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**First Amendment and Restatement to
Declaration of Development Standards
for the Village at Nags Head**

FILED
DARE COUNTY NC
04/23/98 9:44 AM
BARBARA M. GOY
Register Of Deeds

THIS FIRST AMENDMENT AND RESTATEMENT TO DECLARATION OF DEVELOPMENT STANDARDS FOR THE VILLAGE AT NAGS HEAD made this 7th day of November, 1997 by the Village at Nags Head Property Owners Association, a North Carolina Non-Profit Corporation ("Association") of P.O. Box 1807, Nags Head, NC.

RECITALS

1. Following Amendments to their By-Laws, the Association on September 26, 1995 filed that document captioned "Revised By-Laws of Village at Nags Head Property Owners Association" (By-Laws") which By-Laws are of record in Deed Book 1010 at Page 133 in the office of the Register of Deeds of Dare County, North Carolina.

2. As part of its duties, the Association through its Architectural Control Committee administers the Development Standards, the same being the architectural guidelines for The Village at Nags Head, said Architectural Control Committee having been established by the Association and the Town of Nags Head as a condition of approval of the "Special Plan Development-Community District" for the Village at Nags Head under Section 8.04 of the zoning ordinance of the Town of Nags Head and to ensure development of The Village at Nags Head in accordance with the master plan of development and in conformity with development standards and architectural guidelines.

3. Pursuant to the administration of the Architectural Review Committee, the Developer, Ammons Dare Corporation filed that Declaration of June 11, 1993 and recorded in Deed Book 867 at Page 775 of the Dare County Registry ("Declaration") which adopted and declared certain guidelines for building and development within The Village at Nags Head.

4. Pursuant to Article VI of the Association's By-Laws, there has been a transfer from Ammons Dare Corporation to the Association granting authority to the Association to execute any and all rights of architectural control, said transfer of Architectural Control having been filed on May 23, 1997 in Book 1114 at Page 828 of the Dare County Registry ("Transfer of Architectural Control").

5. Subsequent to the Transfer of Architectural Control by Ammons Dare Corporation to the Association, the Architectural Control Committee appointed by the Association has reviewed the policies, design standards and procedures relating to Architectural Control within The Village at Nags Head and having concluded said review has recommended this First Amendment and Restatement to the Declaration which First Amendment and Restatement to the Declaration has been approved and adopted by the Board of Directors of the Association.

NOW, THEREFORE, the Association as part of its delegated responsibility to ensure that any improvements to property situated within The Village at Nags Head [The Village at Nags Head includes all property situated within the perimeter of Nags Head Village as first referenced by Article

IV of the Association's Articles of Incorporation filed May 24, 1982 in the office of the Secretary of State of North Carolina and in Book 9 at Page 355, Dare County Registry, said properties also being more particularly identified and described within that area designated "Special Plan Development-Community District" for The Village at Nags Head under Section 8.14 of the Zoning Ordinance of the Town of Nags Head, said lands and properties subject to this First Amendment to Declaration herein being more particularly referred to hereafter as "Village"] shall conform with those standards of Architectural guidelines previously adopted and amended herein for the purpose of insuring that all improvements to properties within the Village reflect the overall design objectives of the entire Village taking into consideration that the unique natural setting of the Village is preserved and enhanced.

(A) **Submission of Property.** All property situated in The Village of Nags Head (as "Village" is more particularly described in the Recitals to this Declaration) shall be held, transferred, sold, conveyed and occupied subject to this Declaration and the conditions, guidelines and requirements stated herein shall be deemed covenants running with the land of all properties situated within the Village.

(B) **Statement of Purpose.** This First Amendment and Restatement reaffirms the existence of the Architectural Control Committee which was initially established as the Architectural Review Committee by the Town of Nags Head as a condition of the approval of the "Special Planned Development-Community District" for The Village at Nags Head under Section 8.04 of the Zoning Ordinance of the Town of Nags Head to oversee the development of The Village at Nags Head in accordance with that master plan initially approved by The Town of Nags Head to ensure that any improvements to properties within the Village were in conformance with standards of architectural guidelines for the purpose of protecting the value, desirability and the attractiveness of the Village and to protect property owners within the Village from depreciation of values that could be caused by poor design of materials, inharmonious color schemes and haphazard location of improvements on properties within the Village.

(C) **Architectural Control Committee.**

(1) **Membership:** The Architectural Control Committee shall be that Committee appointed by the Board of Directors of the Association as set forth in Article VI of the Association's By-Laws as recorded in Book 1010 at Page 133 of the Dare County Registry. The Architectural Control Committee shall meet monthly as well as upon call of the Chairman. A listing of the current membership, dates, and place of meetings, and copies of current architectural guidelines and any application materials can be obtained from the offices of the Association.

(2) **Plan Submission Procedure.** The following must be submitted to the offices of the Association no later than 15 days prior to the scheduled Architectural Control Committee meeting to allow the Committee ample review time:

(a) Any application form prescribed by the Committee with current application fee;

(b) Three (3) sets of all plans.

(3) **Submission of Plans.** No building, wall, driveway, swimming pool, tennis court, 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 the architectural Control Committee (hereinafter referred to as "the Committee"). Before commencing such review, a Lot Owner shall submit to the Committee three (3) completed sets of plans and specifications, including, but not limited to: foundation plan, floor plan or plans, the four directional elevations, a schedule of proposed exterior colors and material, shingle colors, grade and weight and a complete site plan showing driveway, parking, and all on site improvements, including exterior lighting, heat pumps, trash receptacles, any accessory uses, landscaping plans and the proposed commencement date of construction and expected completion of improvements. All plans should be submitted in consistent scale. Unless otherwise impractical, scale should be thirty (30) feet = one (1) inch for all submissions. There must be a complete identification of all colors and materials including but not limited to shingles, fascia, soffits, and siding. Any submission that does not include all plans, materials, applications, and other items as may be required by the Architectural Control Committee shall not be placed on any agenda for consideration by the Architectural Control Committee until all requirements for submission have been met. The Committee shall have the absolute and exclusive right to refuse to approve any such plans and specifications which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the Committee, shall be deemed sufficient. If construction of any improvement required to be approved shall not have been begun before the expiration of six months following approval, said approval shall be void and of no effect. In such event, the plans of such improvement shall be resubmitted to the Committee for reconsideration and the Committee may, in its discretion either confirm its earlier approval of plans or disapprove. All plans must be in compliance with those Guidelines for Building and development administered by the Committee which as of the date of this Declaration are those guidelines set forth in Section D herein. Plans shall not be deemed approved until the Committee has returned a set of plans with a "stamped approval".

(4) **Architectural Control Committee Meetings.**

(a) The Architectural Control Committee will conduct regular monthly meetings at the offices of the Association or as otherwise designated by the Chairman.

(b) All members shall be notified in writing, at least five (5) days prior to a

scheduled meeting. The notification will contain an agenda for the meeting.

(c) The Architectural Control Committee may conduct special meetings, upon five (5) days written notification of date, time, and place, from the Chairman.

(d) The fifteen (15) day advance submission requirement may be waived, for plans submitted to special meetings, upon approval of the Chairman.

(e) A quorum requirement will have been met if three (3) members of the Architectural Control Committee are in attendance at any regular or special meetings.

(f) Resolutions, approvals, and disapprovals of the Architectural Control Committee may be passed only upon majority vote of those present or by proxy. Proxies will not qualify to meet the quorum requirements of Section (C)(4)(e) hereinabove.

(g) For the purpose of passing a resolution, the Chairman may propose resolutions and vote on any resolutions.

(h) All decisions of the Architectural Control Committee will be final, unless appealed through provisions as specified in Section (C)(5).

(i) Applicants will be notified in writing, of all decisions of the Architectural Control Committee. Oral representations of any decision will not be valid and will not represent decisions of the Committee.

(j) Applicants may have returned to them a copy of plans reviewed by the Architectural Control Committee with appropriate markings to amplify Committee comments or recommendations. Markings on plans so received will not bind the Architectural Control Committee to any design indicated therein but are offered only as advisory comments.

(k) One set of plans received will be retained by the Architectural Control Committee as part of a permanent record, along with color and material samples.

(l) Special visual aids such as models, slides, etc. may be reclaimed by the applicant.

(5) Appeals of Architectural Control Committee Decisions.

(a) An applicant receiving a negative decision from the Architectural Control Committee is advised to revise the plans in accordance with recommendations and

resubmit them to the Committee for approval.

(b) If the applicant is unable to comply with the requirements of the Architectural Control Committee, he may request a hearing before the Appeal Board. The request must be made in writing and directed to the Chairman of the Architectural Control Committee.

(c) The Appeal Board will, initially, consist of three (3) members to be appointed by the Chairman of the Architectural Control Committee and is not to include current members of the Architectural Control Committee. The Appeal Board may request consultation with other professionals as it deems necessary.

(d) The Appeal Board will conduct a review of the most recently disapproved plans of the applicant. The applicant will be given an opportunity to speak before the Appeal Board, using whatever visual aids or consultants he feels appropriate.

(e) All Appeal Board members must be present for a quorum. The majority vote of the Appeal Board will carry a decision.

(f) All decisions of the Appeal Board will be final.

(D) Guidelines for Building and Development.

1. All homes built in the Village shall be of the "Old Nags Head" architectural style similar to those built in the Village to date.

2. All exterior improvements, building extensions and/or exterior painting of existing dwellings must be approved. (This rule applies even though a homeowner may be repainting the house with a previously approved color scheme.) All initial landscaping and/or changes in landscape must be approved.

3. Entrance and yard lighting shall be small wattage, low level ground lighting. High intensity flood lighting from poles or dwellings is not permitted unless specifically approved.

4. Maximum height of dwelling shall be in accordance with the Town of Nags Head Zoning Ordinance.

5. Trash or garbage receptacles location and elevation must be submitted to the Committee for approval and must be constructed of wood and be enclosed on all sides and bottom within six inches of finished grade.

6. Drives are not to exceed eighteen (18) feet in width at connection to streets, and paved with concrete, asphalt or bricks. Colored drives will not be approved (red, green, etc.). One and one-fourth (1-1/4) full size automobile parking spaces to be provided as off-street parking for each bedroom and bedroom/den shown calculations resulting in a fraction of 1/2 or more shall be rounded up to the next whole number. Parking spaces under houses, in garages or carports or in driveways will be acceptable.

7. No detached buildings will be approved. These include all structures designed to house or store vehicles and/or tools, or provide occupancy for persons/animals; e.g., garages and carports. Structures designed to provide temporary shelter from the elements (e.g., gazebos) may be exempt from this requirement at the discretion of the Committee. The construction of permanent volleyball/basketball standards must be approved. Skateboard ramps or other similar recreational structures, whether permanent or temporary, are prohibited. No clothes lines shall be located on the property.

8. There shall be no fuel tanks or storage receptacles exposed to view.

9. Exterior siding shall be of natural wood (or other approved material) and/or covered with solid, semi-transparent stain, weathering stain or paint. Only colors approved by the Committee may be used. Roofs must be of cedar shake.

10. Skylights and antennas will not be permitted unless specifically approved by the Committee. Dish antennas not exceeding eighteen (18) inches in diameter may be approved provided they are well-screened from the road and other homes.

11. All exterior house pilings shall be covered with wing walls and siding to match the house unless otherwise approved by the Committee. The use of lattice or other materials to cover pilings under decks and porches must be approved.

12. Setbacks will be in accordance with the Restrictions, recorded plat and/or CAMA regulations.

13. Signs:

(a) Permanent owner identification - A single sign which must be in good taste, no larger than 5" X 20," and in keeping with the "old Nags Head" style. All signs must be submitted to the Committee for approval.

(b) Real Estate Sales or Rentals - One 12" X 20" Realtors "For Sale" sign and/or one 12" X 20" Realtors "For Rent": sign will be

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allowed for each property - painted Village Blue with cream lettering. Brochure boxes are specifically prohibited.

(c) Contractor sign - One 24" X 36" sign allowed per lot - painted as described above. A single contractor logo is permitted, providing it does not exceed 9" in diameter. In no case will subcontractor signs be permitted (it is the responsibility of the contractor to see that this provision is enforced).

14. Utility lines - All water, sewer, electrical and cable television lines must be installed underground.
15. Mail boxes and newspaper receptacles will be of standardized design approved by the Committee.
16. Enclosed cupolas are allowed provided they do not exceed 45 feet in height and tie in with existing "Nags Head Styling." There shall be no unfinished viewing areas or decks higher than the finished elevation of the highest finished habitable floor.
17. Individual neighborhoods of the Village and their Associations which have either architectural guidelines and/or restrictive covenants are not exempt from any requirement set forth in this Declaration.

E. **Variance.** The Committee may from time to time grant the owners of property in The Village at Nags Head a waiver or variance of the provisions of this Declaration. The conditions under which such a waiver or variance may be granted shall be at the total discretion of the Committee. The expressed purpose of the powers as described in the paragraph is to enable the Committee 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 otherwise cannot be corrected.

F. **Duration.** All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any who shall be burdened and benefitted by these Covenants for a period of thirty (30) years from the date of this Declaration, after which time, all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a two-thirds majority of the then owners of the lots has been recorded, agreeing to change said covenants in the whole or in part, provided, however, that no such agreement to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

G. Notices. Any notice required to be sent to owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Dare County Tax Department at the time of such mailing. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of a Lot.

H. Enforcement. In the event of any violation or breach of any of the restrictions contained herein by any property owner or agent of such owner, the Association, its successors or assigns, or the Owners of Lots within the Village or any of them jointly or severally, shall have the right to proceed in law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach of any of the restrictions set out above, but before litigation may be instituted ten (10) days written notice of such violation shall be given to the Owner or his agent. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, but they and each of them shall remain in full force and effect.

I. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Architectural Control Committee will best effect the intent of the general plan of development within the Village. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of the Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

J. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

K. Amendment. The Development Standards may be amended at any time by a majority vote of the Board of Directors of the Association and shall be deemed effective no earlier than thirty (30) days after recordation of said amendment in the offices of the Register of Deeds of Dare County, NC.

IN WITNESS WHEREOF, the Association has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors the day and year first above written.

IN WITNESS WHEREOF, the Association has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors the day and year first above written.



The Village at Nags Head Property Owners Association

BY: Sepir Meyer, President

ATTEST:

Clarissa C. Thomasson
Secretary

STATE OF NORTH CAROLINA
COUNTY OF DARE

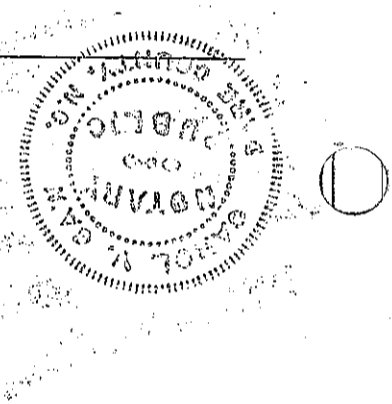
I, a Notary Public of the County and State aforesaid, certify that Clarissa C. Thomasson personally came before me this day and acknowledged that she is Secretary of The Village at Nags Head Property Owners Association, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal, this 14 day of March, 1998.

My commission expires:
May 29, 2001

Carol V. Gaw
Notary Public
(Stamp/Seal)

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North Carolina
Dare County

The foregoing certificate of Carol V. Gaw
a Notary Public of Dare Co, NC
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 Kanzella M. Walcott Asst. Register of Deeds