

DECLARATION OF PROTECTIVE COVENANTS

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BY MAY 11 1987 SOUTH CREEK ACRES, HOLLYWOOD BEACH LOT RECOMBINATION, PHASE I, AND SOUTH CREEK ACRES, 3 46 HOLLYWOOD BEACH, PHASE II

DOUGLAS A. BERRY REGISTERED DEEDS DARE COUNTY, N.C.

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THIS DECLARATION OF PROTECTIVE COVENANTS, made this 1st day of May, 1987, by SOUTH NAGS HEAD DEVELOPMENT COMPANY, INC., a corporation organized and existing under and by virtue of the laws of the State of North Carolina, hereinafter called Developer;

W I T N E S S E T H:

THAT WHEREAS, Developer is the owner of all those certain lots of land numbered 1 through 79 known as South Creek Acres, Hollywood Beach Lot Recombination, Phase I, as shown on plat thereof made by Southern Surveying, Surveyors, dated November 1986 and recorded in Plat Cabinet C, Sheets 15E and 15F, Public Registry of Dare County, North Carolina;

AND WHEREAS, South Nags Head Development Company, Inc. is the owner of those certain lots of land numbered 1 through 34 as shown on plat of South Creek Acres, Hollywood Beach, Phase II, to the west of the highway, dated December 1986 and to be recorded in the Public Registry of Dare County, North Carolina;

AND WHEREAS, Developer intends to sell lots in the said subdivision subject to certain protective restrictions, reservations, easements and covenants in order to insure the most beneficial development of the said subdivision as a residential subdivision and to prevent any such use thereof as might tend to diminish the value or pleasurable enjoyment thereof, and it is the purpose of this Declaration to declare and make known the covenants, easements, conditions and restrictions which shall apply to the lands as shown on said plat, and to Phase III of South Creek Acres if South Nags Head Development Company, Inc., bring same under these restrictive covenants.

NOW, THEREFORE, Developer hereby declares and makes known that the following restrictions, easements, reservations and covenants are hereby imposed upon the said properties which shall run with the land in the subdivision and shall be binding upon Developer, its agents, successors and assigns, and upon all parties, entities and persons claiming by, through or under Developer.

1. Easement. All lots shown on said plat shall be conveyed subject to and together with easements as follows:

(a) Easements of right-of-way to the public utility companies and cable vision companies for the placing and maintenance of underground wiring to serve the subdivision.

(b) Subject to and together with an easement of ingress and egress over and across the private service road as shown on the said plats and to the entrance right-of-ways as shown on said plats from North Carolina State Road No. 1243 to the private service road.

(c) A 20 foot nature trail is reserved along the westwardly 20 feet of each lot for the benefit of the lot owners in the subdivision.

Prepared by  
and return to:  
DOWNS & McCOWN  
ATTORNEYS AT LAW  
WILSON, N. C. 27084

(d) An easement is reserved for the ditches as are on said lands together with an easement right-of-way to clean the ditches out as needed.

(e) An easement for the ponds as located on said properties together with an easement to clean said ponds out if necessary.

(f) An easement is reserved for the sleeves which are placed on the dividing lines between every other lot for the purpose of conveying utility wires and pipes to the lots and are located under the private entrance road.

2. No lot may have direct access to North Carolina State Road No. 1243, but must use the entrance right of ways to gain entrance and exit as shown on said plat.

3. Each lot in the subdivision shall be used exclusively for residential purposes, and no more than one single family residence and garage, with the exceptions of Lot 1, Phase I, and Lot 25, Phase II, which may be used for a duplex, shall be erected on any of the lots shown on the aforesaid plat. If one owner acquired two or more adjoining lots, the adjoining one or more lots may be used together as the building site for a single family residence or duplex family residence. No lot may be subdivided without the written recordable consent of the Association, hereinafter referred to.

4. No building or structure including porches and garages shall be constructed closer than ten feet from the side lines of lots as shown on the above plats, provided, however, that steps and open decks may be within seven feet of the side lines, nor closer to the western margin of the right of way of North Carolina State Road No. 1243 than fifty-five feet, and that the rear building line shall be thirty feet from the line.

5. No dwelling shall be constructed on any one building site containing less than 1344 square feet of living area. There shall be excluded from the above definition and calculation garages, breezeways, porches and unfinished attics. No building shall be erected on said lot having an elevation exceeding 35 feet.

6. All toilet and sewage disposal systems installed upon said lots shall be in accord with the rules and regulations of the North Carolina Department of Health and no outside or chemical toilets permitted.

7. All structures shall be completed on the exterior and any alterations to the original structure within six months after construction has commenced, and all ground disturbed during construction must be planted within sixty days after the house or garage is completed. Garbage cans shall be kept in garbage racks which are fasciated.

8. No trailer, tent, shack or other temporary building shall be erected or placed on the lands within the subdivision, except that a temporary building as may be necessary for the storage of materials or the convenience of workmen, shall be permitted during the erection of a residence upon said lands, and such temporary structure shall be removed from said premises upon issuance of an occupancy permit for such residence.

9. All buildings, structures and their appurtenances shall be maintained in a suitable state of repair; and in the event of destruction or casualty, premises are to be cleared and debris removed within sixty days from the date of such casualty. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkempt condition of

buildings, other structures, including garbage can racks, or grounds on his lot which shall tend substantially to decrease the beauty of the neighborhood and of the subdivision as a whole. Upon the failure of an owner to comply with this requirement, the South Nags Head Lot Owners Association, Inc., hereinafter referred to, has the right at its option, within three weeks after written notice has been mailed to such lot owner's last known address, to clear such property of debris or unkempt growth or grass and remove same, and declare its expense in so doing shall constitute a lien upon such owner's lot and improvements thereof, enforceable in the same manner as a deed of trust or lien for dues as herein-after provided. The South Nags Head Lot Owners Association may make such rules and regulations concerning the upkeep of the grounds of the lot as the members determine is in the best interest of the South Creek Acres community.

10. No signs of any kind, excepting signs advertising the property for rent or for sale, or identifying the owner or occupant of the property, shall be erected on any lot, and no animals, livestock or poultry of any kind shall be raised, bred, or kept for any purpose on the lots herein conveyed, other than the commonly accepted domestic pets, which shall not be permitted to run at large.

11. No lot in the community may be used as a street, lane, right of way or easement over which access might be obtained to adjacent properties, without the written recordable consent of the Association.

12. No lot in the community shall at any time be used or occupied for the manufacture or sale of any articles or for any commercial purpose of any kind or character whatsoever, or for the carrying on of any business.

13. The lot owners shall be responsible for the maintenance and repair of the right of ways and service road as shown on the above plats and for upkeep of such common areas as may be owned by the Association, hereinafter referred to.

14. No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition, change or alteration be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same upon the lot shall have been submitted in writing and approved in writing by the Association's Architectural Committee, to the end that the Association may preserve a desirable beauty and protect the lot owners in the Association. The Association is not to withhold its approval hereunder unreasonably, except that the disapproval of plans, specifications or locations on the lot, may be based on purely aesthetic grounds. No building or structure shall be constructed on the lot unless it complies with the North Carolina Building Code. In the event of modular construction and the transportation to the site of substantial portions of the precut structure, or in the event a building is moved to the lot from other properties, the approval shall be subject to such fees and security deposit as may be established by the Homeowners Association to insure against damage to the access roads and service roads.

15. For the purpose of enforcing the restrictive covenants and maintenance of the private entrance right of ways and service road and common areas, the Developer has cause to be formed the South Nags Head Lot Owners Association, Inc., a nonprofit corporation, and all owners of said lots as shown on the plat shall become members of the said Association;

a. The purpose of the said Association is the operation and maintenance of the private entrance road, the community lights, maintenance of the common areas and, upon consent

of the majority of the members of the Association, the Board of Directors may assess for capital improvements of the common areas.

b. That each lot owner shall initially be assessed the sum of Twenty-Five and No/100 Dollars (\$25.00) per original lot. The Board of Directors of the Association may, after consideration of maintenance costs and future needs of the Association, fix the actual assessment for any year at a higher or lesser amount. The Association may also assess a penalty for late payment.

c. The annual assessment provided for herein shall begin on the first day of January 1988 and the assessment for each succeeding year shall become due and payable on the first day of January of each calendar year thereafter.

d. If the assessments are not paid when due then such assessments shall become delinquent and shall, together with interest, penalties and cost of collection thereof, as hereinafter provided, become a continuing lien on the property. The lien created herein shall be prior to all other liens except (a) liens for real estate taxes due and unpaid, (b) all sums unpaid on Deeds of Trust and other encumbrances recorded against the unit prior to the docketing of this lien, and (c) materialmens and mechanics liens.

e. The Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, enforceable in the same manner as deed of trust or lien.

f. The responsibility to become a member of the lot owner association is absolute and becomes effective whether or not the lot owner has built a structure on his lot.

g. That no restriction, easement, covenant or condition imposed by this declaration shall be construed or interpreted as personal to the Developer herein, and the Association shall have all rights reserved in any easement, covenant, restriction or condition imposed on the said land as shown on said plats in this Declaration.

h. The Association shall have one class of voting membership. When more than one person owns any original lot, all such persons shall be members and the vote for such lot shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any such original lot. If an original lot is divided, then the owners of the portion of the divided lot and the original lot shall have one vote for the original lot and a percentage of one vote for the divided lot.

i. The Association shall provide in its Bylaws, rules and regulations for the community, as adopted by the Association members.

16. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of two-thirds of the original lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3)

years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken by the Association.

17. Notices. Any notice required to be sent to any member or 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 a member or owner on the records of the Association at the time of such mailing. It shall be the responsibility of each member of the Association to keep the Association advised of his current address.

18. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damage, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

19. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in force and effect.

IN WITNESS WHEREOF, South Nags Head Development Company, Inc. has caused this instrument to be executed in its corporate name by its President, attested by its Secretary, its common corporate seal affixed hereto, all as the act and deed of said corporation and by authority of its Board of Directors duly and legally given this day and year first above written.

SOUTH NAGS HEAD DEVELOPMENT COMPANY, INC.

By Jerry E. McManus  
President

ATTEST:

Sue Vick McCown  
Secretary

North Carolina, Dare County

I, a Notary Public of the County and State aforesaid, certify that Sue Vick McCown, personally came before me this day and acknowledged that he/she is Secretary of South Nags Development Company, Inc., 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 Sue Vick McCown as its Secretary.

Witness my hand and official stamp or seal, this 11th day of May, 1987.

Penny C. Lilley  
Notary Public

My Commission Expires: 12-10-89

PENNY C. LILLEY  
NOTARY PUBLIC  
TYRRELL COUNTY, N.C.