

Prepared by and return to:  
Daniel D. Khoury, Attorney at Law  
Vandevanter Black LLP  
P.O. Box 1042  
Kitty Hawk, NC 27949



6010629  
Page: 1 of 12  
06/02/2000 04:46PM

## DECLARATION OF PROTECTIVE COVENANTS

### NINE ESTATES

THIS DECLARATION OF PROTECTIVE COVENANTS, made this 11th day of January, 2000 by Nine Estates, Inc., a North Carolina corporation, hereinafter referred to as the "Declarant,"

### WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in the Town of Kill Devil Hills, Dare County, North Carolina and more particularly described in Article I herein and said property being hereinafter referred to as "Nine Estates" and the "Subdivision" herein; and

WHEREAS, the Declarant desires to provide for the preservation of the values of Nine Estates and, to this end, desires to subject the real property described in Article I to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are, for the benefit of said real property and each owner thereof; and

WHEREAS, Declarant desires the development of Nine Estates be patterned upon Architectural Styles which incorporate coastal theme architecture by incorporating design and building materials as more particularly set forth within those Architectural Guidelines of Article V herein for the purpose of protecting the value and desirability of Nine Estates;

NOW, THEREFORE, the Declarant hereby declares all that property described in Section 1.01 to be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to this Declaration of Protective Covenants, easements liens and charges, all of which are declared and agreed to be in furtherance of enhancing and protecting the value, desirability, and attractiveness of Nine Estates and any part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described Nine Estates or any part thereof.

### ARTICLE I.

#### STATEMENT OF SUBMISSION

Section 1.01 **Submission of Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is shown on that Plat entitled, a nine lot subdivision in Kill Devil Hills, Atlantic Township, Dare County, North Carolina", prepared by William T. Robbins, PLS and recorded in Plat Cabinet E, Slide 287 in the Office of the Register of Deeds of Dare County, North Carolina, said recorded plat being hereinafter referred to in this Declaration as the "Subdivision Plat".

The Subdivision Plat is subject to this Declaration of Protective Covenants for the purpose of protecting Lot Owners from uses in Nine Estates which would depreciate the value of their property.



## ARTICLE II.

### DEFINITIONS

Section 2.01 **Definitions.** When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "ACT" refers to the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes.

(b) "Architectural Standards Committee" shall mean and refer to the committee appointed by the Declarant or the Association to review and either approve or disapprove of all structural improvements, additions, modifications and changes at Nine Estates as provided in Article V.

(c) "Assessments" shall mean and refer to any assessments levied by the Declarant or the Association for the purpose of maintaining the Open Space.

(d) "Declarant" shall mean Bob Evans and William Dunn, Jr. and any successor in interest.

(e) "Declarant's Rights Period" shall refer to any and all privileges, powers, easements, exemptions, rights and duties reserved to the Declarant by this Declaration in any reasonable amendments thereto related to the development of Nine Estates including the pursuit and furtherance of the recitals set forth herein. The Declarant's Rights Period shall extend until the sooner to occur of the conveyance of all nine lots of Nine Estates or by December 1, 2005. During the Declarant's Rights Period, the Declarant shall have all those special Declarant's Rights defined by the Act and in addition, those rights shall include at a minimum: the right to make all appointments to the ASC, the right to be exempt from any assessments, the right to approve the composition of any Association created for the administration of the Subdivision and the right to levy assessments against Lots for the maintenance of the Open Space. During the Declarant's Rights Period, the Declarant shall have all those special Declarant's Rights defined by the Act.

(f) "Declaration" shall mean and refer to this Declaration of Protective Covenants and all amendments thereof filed for record in the Office of the Register of Deeds of Dare County, North Carolina.

(g) "Duplex Lot" shall mean two single-family dwelling units joined as one building sharing structural components which Duplex Lot is only permitted on Lot 9 of Nine Estates.

(h) "Dwelling Unit" shall mean and refer to any improved property intended for use and occupancy by a single household.

(i) "Improvements" shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements and any other construction which has been approved by the Architectural Standards Committee of Nine Estates.

(j) "Living Area" shall mean and refer to enclosed heated covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

(k) "Lot" shall mean and refer to those parcels of land enumerated as Lots (1) through (9) on the recorded Subdivision Plat.

(l) "Mobile Home" shall mean and refer to a modular unit, including double wide and triple wide units, built on a chassis, designed to be used as a dwelling, with or without a permanent foundation.



(m) "Nine Estates" shall refer to that Subdivision developed by the Declarant consisting of nine lots as more particularly described on that plat entitled Nine Estates, a nine lot subdivision in Kill Devil Hills, Atlantic Township, Dare County, North Carolina dated August 17, 1999 prepared by William T. Robbins, PLS and recorded in Plat Cabinet E, Slide \_\_\_ in the Office of Register of Deeds of Dare County, North Carolina.

(n) "Open Space" shall refer to that area designated on the Subdivision Plat, the use and maintenance of which shall be shared by the Lot Owners.

(o) "Owner" shall refer to those holding title to any Lot within the Subdivision.

(p) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(q) "Subdivision" shall refer to the nine (9) lots of Nine Estates as more particularly described on that plat referred to in Section 1.01 herein.

### ARTICLE III. PROPERTY RIGHTS

Section 3.01 **General.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property.

Section 3.02 **Easements for Declarant.** As long as the Declarant retains ownership of any Lots within the Subdivision, Declarant shall have alienable and transferrable right and easement, for purposes of ingress and egress of all roads within the Subdivision for the purpose of constructing any improvements in and to the Lots and for installing, maintaining, repairing and replacing such other improvements to the Subdivision which may be undertaken by Declarant but for which in no event shall Declarant have any obligation to do any of the foregoing.

Section 3.03. **Easements for Utilities and Drainage.** The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric, gas, water, sewer, drainage facilities, telephone systems, cable television services, and conduits for the purpose of bringing public services to the Subdivision, on, in or over those made on the Subdivision Plat and further described in Notes #4 and 5 on the Subdivision Plat which easement shall inure to the benefit of the Town of Kill Devil Hills. Declarant reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Subdivision and the right on, over and under the ground to cut drainways for surface water and make any grading of the soil whenever and wherever such action may appear to Declarant to be necessary to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 3.04. **Maintenance Easement.** There is hereby reserved for the benefit of Declarant, its respective agents, employees, successors and assigns, the right to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, clearing, cutting or pruning underbrush, weeds or unsightly growth for the purpose of building or repairing any land contour or other earth work which in opinion of the Declarant or its agents detracts from or is necessary to maintain the overall beauty, ecology, setting and safety of the property. Such entrance shall not be deemed as trespass. Declarant, and its successors, and/or assigns or designees may likewise enter upon any Lot to remove any trash which is collected without such entrance and removal being deemed as trespass. The provisions of this paragraph shall not be construed as an obligation on the part of the Declarant and/or any designee



of Declarant to undertake any of the foregoing.

Section 3.05. **Environmental Easement**. It is hereby reserved for the benefit of Declarant, and its respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated by any governmental entity or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

Section 3.06. **Underground Street Utilities and Street Lighting**. Declarant reserves the right to subject the real property described hereinabove to a contract with North Carolina Power Company for the installation of underground electric cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the Owner of each building lot.

**ARTICLE IV.  
MAINTENANCE**

Section 4.01 **Maintenance**. Each Lot Owner shall be responsible for all maintenance, repair of his Lot and/or Dwelling Unit together with all other improvements therein and all landscaping grounds on and within the Lot. Each Owner shall be responsible for maintaining his Lot in a neat, clean and sanitary condition and such responsibility shall include the maintenance and care of all exterior surfaces of all improvements and all trees, shrubs, hedges, walkways, driveways and other landscaping consistent with site plan and plans approved by the ASC.

Section 4.02 **Driveway Culverts**. Each Lot Owner shall be responsible for the installation and maintenance of 15" driveway culvert with said culvert to be centered in the stormwater's swale west of Seabreeze Trail with the responsibility to maintain the integrity of the stormwater swale east of Seabreeze Trail and the stormwater's swale along an adjacent lot lines. Such maintenance is to include removal of sediments within the swales, restabilization of the swales as needed and upkeep of the vegetation cover on a periodic, as required, basis. Vehicular traffic and the parking of any vehicles is strictly prohibited within the stormwater's swales.

Section 4.03 **Retainage Wall**. Lots: 4, 7 and 8 are subject to a retaining wall easement on the eastern most portion of their properties as indicated on the Subdivision Plat for which the Lot Owners of Lots: 4, 7 and 8 shall be responsible for any necessary maintenance of said retainage wall as the same abuts their property.

Section 4.04 **Open Space Maintenance**. Each Lot Owner shall be responsible for contributing one/ninth (1/9th) of the annual cost or projected cost to maintain that Open Space designated on the Subdivision Plat including landscaping of said area and the maintenance of the Subdivision signage for Nine Estates and the maintenance of any fencing that may have been installed by the Developer along the parameter areas as a buffer or to provide screening from adjacent properties outside the Subdivision.



## ARTICLE V.

### ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 5.01 **Purpose.** In order to protect the natural beauty of Nine Estates and to protect property owners within Nine Estates, from depreciation of values that could be caused by poor design and failure of materials, in harmonious color schemes haphazard location of improvements, Lots within Nine Estates and all improvements located thereon shall be subject to the restrictions set forth in this Article V. Every grantee of any interest in Nine Estates by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article V.

#### Section 5.02 **Architectural Standards Committee.**

(a) **Membership:** The Architectural Standards Committee (the "ASC") shall be that ASC appointed by the Declarant during the Declarant's Rights and Obligations Period and thereafter by that Association to be formed by the Lot Owners within Nine Estates.

(b) **Procedure:** At least (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any Owner of any other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with.

#### Section 5.03 **Approval of Plans.**

(a) **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 Standards Committee (hereinafter referred to as the "ASC"). Before commencing such review, a Lot Owner shall submit to the ASC 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, plan showing driveway, parking, and proposed commencement date of construction and expected completion of improvement. The ASC 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 ASC for any reason, including purely aesthetic reasons which, in the sole and uncontrolled discretion of the ASC, 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 ASC for reconsideration and the ASC 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 ASC which as of the date of this Declaration are those guidelines set forth in Section 5.03(b) herein.

#### (b) **Guidelines for Building and Development.**

1. The Declarant shall prepare the initial design development guidelines and application of review procedures which shall be applicable to all construction activities within Nine Estates. Each applicant acknowledges that composition of the ASC will change from time to time and that decisions regarding aesthetic matters and interpretation and application may reasonably vary from time to time. The approval of the ASC of any proposal or plans or specifications or drawings



for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ASC, shall not be deemed to constitute a waiver of any rights with whole approval consent as to similar proposals, plans and specifications.

2. No Dwelling Unit which has an area of less than 1,600 square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any Lot. At least twenty (20%) percent of the heated square foot living area of the house must be open decks and at least ten (10%) percent of the heated square foot living area of the house must be covered porches.

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 in writing by the ASC.

4. Maximum height - In accordance with the Town of Kill Devil Hills Zoning Ordinance and the restrictive covenants applicable to developed parcel.

5. Drives not to exceed eighteen (18) feet in width at connection to streets, paved with concrete, asphalt or bricks. Colored drives will not be approved (red, green, etc.). Parking spaces under houses, in garages or carports or in driveways will be acceptable.

6. Landscaping must be approved. Generally native vegetation shall be used. There shall be no removal of trees except as necessitated by construction.

7. No detached buildings will be approved.

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

9. Exterior siding shall be:

(a) hardiplank or equivalent lap siding;

(b) cedar shakes with a maximum of 6 inches of exposure resistance to wind pressure of 135 MPH; and

(c) vinyl siding with a minimum resistance to low pressures of 135 EMH such as Certainteed Hamilton Park Rigidform 135. If vinyl siding is used, a contrasting color of scallop look vinyl shake material shall be used in at least one accent gable or other area.

10. Roofs that are permitted are those of traditional design with a minimum 6 - 12 pitch. No single pitch roof system shall be permitted.

11. Set back restrictions are those set forth on the Subdivision Plat and in addition thereto each front yard set back shall be staggered a minimum of ten (10%) percent of the Lot's depth from the adjacent Dwelling Unit. For the purpose of this setback requirements, if Dwelling Units have been built on both sides of the Lot and site planning constraints create a hardship in achieving the Declarant's goal to stagger the set backs, then the Declarant (or the Association subsequent to the Declarant's Rights Period) may grant a waiver to this requirement for front yard staggering of the set backs.

12. Signs: Only the following signs are permitted:

(a) Permanent Owner Identification - 5" X 20" with Owner's name or adopted name with colors to be approved.

(b) Real Estate Sales or Rentals - One 12" X 20" Realtors's "For Sale" sign and/or one 12" X 20" Realtors "For Rent" sign allowed for each property.

(c) Contractor Sign - One 24" X 36" sign allowed per lot.

(d) Marketing Sign - During the Declarant's Rights Period, the Declarant shall have the right to place and maintain a 32 square foot sign in the Open Space area.



13. No clothes lines shall be located on the property unless specifically approved by the ASC.

14. Utility lines - All water, sewer, electrical and cable television lines are to be installed underground.

15. Mail boxes and newspaper receptacles will be of standardized design approved by the ASC.

(c) Variance. The ASC may from time to time grant the Owners of the property in Nine Estates a waiver or variance of the provisions of this Declaration. The conditions under which such a waiver or variance may be granted shall be in the total discretion of the ASC. 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 cannot otherwise be corrected.

(d) Procedure: At least thirty (30) days prior to the proposed commencement of any construction, the plans shall be submitted to the ASC. The ASC's approval, disapproval or waiver as required in these covenants shall be in writing and the decision of a majority of the ASC in case of any disagreement among ASC members as to the approval, disapproval or waiver by the ASC shall be controlling. In the event the ASC or its designated representatives fail to approve or disapprove within thirty (30) days after plans have been received by it, approval of the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with. Further, in the event any construction is commenced on any Lot without submission to the ASC of the plans with respect thereto, and no action or suit is instituted against the Owner of such Lot by the Association or any Owner of any other Lot constituting a portion of the Subdivision within ninety (90) days after the foundation of any building being constructed on any such Lot is completed, then, and in any such event, approval by the ASC will not be required and the related covenants and conditions of this Declaration shall be deemed to have been fully complied with

(e) ASC: Within five (5) years from the date of the first sale of a Lot by the Declarant or all nine (9) Lots have been sold by the Declarant, whichever occurs first, at least a majority of the members of the ASC shall be composed of Owners other than the Declarant.

Section 5.04 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as presenting or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, nor the Architectural Standards Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article V, nor any defects in construction undertaken pursuant to such plans and specifications.

Section 5.05 Lot Coverage. No more than thirty (30%) percent of any Lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials. This covenant is intended to insure continued compliance with stormwater runoff rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina. When an Owner acquires two or more Lots then, and in that event, the adjoining one or more Lots may be used as one (1) building site and the side Lot lines and easements referred to therein shall apply to the outside perimeter line of the combined Lots.

Section 5.06 Use of Lots and Dwellings. No part of said property shall be used for business, manufacturing, commercial or professional purposes except those home occupations as may be approved by the Town of Kill Devil Hills. No noxious or offensive trade of activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.



Section 5.07 **Exterior Appearance**. No fence, wall, hedge, or mass planting shall be permitted except upon approval by the ASC as to location, style, design and materials. Any unenclosed garages or carports must be adequately screened from street views. Further, no foil or other reflective material shall be used on any windows for sunscreens, blinds, shades or other purposes nor shall any window-mounted heating or air-conditioning units be permitted.

The ASC shall determine the standards and issue guidelines for the implementation thereof for the location, material, color and design of all mail and newspaper boxes and the manner which they shall be identified.

Section 5.08 **Antennas**. No television antenna, radio receiver, or other similar device shall be attached to or installed on any portion of the Subdivision, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot, which may unreasonably interfere with the reception of television or radio signals within the Subdivision.

Section 5.09 **Animals and Pets**. Animals, livestock or poultry of any kind shall not be raised, bred or kept on any Lot except dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and provided that they are under the control of their owners at all times.

Section 5.10 **Prohibited Structures**. No structure of a temporary character, house trailer of any kind, tent, shack, garage, mobile home, barn or other outbuilding shall be used, placed or allowed on any Lot or building site of land at any time either temporarily or permanently, except such temporary structures as may be necessary for the storage of materials by or for the convenience of workmen and contractors during the erection of residences upon said Lots. No temporary structure of any kind, including those hereinabove set out shall be used on any Lot or site at any time as a residence either temporary or permanently. "Modular Home" or similar types of dwellings shall not be constructed or placed upon any Lot or building site.

Section 5.11 **Motor Vehicles, Trailers, Etc.** Each Owner shall provide for parking of automobiles off the streets and roads within the Subdivision prior to occupancy of any Dwellings owned by such Owner. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas of any: mobile home, trailer, motor home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, motorized bicycle, motorized go-car, or any other related forms of transportation devices. Notwithstanding of the restrictions herein, temporary parking (not longer than seven (7) consecutive days) is permitted. These restrictions shall not apply to properly licensed and maintained boats and trailers.

Section 5.12 **Exterior Lights**. All lights bulbs or other lights installed in any fixture located on the exterior of any dwelling, building or other structure located on any Lot shall be clear, white or nonfrost lights or bulbs.

## ARTICLE VI.

### NINE ESTATE PROPERTY OWNERS' ASSOCIATION

Section 6.01 **Membership**. Every person or entity who is a record owner of a fee simple interest in any Lot as described in Article I, is subject by this Declaration to assessment by the Declarant and subsequent to the Declarant Control Period, by the Nine Estate Property Owners' Association and shall be a member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of an obligation shall not be a member. The requirement of membership shall not apply to any mortgagee or trustee beneficiary acquiring title by foreclosure or otherwise pursuant to the mortgage or deed of trust instrument.





Section 6.02 **Voting Rights**. The Association shall have one class of voting membership and members shall be entitled to one vote for each Lot in which they hold an interest required for membership by (a) of this Article. When more than one (1) person or entity holds such an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine and such persons shall designate one (1) person to vote for their Lot, but in no event shall more than one vote be cast with respect to any such Lot. These voting rights are subject to those provisions made on behalf of the Declarant as set forth in Section 6.07 herein.

Section 6.03 **Meetings**. Regular Meetings shall be convened annually by the President of the Association. Called meetings may be convened by the President of the Association or by any three (3) members of the Association by giving thirty (30) days written notice to all the Association members.

Section 6.04 **Quorum**. A quorum for a regular or called meeting of the Association shall consist of a majority of the members of the Association.

Section 6.05 **Officers**. Officers of the Association charged with the day to day operation of the Association and who shall be authorized to carry out the Association's business and execute documents on behalf of the Association, shall consist of a President and a Secretary/Treasurer, each appointed by the Declarant during the Declarant's Rights Period and thereafter elected by a majority vote of the Property Owners of the Subdivision.

Section 6.06 **Responsibilities and Authority**. The members of the Association, by and through its elected officers, shall be responsible for maintaining the Common Areas of the Association and upon termination of the Declarant's Rights Period, the Association shall be responsible for the administration of the ASC.

Section 6.07 **The Declarant's Representation**. During the Declarant's Rights Period, the Declarant shall be entitled to eight (8) votes in addition to one vote for each Lot that the Declarant owns and thus the Declarant shall have a majority control during the Declarant's Rights Period and there shall be no amendment of this Declaration during the Declarant's Rights Period without the consent of the Declarant.

## ARTICLE VII

### COVENANT FOR PAYMENT OF ASSESSMENTS

Section 7.01 **Creation of Lien and Personal Obligation for Assessments**. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed of other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments or charges related to the maintenance of the Common Areas as designated on the Subdivision Plat. The annual assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made.

Upon filing with the Dare County Clerk of Court's office, each such lien shall be prior to all other liens except the following: (1) assessments, liens and charges for real estate taxes due and unpaid on the Lot; and (2) all sums unpaid on deeds of trust, mortgages and other encumbrances duly of record against the Lot prior to the docketing of the aforesaid lien. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the owner of such Lot at the time when the assessment fell due.



Section 7.02 **Purpose of Assessments.** The assessments levied by the Association shall be exclusively for the purpose of maintaining the Common Areas including landscaping and signage for the Subdivision.

Section 7.03 **Annual Assessments.** The annual assessment shall never be greater than \$100.00 per Lot unless all Lot Owners agree. Thereafter, the annual assessment shall be established by the Declarant during the Declarant's Rights Period and thereafter shall be established by a budget adopted by the Executive Board of the Association pursuant to the revisions of Section 47F-3-103(c) of the Act.

Section 7.04 **Due Dates of Assessments.** Written notice of the annual assessment shall be sent to every Lot Owner subject thereto between January 1 and March 1 of each year and the annual assessment shall be due and payable on or before April 1 of each year.

Section 7.05 **Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of the Association.** If the assessments are not paid on the date due then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection, including reasonable attorney fees thereof as hereinafter provided, thereupon become a continuing lien on the Lot, or Lots, which shall bind such Lot or Lots, in the hands of the then-owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then-owner to pay such assessments, however, shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of interest set by the Board, not to exceed the maximum rate permitted by law and the Association may bring appropriate civil action against the Owner personally obligated to pay the same or to foreclose the lien against any such Lot, or Lots, and there shall be added to the amount of such assessment to be collected upon foreclosure, the costs of such action and reasonable attorney's fees to other cost incurred by the Association. In the event a judgment is obtained against any owner for such assessment, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the Court, together with the costs of the action.

## ARTICLE VIII.

### GENERAL PROVISIONS

Section 8.01 **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 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.

Section 8.02 **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.



Section 8.03 **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, Declarant, its successors or assigns, or the Owners of Lots within the Subdivision or any of them, jointly or severally, (and any Association that may become incorporated in the future) 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 affect. In addition, the State of North Carolina as a beneficiary of the obligations set forth in the Lot coverage provisions of Section 5.05 shall have a right to enforce any violation of said Section.

Section 8.04 **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 Declarant or the Architectural Standards Committee will best effect the intent of the general plan of development. 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 this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive.

Section 8.05 **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 any 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.

IN WITNESS WHEREOF, the duly authorized partners of the undersigned Declarant have executed this Declaration of Protective Covenants under seal, this the 14 day of January, 2000.

**DECLARANT**

**NINE ESTATES, INC.**

By: Bob Evans  
Bob Evans, President

ATTEST:

William Dunn, Jr.  
William Dunn, Jr. Secretary



[CORPORATE SEAL]



STATE OF NORTH CAROLINA  
COUNTY OF DARE

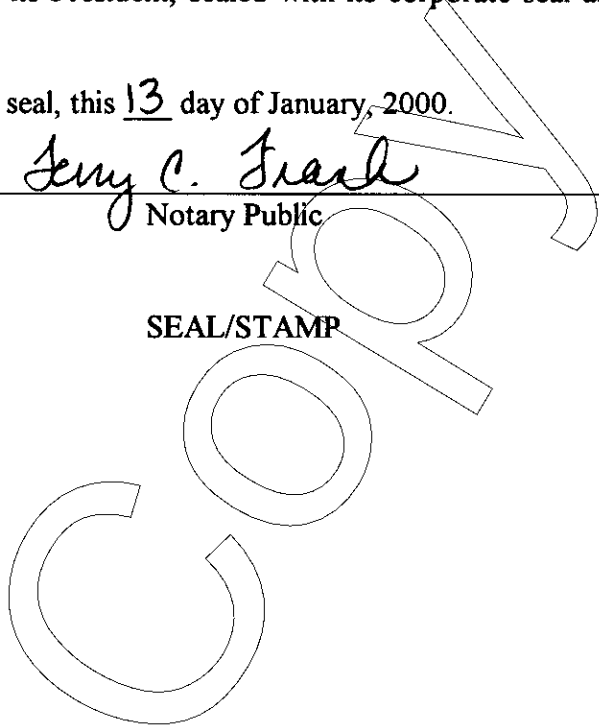
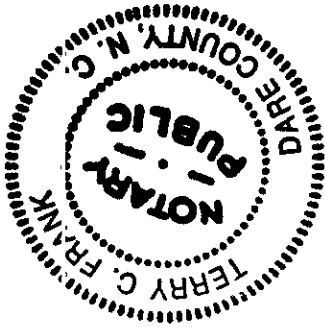
I, a Notary Public of the County and state aforesaid, certify that William Dunn, Jr., personally came before me this day and acknowledged that he is the Secretary of Nine Estates, Inc., a North Carolina corporation, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

WITNESS my hand and official stamp or seal, this 13 day of January, 2000.

March 24, 2004  
My Commission Expires

Terry C. Frank  
Notary Public

SEAL/STAMP



K:\Data\Users\ DANIEL\ Clients (Business)\ Nine Estates, Inc\ COVENANTS.wpd

NORTH CAROLINA  
DARE COUNTY

The foregoing certificate of a Notary Public of Dare Co., NC Terry C. Frank 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 Vanzella McMullan Assistant Register of Deeds

