covenants and easements shall run with the land and be binding upon all purchasers of lands and lots in said properties covered by these restrictions, and upon all persons or entities claiming under them through the 30th day of June, 2028, at which time the said conditions, reservations, easements, declarations and covenants shall automatically be extended for further successive periods of 10 years each, unless by vote of the then owners of record of a majority of the lots shown on the plat above referred to, it is agreed on or before such expiration date to change the said conditions, reservations, easements, restrictions, covenants, declarations in whole or in part.

Notwithstanding any of the above provisions to the contrary, the Declarant reserves the right to amend these covenants, as they deem appropriate without the consent of any owners, for a period of two (2) years from the recording of this Declaration; however, the Declarant shall not amend any provision of this Declaration which affects the Silver Tract without the prior written consent of the then owner(s) of the Silver Tract.

*James E. Dough* (SEAL)  
James E. Dough  
*Kathleen W. Dough* (SEAL)  
Kathleen W. Dough  
*Russell L. Stetson* (SEAL)  
Russell L. Stetson  
*Carolyn D. Stetson* (SEAL)  
Carolyn D. Stetson



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NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that James E. Dough and Kathleen W. Dough personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 13<sup>th</sup> day of February, 2006.

Carol A. Hayward  
Notary Public

My commission expires: 02/14/06

NORTH CAROLINA  
DARE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Russell L. Stetson and Carolyn D. Stetson personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 13<sup>th</sup> day of February, 2006.

Carol A. Hayward  
Notary Public

My commission expires: 02/31/06

The foregoing certificate of \_\_\_\_\_, a Notary Public of Dare County, North Carolina, is certified to be correct. This instrument and this certificate are duly registered as of the date and time and in the Book and Page shown on the first page hereof.

BY: \_\_\_\_\_  
Register of Deeds Deputy/Assistant Register of Deeds